

JERSEY / JUDGMENT

Representation of CPA [2010]

JRC 021 (28 January 2010)

[2010] JRC 021

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judgment

the bailiff: 1. This is an application by Computer Patent Annuities Holdings Limited for approval of a scheme of arrangement pursuant to Article 125 of the Companies (Jersey) Law 1991 . The background to the application is set out in the judgment of the Court which was delivered following a hearing on 15 December, 2009, when the Court convened the relevant meeting of shareholders which is required under Article 125. The scheme is extremely complex. We have been provided with very full details which have set the matter out for us very clearly. In the circumstances we do not think it necessary to recount the scheme in any detail. 2. In briefest outline the scheme is concerned with the proposed acquisition of the whole of the issued share capital of the company by a company called George Topco Limited which has been referred to as the bidder. The consideration will consist of a mix of cash, various preferred shares in the bidder, and also ordinary shares in the bidder. 3. As well as the application for approval of the scheme of arrangement there is an associated application for confirmation of a reduction in share capital. 4. The Court's duty when considering applications under Article 125 was set out in the case of the Representation of Andsberg Limited

[2007] JLR N 53 and has also been repeated in Re CI Traders Limited

[2007] JRC 149A , where, although the case heard in 2007, the judgment has apparently only just been transcribed and published. The test is three-fold. The Court must consider:- (i) Whether the provisions of the 1991 Law have been complied with; (ii) Whether the class of shareholders to be affected by the proposed scheme was fairly represented by those who attended the meeting and whether that the statutory majority are acting bona fide and not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and (iii) whether the arrangement is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest might reasonably approve. We therefore take each of these matters in turn. 5. In relation to the first point, we have received a number of affidavits explaining exactly what has occurred in terms of sending out the notices and the events at the meeting itself. We are satisfied that the court meeting was properly notified to shareholders and properly held. In particular the explanatory statement which went with the documents, in our view,

explained the matter fairly and properly. Thus out of the ten non-executive directors, whilst eight were in favour of recommending the scheme to the shareholders, two did not agree that the scheme should be recommended and their reasons for that opinion were included in the document sent out to shareholders. Thus the shareholders had clearly before them the arguments for and against the scheme. As to the votes at the meeting, there are twenty-one registered shareholders representing some three hundred and five beneficial owners altogether. At the hearing on 15 th December the Court gave directions as to the counting of votes at the court meeting so as to ensure that it was the views of the beneficial owners which were counted rather than the views of the registered shareholders who are just nominees. We are satisfied that the requisite majority, both required by the statute and required by the articles of association, was obtained. Thus of the votes cast, 95.72% in number were in favour and 96.11% by value were in favour. So we are satisfied that the statutory provisions have been complied with. 6. We turn then to the second issue. We are satisfied that those who were represented at the meeting fairly represented the shareholders as a whole. There is of course only one class of shareholder in this case, and there are a total of 2,375,800 ordinary shares in issue. Of these 2,373,252 were represented at the meeting in person or by proxy; thus over 99% of the shareholders of the company attended the meeting in person or by proxy and their votes were cast. As we say, of those who voted, 96.11% in value voted in favour. We are therefore satisfied that there was indeed fair representation and we are satisfied that there is no reason to think that anyone was acting other than in good faith. There is no evidence whatsoever of any coercing of the minority. 7. We then turn to the third issue. As we have said, the competing arguments were put in the explanatory document. In particular it was pointed out that part of the consideration would be in liquid shares of a company which would have substantial gearing. However, the majority of the non-executive directors recommended acceptance of the scheme and there was, as we say, very high attendance and a very high vote in favour. During the hearing before this court an issue did arise as to whether adequate prominence had been given in the explanatory document that there was to be a gap of ten days between the effective date (following approval of the scheme) and payment of the consideration. Having been referred to various parts of the documentation, we have been satisfied that it was adequately drawn to their attention. It is certainly an important aspect. We have also been provided with an affidavit from Topco which makes it clear that all the funding is in place and that, although there are conditions which require to be fulfilled before that funding can be made available, most of them have been complied with and Topco is confident that the outstanding ones will be complied with in the very near future. We have no reason to doubt that, and Topco, through Mr MacRae, has undertaken to be bound by the scheme. So, looking at the matter in the round, given the high number of votes and the overall scheme as it has been explained to us, we are satisfied that this is indeed an arrangement which a shareholder could reasonably approve and of course, the vast majority have indeed done so. We are content to approve the scheme of arrangement. 8. We turn next to the reduction in share capital. This, it has to be said, is a very technical reduction. All the existing ordinary shares in the

company will be cancelled but they will be immediately replaced by new shares; there will be no reduction in the assets of the company as a result. This matter was fully explained to the shareholders, there is no prejudice to creditors and, in the circumstances, we are content to waive the requirement to convene creditors under Article 62(6) of the 1991 Law and we also approve the reduction. 9. Turning therefore to formalities we approve the draft acts which have been produced to us, both in relation to the scheme and the reduction. There is only one change we have made to the draft in relation to approval of the scheme. As drafted it contained an undertaking on behalf of the company to be bound by the scheme. That seems to us unnecessary and inappropriate because, under the Law, once the scheme is approved by this court it will be binding upon the company as a matter of law and therefore it seems inappropriate that the company should undertake to be bound by something that it is already bound by as a matter of law. Subject to that minor amendment we approve the draft acts. Authorities Companies (Jersey) Law 1991.
Representation of Andsberg Limited

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Prepared on 28 October 2026 · Esheria