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Neutral Citation Number: [2023] EWHC 1543 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

No. CR-2022-001674

7 Rolls Building  
Fetter Lane  
London, EC4A 1NL

Thursday, 25 May 2023

Before:

MR JUSTICE MICHAEL GREEN

IN THE MATTER OF **EMIS GROUP PLC**

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MR A THORNTON KC (instructed by Travers Smith) appeared on behalf of the Applicant.

\_\_\_\_\_

J U D G M E N T



(Transcript prepared without the aid of documentation)

MR JUSTICE MICHAEL GREEN:

- 1 This is an application by Emis Group Plc (“the Company”) seeking to extend the longstop date in a scheme of arrangement proposed to be entered into between the Company and the holders of its ordinary shares of one penny each (“the Scheme Shareholders”). The Company’s ordinary shares are admitted to trading on AIM. It provides solutions in healthcare software systems. The underlying commercial purpose of the scheme is to enable Bordeaux UK Holdings II Limited (“Bidco”) to acquire the entire issued and to be issued share capital of the Company. Bidco is ultimately owned by United Health Group Incorporated, a healthcare and well-being company. For every scheme share held at the scheme record time and transferred to Bidco under the scheme, a Scheme Shareholder will receive £19.25 in cash.
- 2 This is not the sanction hearing. That is now some way off, it seems.
- 3 On 6 July 2022 ICC Judge Burton convened a court meeting of Scheme Shareholders and this was held on 9 August 2022. The scheme was approved by a majority of 95.79 percent in number and 99.54 percent in value. The turnout was 32.6 percent in number and 63.44 percent in value.
- 4 All jurisdictional requirements for the sanction of the scheme have been satisfied but there are some outstanding regulatory requirements. In particular, the scheme is conditional on satisfaction of regulatory conditions, including clearance by the Competition and Markets Authority (“CMA”). On 31 March 2023 the CMA announced that, following a phase 1 investigation of the acquisition, it was referring it for a phase 2 investigation. On 6 April 2023 the Company and Bidco announced that they intended to proceed with the phase 2 investigation and, according to Mr Andrew Thorburn, the Company’s CEO and who has provided a witness statement in this respect, the board continues to consider that the scheme is in the best interests of the Company and its shareholders.
- 5 The trouble with this is the delay to sanction and implementation which in itself is undesirable but, more particularly, the longstop date in the scheme document needs to be extended to avoid the scheme lapsing according to its terms. Mr Thorburn set out in his second witness statement the possible timeline for conclusion of the phase 2 investigation together with a reasonable period for satisfying any conditions that might be imposed by the CMA. That will take us well into next year. Therefore, the Company and Bidco, and with the consent of the Takeover Panel, have agreed a new longstop date for the completion of the acquisition to 30 June 2024. That is exactly a year after the current longstop date of 30 June 2023. This was announced to the market on 6 April 2023 and the Company has not received any objection from shareholders. Indeed, the correspondence that they have had from shareholders supports the continuation of the phase 2 investigation.
- 6 The scheme document made clear that the timings of the sanction hearing were indicative only and depended on when the conditions were satisfied. It was envisaged that the longstop date may have to be extended by agreement between the Company and Bidco and with the consent of the Takeover Panel and “as the court may approve (should such approval be required).” Those are the terms of clause 6.2 of the scheme but it rather, as discussed with Mr Thornton who appears for the Company, begs the question as to whether court approval is actually required.

- 7 Also clause 7 of the scheme provides for modifications to the scheme to be agreed between the Company and Bidco and possibly with the consent of the Takeover Panel.
- 8 But it is out of an abundance of caution that the Company does seek the approval of the court to this modification. The Company will still have to decide whether to proceed with the scheme without further shareholder approval or to convene another meeting before seeking the sanction of the court. The board has not decided the answer to that question and it depends on what happens in the investigation primarily and what the situation is after that. In any event, the scheme will be subject to the scrutiny of the court in due course at a sanction hearing to make sure that it is fair to proceed on the terms proposed.
- 9 Mr Thornton who, as I have said, appears for the Company, says there have been at least two unreported decisions where judges of this Division have granted such an extension and that makes sense to me. It is far better to get approval before the scheme lapses rather than seeking a retrospective extension after it has lapsed. I will therefore grant the application and approve the extension to the longstop date in the scheme.
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**CERTIFICATE**

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This transcript has been approved by the Judge.