Case No: CR-2019-006868
Neutral Citation Number: [2020] EWHC 3931 (Ch)

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Thursday, 6 August 2020

BEFORE:

MR JUSTICE TROWER

IN THE MATTER OF THE COMPANIES ACT 2006

IN THE MATTER OF SMITH & WILLIAMSON HOLDINGS LIMITED

MR A THORNTON appeared on behalf of Smith & Williamson Holdings Limited

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JUDGMENT
(Approved)

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Lower Ground, 18-22 Furnival Street, London, EC4A 1JS
Tel No: 020 7404 1400
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. MR JUSTICE TROWER: This is an application for the sanction of a Scheme of Arrangement under Part 26 of the Companies Act 2006 between Smith & Williamson Holdings Limited and its A and D shareholders.

2. The company is a leading providing of investment management accounting and tax advisory services to business, private individuals, families and intermediaries. The purpose of the Scheme is to enable the entire issued share capital of the company to be acquired by the Tilney Group through Tilney Group Limited and Symmetry Topco (Guernsey) Limited ("STGL") a Guernsey limited company.

3. The company's issued share capital consists of A shares and D shares. All of the D shares are held by AGF Management Limited ("AGF") a company incorporated in Ontario. It consents to be bound by the Scheme and no meeting was therefore held for the D shareholders.

4. The A shareholders fall into three broad categories: (a) an employee benefit trust, (b) current partners and employees of the Smith & Williamson Group, their spouses, family members and related persons, and (c) former partners and employees of the Smith & Williamson Group, their spouses, family members and related persons.

5. The A and D shares are not listed. Their total implied value for Scheme purposes is approximately £625 million. The total consideration for the purchase is to be satisfied by a mixture of cash and the issue of ordinary and preference shares by STGL.

6. The matter has been before the court on two previous occasions. The first was on 18 October last year when I gave a judgment ([2019] EWHC 3021) explaining my reasons for convening scheme meetings in the form sought by the company, and unusually then for a members scheme, expressed views as to class constitution. The second was on 30 June 2020 when I gave directions for the convening of a further meeting in light of the fact that the terms of the scheme had changed in material respects since the time of the first hearing. Indeed, the scheme in its original form was approved by the A shareholders in a meeting on 13 November 2019 before it became apparent that its terms would have to be changed. My rather shorter reasons for making the order I did are at [2020] EWHC 1980.

7. The task of the court of an application to sanction a scheme is well-established. It is explained in a passage from *Buckley on the Companies Act*, which was explicitly approved by Plowman in *Re National Bank Limited* [1966] 1 WLR 819 at 829, in terms which have been applied on countless occasions since. It has been summarised more recently by Morgan J in *Re TDG plc* [2009] 1 BCLC 445.

8. The first question for the court is whether the terms of the statute have been complied with. This falls into a number of parts.

9. The first part is whether the terms of the convening order were complied with. The convening order made provision for service of the Scheme documentation and gave directions for the way in which the meeting was to be held. I have considered the evidence in relation to this and am satisfied that there was full compliance with the terms of the order.

10. Secondly, was the composition of the class for the purposes of the meeting correct? Whilst the views I expressed in my October judgment were not binding on the court for the purposes of the sanction hearing, and I always intended that it would be open to members to challenge them at this stage, I do not think that it is necessary for me to go through my conclusions again in the absence of challenge. It suffices to say that, for the reasons I then gave, supplemented by the June judgment, I am satisfied that the class constitution was correct. I should add that there has been correspondence subsequent to my October judgment with more than one shareholder on some of these issues. I have considered that correspondence with care and I have also had regard to the detailed evidence at paragraphs 67ff of Ms Mitford-Slade's second witness statement which deals with those issues. Nothing that has been said subsequently causes me to change my views in relation to class constitution.

11. The third part is whether the Scheme amounts to a compromise or arrangement within the meaning of the statute. I am satisfied that it does for the reasons given, amongst others, by the judgment by Mann J in *Re JEFL Group plc* [2015] EWHC 3857. There was a sufficient give and take to satisfy the definitional requirements of the statute.

12. The fourth part is whether the statutory majorities were achieved. It is clear from the Chairman's report that they were. Out of the 602 A shareholders voting in person or by proxy, 564 voted in favour and 38 voted against, a majority by number of some 93.69 per cent. As to value, of the 36,758,166 shares voted in person or by proxy, somewhat in excess of 35 million voted in favour and 1.387 million voted against, a majority by value of 96.23 per cent. The turnout was high, as one might expect in a company and with a shareholder constituency of the type that it has. 58.16 per cent by number and 89.83 per cent by value of all eligible shareholders or shares voted on the Scheme. Even if all the shares who did not vote had been voted against the Scheme, the statutory majorities would still have been comfortably achieved.

13. The final question on compliance with the terms of the statute is whether the explanatory statement satisfied the requirements of section 897. I have considered the form that it took and am satisfied that it explains the effect of the Scheme so as to comply with section 897(2)(a).

14. There was, however, one potential non-compliance with the terms of section 897(2)(b) which was a failure by the company to disclose in the explanatory statement an interest which one of its directors had in Permira Fund V, a fund holding the majority stake in the Tilney Group. This was because the director concerned had not disclosed his interest to the company until the evening before the meeting. The evidence explains in some detail how this came to occur and identifies that this means that the director has, indirectly through Permira, a 0.0007 per cent interest in Tilney.

