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Case No: CR-2024-006117

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 07/02/2025

Before :

THE HON MR JUSTICE MELLOR

IN THE MATTER OF LOUNGERS PLC

AND IN THE MATTER OF THE COMPANIES ACT 2006

ANDREW THORNTON KC (instructed by **Jones Day**) for Loungers PLC

Approved Judgment

This judgment was handed down remotely on 7th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON MR JUSTICE MELLOR

Mr Justice Mellor :

Introduction

1. This is the application of Loungers plc (“the Company”) seeking sanction of a proposed modified scheme of arrangement (“the Scheme”) pursuant to Part 26 of the Companies Act 2006 (“CA 2006”). The Scheme is proposed between the Company and the holders of its ordinary shares of 1 penny each (“the Scheme Shareholders” and the “Scheme Shares” respectively).
2. The Company operates café bars, restaurants and roadside dining outlets across the United Kingdom. It has 285 outlets across its three operating brands. The Company’s ordinary shares are admitted to trading on AIM, a market operated by the London Stock Exchange plc (“AIM”). In its 2024 financial year, the Company had revenue of £346.6 million and EBITDA of £43.5 million.
3. The underlying commercial purpose of the Scheme is to enable CF Exedra Bidco Limited (“Bidco”) to acquire the entire issued and to be issued share capital of the Company. Bidco has been formed for the purposes of the acquisition by investment funds and accounts managed or advised by affiliates of Fortress Investment Group, LLC (“Fortress”). Fortress is a leading global investment manager with approximately US\$48 billion in assets under management.
4. Mr Andrew Thornton KC appears for the Company and is also instructed by Bidco to offer conventional undertakings to the Court on behalf of Bidco and other members of its group to be bound by the Scheme.
5. Mr Thornton supplied me with a very useful and clear skeleton argument and the relevant authorities and his solicitors prepared and supplied a bundle containing all the relevant documents. He supplemented his skeleton argument with succinct oral submissions at the hearing.

The Scheme

6. The Scheme is a straightforward transfer scheme between the Company and the Scheme Shareholders. Bidco is to provide the consideration due to the Scheme Shareholders pursuant to the Scheme, hence the need for its undertaking to be bound by the Scheme.
7. In passing, I mention briefly that the original proposed Scheme contained an error in its definition of ‘Loungers Shares’. It incorrectly referred to them as ‘ordinary shares of ten pence each in the capital of the Company’, whereas the ordinary shares are of one penny each. The error was corrected in the Amended Scheme and I am sure it has had no effect on the process. I will ensure the Scheme attached to my Order will have the correct definition.
8. The Scheme does not involve any reduction in capital or any other changes to its capital base or underlying business, so the Scheme will not have an adverse impact on the interests of the Company’s creditors.
9. Under the terms of the original offer from Bidco, a Scheme Shareholder was to receive 310 pence in cash. As an alternative Scheme Shareholders were offered the

option to elect to receive rollover units (i.e. shares and B preference shares in the capital of CF Exedra Topco Limited (the ultimate owner of Bidco)). Details of the rollover units were set out in Part V of the Scheme document.

10. However, apparently due to resistance on the part of at least some shareholders, on 15 January 2025, Bidco and the Company jointly announced an increased and final offer of 325 pence a share in cash (and a proportionate adjustment in the non-cash alternative). The increased offer values the Company's issued and to be issued share capital at £354.4 million and represents a premium of 36.6 per cent to the 27 November 2024 undisturbed share price.
11. The original cash offer and the increased cash offer were both the subject of unanimous recommendations from the directors of the Company. The directors were advised on the financial terms of the Scheme by Houlihan Lokey UK Limited ("the Financial Adviser"). The directors set out their detailed reasoning for their recommendation of the offers in paragraph 3 of the chair's letter (in respect of the original offer) and in the announcement of the revised offer. The directors made no recommendation in relation to the rollover alternative but instead identified a number of potential advantages and disadvantages a Scheme Shareholder might want to take into account in determining whether to make an election for it.

The Jurisdictional Requirements under Part 26

12. Mr Thornton directed my attention to the jurisdictional requirements and explained how they were satisfied in this case.
13. First, the Scheme involves an arrangement between the Company and the Scheme Shareholders with the necessary element of give and take between them.
14. Second, at the permission to convene stage there were no issues arising requiring the application to be listed before a High Court Judge instead of the ICC Judge.
15. Third, accordingly, at a hearing on 16 December 2024 before ICC Judge Mullen, permission was granted to convene a meeting of the Scheme Shareholders for the purpose of considering and if thought fit, approving the Scheme. The Company was granted permission to convene a single physical meeting of the Scheme Shareholders. Mr Thornton drew my attention to an apparent error in the Order of ICC Judge Mullen. It specified that the meeting should take place in London whereas I understand the intention was always for the Court Meeting to take place in Bristol, and it duly did take place at the headquarters of the Company in Bristol, where the Chairman of the Company, Mr Alexander Reilly took the Chair.
16. Fourth, since all Scheme Shareholders were being offered the same 'deal' under the terms of Scheme, it was appropriate to call a single meeting of Scheme Shareholders to consider and, if thought fit, approve the Scheme. The directors' interests in the Scheme are set out in paragraph 11 of the explanatory statement. The interests of the directors in the share capital of the Company are set out in the Scheme document.
17. Fifth, the Scheme document contains the elements required by Part 26 and a full and proper explanation of the Scheme and its effects on Scheme Shareholders. The witness statements of Robert Bacon and Paula Lee of MUFG Corporate Markets (UK)

Limited (“MUFG”) and Adrian John McElroy of Perivan Limited (“Perivan”) set out the steps taken by the Company to comply with the notice requirements in the order of ICC Judge Mullen. MUFG are the Company’s registrars and Perivan provided printing and posting services to the Company for the purposes of producing the Scheme document. The witness statements also describe how the Scheme Shareholders were sent the announcement of the increased offer.

