



Neutral Citation Number: [2021] EWHC 574 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No: CR-2020-004030

THE BUSINESS AND PROPERTY COURTS IN ENGLAND & WALES

INSOLVENCY & COMPANIES LIST (ChD)

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Thursday, 28 January 2021

Before:

MRS JUSTICE JOANNA SMITH DBE

IN THE MATTER OF:

McCARTHY & STONE PLC

Applicant

MR A. THORNTON QC appeared on behalf of the Applicant.

JUDGMENT

MRS JUSTICE JOANNA SMITH:

- 1 This is an application on behalf of McCarthy & Stone Plc pursuant to Part 26 of the Companies Act 2006 seeking the sanction of the court to a scheme of arrangement between the company and the holders of its ordinary shares of 8 pence each. The purpose of the scheme is to effect an acquisition of the entire issued and to-be issued share capital of McCarthy & Stone by Mastiff Bidco Limited, a wholly owned indirect subsidiary of Lone Star Real Estate Fund VI LP, a private equity fund. For every scheme share held at the scheme record time and transferred to Bidco under the scheme, a scheme shareholder will received 120 pence in cash (the original offer was for 115 pence in cash, but was amended on the day of the court meeting).
- 2 The scheme values the entire issued share capital of the company at approximately £647 million and the consideration payable to the scheme shareholders pursuant to the scheme represents a premium of approximately 44.6 per cent to the closing price on the last business day before the announcement of the proposed scheme.
- 3 I have received a comprehensive and very helpful skeleton argument from Mr Thornton QC for which I am most grateful. No one else has attended court today with a view to making any representations.
- 4 I have read the scheme, which I was also taken through by Mr Thornton, the Chairman's letter and the explanatory statement, together with the Chairman's report of the court meeting. The scheme was the subject of a unanimous recommendation from the directors of the company, who were advised on its financial terms by Rothschild & Co and Deutsche Bank.

- 5 On 16 November 2020 Judge Prentis, sitting in the Insolvency & Companies Court, gave the company permission to convene a meeting of the holders of the scheme's shares, as defined in the scheme of arrangement, for the purposes of considering and, if thought fit, approving the scheme. There were no issues as to class constitution at that time and there are no issues as to class constitution before me.
- 6 I have read the witness statement of the company's chairman, Paul Lester, in support of that application for permission to convene a meeting, together with his second statement in support of this application for the court sanction. I have also read witness statements confirming that hard copies of the scheme documents were sent out to the shareholders and that electronic notifications were sent in accordance with the requirements of the order of 16 November 2020.
- 7 The court meeting was held on 7 December 2020 and the scheme was approved by a majority of those voting in person or by proxy, representing over 75 per cent in value of those voting. I have read the chairman's report of that meeting. 184 of the 244 scheme shareholders who participated in the court meeting voted in favour of the scheme, holding 362,849,735 scheme shares. 79 scheme shareholders voted against the scheme, holding 60,796,088 scheme shares. The majority was therefore 75.41 per cent in number representing 85.65 per cent in value. The turnout at the court meeting was 35.67 per cent in number and 78.78 per cent in value, which Mr Thornton tells me is a relatively high turnout for meetings of this type.
- 8 In the circumstances, the meeting was held in accordance with the directions of Judge Prentis, and the scheme was approved at the meeting by a strong majority on that representative turnout.

9 Bidco will become bound by the scheme, and has provided the necessary undertaking to the court today to that effect. Further, it has been confirmed to me at this hearing that all relevant conditions in the scheme have been satisfied or waived.

10 In his skeleton argument, Mr Thornton referred me to the relevant legal principles as to the approach to take to the exercise of my discretion in determining whether to sanction the scheme. In particular he referred me to the well-known passage in *Buckley on the Companies Acts* at paragraph 219, which I have no need to read out, together with the authority of *Re TDG Plc* [2009] 1 BCLC 445 per Morgan J at [29]-[30] where the learned judge summarised the four key matters that require attention when the court is considering whether to sanction any proposed scheme of arrangement. I note that in addition to setting out these matters, he also made it clear at [30] that “*the court does not act as a rubber stamp simply to pass without question the view of the majority but, equally, if the four matters I have referred to are all demonstrated, the court should show reluctance to differ from the views of the majority, and should certainly be slow to differ from the views of the majority, on matters such as what an intelligent, honest person might reasonably think*”.

11 Having regard to each of the matters identified by Morgan J, I am satisfied that the relevant requirements for the exercise of my discretion are met in this case. Taking each in turn:

12 **First, have the provisions of the statute been complied with?** I am satisfied that the provisions of the statute have been complied with. As I have said, the meeting of members was duly convened and held in accordance with the order of Judge Prentis. An explanatory statement was drawn up in accordance with the requirements of Part 26 of the Companies Act 2006 and sent out to scheme shareholders, and those shareholders who attended the meeting in person or by proxy approved the scheme by the requisite statutory majority.

- 13 **Second, was there fair representation at the meeting?** I am satisfied that the class of shareholders who were the subject of the court meeting was fairly represented by those who attended the meeting, indeed there was a relatively high turnout, as I have already alluded to. There is no evidence on which I could find that the statutory majority was acting other than *bona fide* or coercing the minority in order to promote interests adverse to those of the class.
- 14 **Third, is the scheme one that an intelligent and honest person, a member of the class concerned, and acting in respect of his own interests, might rightly approve?** I am satisfied that it is and in particular for the following reasons: (i) the scheme was unanimously recommended by the directors of the company as I have said, who had the benefit of advice from Rothschilds & Co and Deutsche Bank, (ii) the scheme was fully and properly explained to the scheme shareholders in the scheme document; (iii) the scheme was approved by a strong majority of the scheme shareholders at the court meeting; and (iv) no one has appeared before me today to suggest otherwise.
- 15 **Fourth, are there any blots on the scheme?** I have not found any blots on the scheme, and none has been drawn to my attention.
- 16 For the sake of completeness I note that my attention was drawn during the course of the hearing to the fact that irrevocable undertakings were provided to Bidco by directors of McCarthy & Stone, and by shareholders. I am satisfied that those irrevocable undertakings did not give rise to a class issue in circumstances where the givers of those undertakings did not receive any additional consideration. Mr Thornton has confirmed that it is entirely normal to see irrevocable undertakings of this type being given in a case such as this.

17 No other issues have been drawn to my attention and, as I have said, there have been no objections to the scheme. In all the circumstances, I make an order in the terms sought sanctioning the scheme of arrangement.
