

Case No: CR-2021-001641

Neutral citation number: [2021] EWHC 3199 (Ch)

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

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

Friday, 5 November 2021

BEFORE:

MR JUSTICE ADAM JOHNSON

IN THE MATTER OF
THE FRENCH CONNECTION GROUP PLC

MR STEPHEN HORAN appeared on behalf of the Company

JUDGMENT
(Approved)
(Remote Hearing)

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1.

MR JUSTICE ADAM JOHNSON: This is a hearing to sanction a members scheme of arrangement under [Part 26](#) of the [Companies Act 2006](#). The Company in question is The French Connection Group plc. The scheme is a takeover scheme. The scheme proposal is for the acquisition by a bid vehicle, MIP Holdings Limited ("Bidco") of the shares in the Company not presently held by Mr Apinder Singh Ghura and certain other persons and entities associated with him. Their shares have been referred to as "the excluded shares" and the remaining shares are the "scheme shares".

2.

The scheme shares comprise some 74.6 per cent of the Company's issued shares. The consideration to be paid is 30 pence per scheme share. That values the Company at approximately £28.98 million, which represents a premium of 29.9 per cent on the share price as at 22 September 2021. The consideration is to be paid in cash.

3.

I have had the benefit of evidence from Mr Neil Williams, the Company's Chief Operating Officer. The scheme is unanimously recommended by the directors, and the one director who is also a shareholder, Mr Stephen Marks, gave an irrevocable undertaking to vote in favour of the scheme at the meeting which I will shortly describe. Irrevocable undertakings were also given by other persons associated with Mr Marks. Altogether, their undertakings corresponded to some 43.6 per cent by value of the ordinary issued shares in the Company as at 1 October 2021.

4.

A convening order was made by Chief Insolvency and Companies Court Judge Briggs on 8 October 2021. That order directed a single meeting of the scheme shareholders. I am satisfied, as was Judge Briggs, that the scheme shareholders properly form one class, because they have the same rights going into the scheme and the scheme treats them all in the same way. That is so despite the undertakings I have referred to, for which the givers of the undertakings received no consideration other than the promise by Bidco to make the bid. The scheme shareholders as a class were therefore perfectly well able, in my view, to consult together in the scheme meeting with a view to their common interest, to use the well-known expression of Bowen LJ in *Sovereign Life Assurance Company v Dodd* [1892] 2 QB 573 at page 583.

5.

I have been referred by Mr Stephen Horan, counsel for the Company, to the well-known passages in Buckley on the Companies Acts dealing with the role of the court in sanctioning schemes. I have also been referred to the dicta of Mr Justice David Richards (as he then was) in *Re Telewest Communications plc (No.2)* [2005] 1 BCLC 772 [20] to [22] and of Morgan J in *Re TDG plc* [2009] 1 BCLC 445 at [30]. Using the questions derived from these sources as a template, I will now address the issues directly relevant to the question of sanction.

6.

First, I am satisfied that the relevant statutory criteria have been complied with. The meeting of the scheme shareholders required under Judge Briggs's order was properly convened. The scheme document containing the explanatory statement satisfied the requirements of section 897. I have been shown and have read the report prepared by the chairman of the meeting, also Mr Williams. This shows that of those present in person or who voted by proxy, some 43 scheme shareholders holding 99.84 per cent of the scheme shares voted at the meeting were in favour of the scheme. Seven scheme

shareholders voted against. Thus, the majority in number voted in favour and held shares well in excess of the statutory requirement of 75 per cent by value. I am therefore satisfied that the statutory majorities under section 899(1) were obtained at the meeting approving the scheme.

7.

Second, I am satisfied that the scheme shareholders were fairly represented. That is so, even though the turnout by headcount was relatively low, i.e. only 14.16 per cent of the known shareholder body by number. This level of engagement is consistent with and in fact in excess of that typically encountered at the Company's AGMs. Moreover, the turnout by number of shares voted was reasonably high, at some 68.27 per cent.

8.

I have read the evidence concerned with the process for posting the materials relevant to the scheme meeting and see no reason to think there was any deficiency in that process.

9.

I can only speculate as to the reasons for the limited turnout by headcount, but I have seen nothing to suggest that a substantial number of members who might be opposed to the scheme have not voted. The evidence is more consistent with apathy or indifference or perhaps an assumption that the vote was bound to be carried in favour of the scheme in any event.

10.

I should also say under this second heading that I am satisfied that the majority acted bona fide and for proper purposes in voting at the scheme meeting. I have seen nothing to suggest the operation of anything other than a bona fide commercial purpose in the relevant pattern of voting.

11.

The third question is whether the scheme is one that an intelligent and honest person acting in respect of their interests might reasonably approve. I am satisfied that it is. The commercial rationale for the scheme is described in the chairman's letter and explanatory statement, both dated 9 October 2021. In making their unanimous recommendation to support the scheme, the Company's directors were advised by WH Ireland Limited on the financial terms of the offer and were of the view that the offer was fair and reasonable. No objections have been received.

12.

The fourth and final matter is whether there is any blot on the scheme. This is normally understood to mean some technical or legal defect in the scheme such as an internal inconsistency or infringement of some mandatory legal provision. I can see no such blot, and none has been identified by counsel for the Company or by any other party.

13.

In such circumstances, and upon receiving Bidco's undertaking to be bound, I therefore propose to sanction the scheme.

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

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This transcript has been approved by the Judge