18. Sixth, no difficulties were encountered in distributing the Scheme document to Scheme Shareholders.

The Court Meeting

19. The Chair’s report of the Court Meeting shows that the resolution to approve the Scheme (modified to reflect the increased consideration) received the requisite votes in favour both as to majority in number and majority in value of those shareholders who attended the Court Meeting.
20. No questions were asked by Scheme Shareholders at the Court Meeting.
21. 10 shareholders cast votes both for and against the Scheme. The Chair’s report sets out the outcome based on the approach taken in *Re Equitable Life Assurance Society (No.1)* [2002] BCC 319 and *Re Cardtronics plc* [2021] EWHC (treating the shareholder as both a member in favour and a member against the Scheme for the purposes of the majority in number test).
22. On that basis, 92 Scheme Shareholders voted in favour of the Scheme, holding 83,586,400 Scheme Shares. 16 Scheme Shareholders voted against the Scheme holding 5,837,753 Scheme Shares. The majority was therefore 85.19 per cent in number representing 93.47 per cent in value. The turnout at the Court Meeting was 10.96 per cent in number and 86.02 per cent in value.
23. In the circumstances, it is entirely appropriate to waive the technical defect as to the place where the Court Meeting was directed to be held and I do so. Subject only to that point (which, as I have said, I have waived) the Court Meeting was held in accordance with the directions of ICC Judge Mullen and the Scheme was approved at the Court Meeting on a representative turnout.

The Court’s Discretion

24. So far as the Court’s discretion to sanction a scheme is concerned, Mr Thornton drew my attention to the well-established guidance set out in Buckley on the Companies Acts at [219] et seq. It is unnecessary to set it out but I have it well in mind. He also reminded me of the four matters set out by Morgan J. in *Re TDG plc* [2009] 1 BCLC 445 to which the Court is required to direct attention when considering whether to sanction any proposed scheme of arrangement. These are:
 - i) the court must be satisfied that the provisions of the statute have been complied with;
 - ii) the court must be satisfied that the class of shareholders, the subject of the court meeting, was fairly represented by those who attended the meeting, and the statutory majority are acting bona fide and not coercing the minority in

order to promote interests adverse to those of the class they purport to represent;

- iii) an intelligent and honest person, a member of the class concerned and acting in respect of his own interest, might reasonably approve the scheme; and
- iv) there must be no blot on the scheme.

25. Addressing those four points in turn.

26. First, I am entirely satisfied that the provisions of the statute have been complied with. The meeting of the Scheme Shareholders was duly convened and held in accordance with the directions of Insolvency and Companies Court Judge Mullen, an explanatory statement drawn up in accordance with the requirements of Part 26 CA 2006 was sent to Scheme Shareholders and the Scheme Shareholders who attended the Court Meeting (in person or by proxy) approved the Scheme by the requisite statutory majority.

27. Second, 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, and there is no evidence to suggest that the statutory majority was acting other than bona fide or coercing the minority to promote interests adverse to those of the class.

28. Third, I am satisfied that the Scheme is one that an intelligent and honest person, a member of the class concerned and acting in respect of his own interest, might reasonably approve. In particular, the Scheme:

- i) was unanimously recommended by the directors of the Company who had the benefit of advice from the Financial Adviser;
- ii) was fully and properly explained to the Scheme Shareholders in the Scheme document;
- iii) was approved by the Scheme Shareholders at the Court Meeting; and
- iv) provides for the Scheme Shareholders to dispose of their shares for consideration with a value significantly in excess to the price at which they were trading before the announcement of the Scheme.

29. Fourth, I am satisfied that there is no blot on the Scheme.

Other issues

30. As regards other issues, Mr Thornton drew my attention to 5 matters. These were as follows.

31. First, Bidco received irrevocable undertakings in support of the increased offer from directors holding approximately 7.5 per cent of the Scheme Shares and from others in respect of approximately a further 31 per cent of the Scheme Shares. A full breakdown of the irrevocable undertakings and letters of intent were set out in the announcement of the increased offer on 15 January 2025.

32. Second, no additional consideration was provided to the shareholders who provided irrevocable undertakings. Accordingly, the irrevocable undertakings do not give rise to any class issue (see *Re Telewest Communications plc (No.1)* [2004] EWHC 924 (Ch)) and do not give rise to any concerns as to discretion in this case.
33. Third, at the hearing Counsel for the Company confirmed that all outstanding conditions have been satisfied or waived by Bidco (save for those within the control of the Court).
34. Fourth, Bidco and other members of its group propose to rely on the exemption contained in section 3(A)(10) of the United States Securities Act of 1933 (as amended) to obviate the need to comply with the registration requirements of that statute in respect of any securities to be issued in connection with the share alternative.
35. Fifth, none of the Company, Bidco or their respective advisers have received notice of any objections to the Scheme or of any stakeholder in the Company proposing to attend the sanction hearing.
36. Finally, Counsel gave the undertakings as set out in the draft Order to the Court (and as also set out in Recital F to the Scheme) on behalf of Bidco and its related parties.

Decision

37. For all these reasons (as set out in this Judgment) at the conclusion of the hearing I announced I was sanctioning the Scheme.