15. The question which arises is whether the non-disclosure of this interest is in breach of section 897(2)(b)(i). In my view, while the court will always be astute to ensure that interests that might reasonably be thought to be material must be disclosed, this interest does not even arguably fall into that category. The question is whether there is a real possibility that a shareholder would take a different view in relation to the Scheme. As Mr Thornton submitted to me, the question for the court is whether it puts the validity of the vote at risk. As the interest is such a tiny percentage, it is worth some £5,883 to the director concerned, I am satisfied that it is wholly **de minimus**, that it is not a material interest within the meaning of section 897(2)(b)(i), and that it has no

impact on the jurisdiction of the court to sanction the scheme, nor for what it is worth, does it have any significance on the way in which my discretion ought to be exercised.

16. Turning then to the discretionary questions summarised by Morgan J in *TDG*, the first is: was the class of shareholders who were subject to the meeting fairly represented by those who attended the meeting and were the statutory majorities acting **bona fide** and not coercing the minority in order to promote interests adverse to those of the class they purport to represent. As I have already explained, the turnout was high, which supports the company's submission that the class was fairly represented. I have also received an analysis of the voting figures as they related to individual members with particular interests and in particular those whose interests were considered at the October hearing on class issues.

17. The first category is those with holdings of less than £45,000 who only receive cash under the Scheme, a point which I considered in paragraphs 28ff of my October judgment. This caused concern for a number of shareholders, two of whom had correspondence with the company after my October judgment, which was obviously at an earlier stage in the development of the Scheme. I have read that correspondence. In the event, of the 130 shareholders who fell into this category, 125 voted in favour (including one of the two correspondents) and 5 voted against, including the other correspondent. The 130 who voted gave turnout of 32.58 per cent of those who fell into that category, 96.15 per cent of whom by number voted in favour and 3.85 per cent voted against. In my view, these figures are consistent with a fair representation of those with this interest and inconsistent with any suggestion that the statutory majority of the A shareholders as a whole were not acting **bona fide**.

18. The same can be said about the other differences in interest. I considered the question of irrevocable undertakings at paragraphs 52ff of my October judgment. The evidence is that 165 A shareholders gave such undertakings, but of those who did not, a further 399 voted in favour of the scheme and 38 voted against. Thus, 91.3 per cent of the voting shareholders who did not give irrevocable undertakings voted in favour of the Scheme.

19. I also considered the bad leaver arrangements in paragraphs 36ff of my judgment. The particular category with which there is some concern is what are described in the evidence as the Category 3 only shareholders who are not currently subject to a bad lever clip, but will be in respect of share consideration received under the Scheme. The evidence is that 263 Category 3 only shareholders were eligible to vote, of which 194 did so. 90.21 per cent (175) voted in favour and 9.79 per cent (19) voted against. The percentages in favour were marginally higher for current employees who are Category 3 only shareholders as opposed to their family members.

20. I have also considered a number of other mixes of interest where the percentages are different and in one particular instance dropped marginally below the statutory majority. I accept Mr Thornton's submission though that there comes a stage at which it is not possible to sub-divide categories to the extent that would make a material difference in relation to questions that are of concern only to a particularly small class of different interests. I do not consider that the fact that there was a marginal drop below the statutory majority in their case is a matter which gives rise to any concern in relation to the issue which I am required to consider, which is whether or not the meeting was fairly representative of the class concerned, and whether or not the statutory majority were actually acting **bona fide**.

21. The consequence of this analysis is that, where there were differences in the position of A shareholders which were insufficient for whatever reason to give rise to class issues, the voting figures demonstrated that the statutory majorities would in almost every case have been achieved, even if they had been placed in a different class. This, in my view, also demonstrates with some clarity that the first of Morgan J's three discretionary factors is amply satisfied.

22. The next question is whether the Scheme is one that an intelligent and honest person, a member of the class concerned, and acting in respect of his own interests might reasonably approve. The formulation of this test recognises that the members themselves are a much better judge of what their own collective interests are than the court can ever be. However, the court is still required to satisfy itself that the scheme is one that is fair. In the present case, that conclusion is well-evidenced by the fact that it

was recommended unanimously by the directors, that it was fully explained to the shareholders and was approved by a very substantial majorities.

23. However, immediately after the second directions hearing, 22 individual shareholders wrote to the board expressing a number of concerns about the impact of the deal. They did so in the following terms:

> "We are writing to you and the board further to the recent presentations and regional meetings in relation to the revised transaction structure for the merger. The following concerns make it difficult for us to support the new deal at this point in time:
>
> (1) the risk moving from a well-regarded and conservatively managed business with no debt to one controlled by private equity and what this means for the alignment of interests with our clients;
>
> (2) the loss of control, the management structure, the future operating model and the uncertainty over ownership post any exit by Primera if this is not via an IPO;
>
> (3) the complexity of the deal itself, the lack of clarity of the overall structure of the deal and what the long-term implications are for partners, employees and shareholders; and
>
> (4) remuneration, we are being asked to essentially sign a contract with no certainty of how we will be rewarded in the future, in particular the balance between awarding revenue generation and winning new business."

24. It is plain that these are concerns which are genuinely held. They were, not surprisingly but effectively, addressed in a letter from the company's Chairman on 7 July 2020. I have given very careful consideration to what has been said. The shareholders who have said it have obvious anxieties about the future of the business generally and their position in it. As a minimum they do not appear to like the move of the business to an entity controlled by a private equity investor.

25. Nonetheless, their views are not in step with the results of the voting which has taken place. Those votes reflect the fact that, whatever concerns particular shareholders might have about the future, an overwhelming majority regard the deal that is on offer

as the best way forward. There is no basis for me to decide that that is not a conclusion which an intelligent and honest person might reasonably reach.

26. Finally, I am required to consider whether or not there is a blot on the scheme. I have been unable to identify any such blot and nor has Mr Thornton who appears on the company's behalf. Accordingly, it is my view that all the requirements for the sanctioning of this scheme have been satisfied and I shall so order in the terms in which it is sought.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge