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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
CHANCERY DIVISION



No. CR-2019-002197

Neutral Citation Number [2019] EWHC 2680 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 3 October 2019

Before:

MR JUSTICE TROWER

IN THE MATTER OF CHARTER COURT FINANCIAL SERVICES GROUP PLC

MR MARTIN MOORE QC instructed by Linklaters LLP appeared on behalf of Charter Court Financial Services Group PLC.

MR ANDREW THORNTON appeared on behalf of OneSavings Bank Plc

J U D G M E N T

(Please note this transcript has been prepared from poor quality recording
and without the aid of documentation)

MR JUSTICE TROWER:

- 1 This is an application by Charter Court Financial Services Group Plc (“the Company”) to sanction a scheme of arrangement (“the Scheme”) under section 899 of the Companies Act 2006 (“the Act”). The purpose of the Scheme is to transfer all of the Company’s 1 pence ordinary shares (“scheme shares”) to OneSavings Bank PLC (“OSB”) in consideration for the issue of new shares in OSB at the rate of 0.8253 of a new OSB share for each scheme share. In substance, the Scheme gives rise to the combination of two specialised lending businesses.
- 2 A single meeting of the Company’s members holding scheme shares was held on 6 June 2019 pursuant to a convening order which was made by Deputy ICC Judge Middleton on 13 May 2019. At that meeting, the Scheme was approved by substantially in excess of 99 percent by value and some 92.86 percent by number of those members present and voting.
- 3 The turnout in value terms was substantial as well. It amounted to about 90.69 percent of those entitled to vote, approximately 50 percent of which was pre-committed by irrevocable undertakings. The turnout by number was less, amounting to 18.89 percent. The number of holders of scheme shares is, on the evidence, some 379.
- 4 The role of the court on an application to sanction a scheme of arrangement is summarised in the well-known passage from **Buckley on the Companies Acts (13th edn)**, which was approved in *Re National Bank Limited* [1966] 1 WLR 819 and which, as Mr Moore QC for the Company says in his skeleton argument, has been followed in numerous authorities since. Running through the factors which that passage from **Buckley** requires the court to

consider, the first issue is whether or not there has been compliance with the terms of the statute.

- 5 As to the first aspect, in my judgment, the Scheme clearly amounts to a compromise or arrangement within the meaning of section 895 of the Act. There is, on any view, the necessary element of give and take.
- 6 The second aspect of compliance with the terms of the statute relates to the constitution of the meeting. In my judgment, a single class of members was clearly appropriate. All the scheme shares are fully paid, none are held in treasury and no other differences in rights have been drawn to my attention. In these circumstances, I am satisfied that the rights of members holding scheme shares are not so dissimilar as to make it impossible for them to consult together with a view to their common interest; this being the test that I am required to apply by the authorities cited by Mr Moore in his skeleton.
- 7 The third aspect of compliance with the terms of the statute is that the provisions of the convening order must have complied with. I am satisfied on the evidence, including in particular the witness statements of Lisa Gehar and Emir Topçu, together with the chairman's report, that the requirements of the convening order as to service and the practicalities of holding the meeting were satisfied.
- 8 The fourth aspect of compliance with the provisions of the statute is that the explanatory statement in the form required by sections 897 and 898 of the Act should have been satisfied. On the evidence I have seen, that is plainly the case. The explanatory statement was full and detailed and the statutory requirements in relation to disclosure of the interests of the Company's directors has been complied with.

- 9 The fifth requirement of the statute has also been satisfied in that, as I have explained, the statutory majorities (being a majority in number representing 75% in value of the members present and voting) were plainly achieved.
- 10 The second issue which I must then consider is whether the class was fairly represented by those who attended the meeting and whether the members of the statutory majority were actually bona fide and were not coercing the minority in order to promote interests adverse to those of the class whom they represent.
- 11 There is no evidence that I have seen of any lack of bona fides or of coercion of a minority. There was a very small number of members who voted against the Scheme and there are obviously a significant number of members, albeit not holding shares of great value, who did not vote at all. However, there is no evidence that I have seen which indicates that they might have been coerced in any way.
- 12 Furthermore, while the turnout by numbers was less than 20 percent of the holders of scheme shares, the participation by value was very substantial and the evidence is that the turnout both by value and by numbers was consistent with the attendance at the 2018 and 2019 annual general meetings of the Company. This evidence supports the Company's submission that the class of members was fairly represented by those present and voting at the meeting.
- 13 The third issue which I must then consider is whether the Scheme is one that an intelligent and honest man being a member of the class could reasonably approve. I am satisfied that this is established on the evidence. There is credible evidence that the share combination is expected to give rise to cost synergies and the creation of additional shareholder value. The number of members who voted in favour of the Scheme was very substantial indeed and the Scheme was recommended by the directors with the benefit of advice from Credit Suisse

and RBC Capital Markets. All those factors seem to me to support the proposition that this is a Scheme that an intelligent and honest man being a member of the class concerned could reasonably approve.

- 14 I must also consider whether there is any blot on the Scheme. I have seen nothing from the terms of the Scheme itself, being the question with which the issue of blot is primarily concerned, to indicate to me that there is any blot on the Scheme. Nor is there anything in the circumstances surrounding the Scheme not otherwise dealt with by the other matters of which I have to be satisfied in order to satisfy the *National Bank* requirements, that there is anything that might amount to a blot.
- 15 I am also satisfied that the arrangements that have been made in relation to the employees in respect of their rights under the employee share plan are appropriate in all the circumstances and that their interests have been dealt with in a way which is consistent with their entitlement to receive shares under that plan.
- 16 So, in all these circumstances, it seems to me that this is a clear case for the sanction of the scheme of arrangement that has been proposed by the Company and approved by the statutory majorities of members holding scheme shares.
- 17 I should also add that I have had the benefit of the attendance of Mr Thornton for the bidder, OSB. He has given the necessary undertakings to ensure that the Scheme can be fully put into effect. Accordingly, I will sanction the Scheme.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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