Case No: CR-2020-002753

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)
NEUTRAL CITIATION NUMBER [2020] EWHC 2397 (Ch)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Friday, 7 August 2020

BEFORE:

MR JUSTICE TROWER

IN THE MATTER OF CELLO HEALTH PLC
and
IN THE MATTER OF THE COMPANIES ACT 2006

Mr Andrew Thornton QC instructed by Marriott Harrison LLP for the Applicant Company

JUDGMENT

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MR JUSTICE TROWER:

1. This is an application by Cello Health Plc (the "Company") to sanction a scheme of arrangement under part 26 of the Companies Act 2006 ("CA 2006"). The purpose of the scheme is to enable Pharma Value Demonstration Bidco Limited to acquire the entire issued and to be issued share capital of the Company, a healthcare focused advisory group.

2. The scheme shares are listed on AIM. The proposal is that, for each scheme share held, a scheme shareholder will receive 161 pence in cash, which is a significant premium (c.43 per cent) over the closing price at which the scheme shares were trading as at 30 June 2020.

3. The court's role on an application to sanction a scheme is well established: see e.g. *Re TDG Plc* [2009] 1 BCLC 445.

4. The first question is whether the provisions of the statute were complied with? In my view, they were. I am satisfied that the Company is a company within the meaning of section 895 of CA 2006 and that the scheme is a compromise or an arrangement within that section.

5. I am also satisfied that the terms of the convening order made by ICC Judge Burton on 10 July 2020 were complied with, and in particular that the scheme documents referred to in paragraph 2 of that order were sent out on 13 July, which was more than 14 days before the date fixed for the scheme meeting (3 August 2020).

6. I have considered the explanatory statement, which was sent out as one of the scheme documents on 13 July. In my view it complies with the terms of section 897 of CA 2006 in that it explained the effect of the scheme and dealt with the interests of the Company's directors.

7. As to the directions that were given in relation to the practicalities of holding the meeting, I am satisfied that there were arrangements in place for the shareholders to access the scheme meeting by electronic means in accordance with paragraph 6 of ICC

Judge Burton's order, although in the event no shareholder asked to make use of those arrangements.

8. It is clear from the chairman's report that the statutory majorities were achieved at the scheme meeting in that 91.72 per cent by number of all shareholders present and voting in person or by proxy, representing 96.7 per cent of all such shareholders by value, voted in favour of the scheme.

9. I am also satisfied that the constitution of the meeting directed by ICC Judge Burton was correct. At the convening hearing, she did not consider matters of class constitution in any detail because the view was taken that none of the issues referred to in paragraph 6 of the new Practice Statement (issued on 26 June 2020) arise. In that sense, it was then thought (and I agree) to be a straightforward case.

10. In my view, a single class was justified because all shareholders have the same existing rights, and all are being offered the same deal under the terms of the scheme. The only possible class issue that was drawn to my attention was the fact that irrevocable undertakings and non-binding letters of intent were provided by 13 shareholders holding 37 per cent of the shares before the meeting was held. I agree with Mr Thornton QC that this does not of itself give rise to a class issue (*Re Telewest Communications Plc (No 1)* [2004] EWHC 924 (Ch).

11. The next question which arises on any sanction application is whether the class of shareholders subject to the meeting was fairly represented by those who attended and whether the statutory majority was acting *bona fide* and not coercing the minority in order to promote interests adverse to those of the class they purport to represent. In the present case the turnout was respectable and is consistent with this requirement being satisfied. 133 shareholders voted, representing some 24 per cent by number and 56.75 per cent by value of all shareholders entitled to vote. There are no other indications that the fair representation and *bona fide* aspects of the test for sanction were not achieved, and I am satisfied that they were.

12. The court is also required to consider whether the scheme is one that an intelligent and honest person, a member of the class concerned, might reasonably approve. In my

view, that aspect of the test to be applied on a sanction application is also satisfied. The scheme was unanimously recommended by the directors who had been advised by Greenhill & Co. The statutory majorities were overwhelming. The effect of the scheme was properly explained in the explanatory statement and the scheme provided that the price for acquisition of the shares was at a substantial premium over their closing price on the last day of trading.

13. Finally, I have been unable to identify any blot on the scheme and Mr Thornton did not draw any other possible problems with the scheme to my attention.

14. In those circumstances, I shall the sanction the scheme in the terms sought by the Company.

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