



Neutral Citation Number: [2019] EWHC 3085 (Ch)

Claim No: CR-2019-006253

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

Rolls Building
Fetter Lane
London, EC4A 1NL

25 October 2019

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

**IN THE MATTER OF STATPRO GROUP PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006**

Mr Andrew Thornton appeared on behalf of Statpro Group plc.

J U D G M E N T

Mr Justice Marcus Smith:

- 1 This is an application for the sanction of a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 (the **Scheme** and the **2006 Act**). The Applicant is Statpro Group plc (**Statpro**).
- 2 The Scheme is structured as a transfer scheme and involves the Scheme shares being transferred from their present owners (the **Scheme shareholders**) to Ceres Bidco Limited (**Bidco**) in exchange for a cash consideration. The cash consideration to be received by the Scheme shareholders is 230 pence in cash for each Scheme share held at the Scheme record time. This values the share capital of Statpro at approximately £161.1 million and represents a significant premium to the undisturbed trading price for Statpro's shares.
- 3 The purpose of the Scheme is to enable Bidco to acquire the entire issued and to-be-issued share capital of StatPro. Bidco is itself a wholly owned subsidiary of Confluence Technologies Inc, which is an entity ultimately controlled by firms advised by TA Associates, a United States based private equity firm.
- 4 As I have said, the application before me is that of StatPro. However, Bidco undertakes to this court, as reflected in the draft order before me, to be bound by the Scheme. That is because the key commercial purpose of the Scheme is to enable Bidco to acquire the entire the entire issued and to-be-issued ordinary share capital of StatPro. The undertaking is one that this court accepts in the terms offered.
- 5 Because the Scheme is a transfer scheme, the only stakeholder interests engaged are those of the holders of the Scheme shares. It is clear, given the nature of the Scheme, structured as it is as a transfer scheme, that the interests of StatPro's creditors cannot be prejudiced.
- 6 Mr Thornton, who appeared on behalf of Statpro, has made clear that there are options and growth share arrangements in place in relation to StatPro's share capital which are capable of exercise as a result of the Scheme. To the extent that options or growth shares are exercisable due to their being "in the money" as a result of the price being paid for the Scheme shares, they convert into ordinary shares and will, after the Scheme is approved (if it is approved), participate in it. If, on the other hand, the growth shares are "out of the money" or "underwater", that is to say, if they do not (because of the price being offered) trigger the option, they convert into deferred shares and fall outside the Scheme. That is simply a consequence of the price that is being accorded to each Scheme share as held at the Scheme record time.
- 7 The jurisdictional requirements for the approval of a scheme are as follows. In the first place, the scheme must amount to a compromise or arrangement proposed between the company and its members or any class of them. I refer to section 895(1) of the 2006 Act. To amount to a compromise or arrangement, there must be an element of give and take as between the company and its members. I am satisfied that the present arrangement, involving as it does the transfer of shares in StatPro and the necessary termination of the membership in Statpro of the Scheme shareholders in return for a cash consideration, does contain the necessary ingredients of give and take so as to render this a scheme within the meaning of section 895(1).
- 8 Secondly, the shareholders, or any class of shareholders, must approve the scheme by a majority in number representing 75 per cent in value of those shareholders (in this case) who attend the meeting of those members. That is a requirement laid down in section 899(1) of

the 2006 Act. I am satisfied that the outcome of the meeting in this case meets this requirement.

- 9 The chairman's report of the court-ordered meeting, which took place on 21 October 2019 in accordance with the order of Chief Insolvency and Companies Court Judge Briggs, took place and I am satisfied from the reports that I have seen that the Scheme was approved by the requisite statutory majority. Essentially 77 of the 81 Scheme shareholders who participated in this court meeting voted in favour of the scheme, holding 47,520,509 of the scheme shares. Four scheme shareholders voted against the scheme, holding 12,461 scheme shares. The majority was therefore 95 per cent in number, representing 99.97 per cent in value. The turnout at the meeting was 21.95 per cent in number and 72.16 per cent in value, and accordingly the scheme was approved by a significant majority both as to number and value on a representative turnout. So I am satisfied that this requirement has been met.
- 10 Of course, the statutory majority means nothing if the meeting was not properly convened, and that is the third jurisdictional question that I must consider. The meeting must be one convened by an order of the court pursuant to section 896(1) of the 2006 Act, on the application in this case of the company, and the court needs to make an order as to how the meeting is to take place and be conducted. I will not go through all of the law regarding class constitution for the purposes of a meeting to sanction a scheme by (in this case) members. It seems to me that in this case the meeting that was ordered by Chief Insolvency and Companies Court Judge Briggs was an appropriate one and that the meeting was properly constituted and that the majority that was achieved at the court meeting was an appropriate one to meet the statutory majority requirements. I am also satisfied that proper notice of the court meeting was given and that a proper explanatory statement accompanying that notice was given. The explanatory statement must explain the effect of a compromise or arrangement, identifying the directors' material interests, and the effects of the scheme on those different interests, should they exist.
- 11 It follows that I find that the essential jurisdictional requirements are met. That being the case, the next question that I must address is whether the Scheme should be sanctioned. In terms of the requirements that must be made, these were set out by Morgan J in *Re TDG Plc* [2009] 1 BCLC 445, where Morgan J identified four matters requiring the court's attention when considering whether to sanction a scheme. Those matters were:
- (1) The court must be satisfied that the provisions in the statute have been complied with. I have gone through the statutory requirement already, and I find that they have properly been complied with.
 - (2) 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, with a statutory majority acting *bona fide* and not coercing the minority in order to promote interests adverse to those of the class they purport to represent. I have described the meeting of the shareholders which took place, and I am satisfied that it was a proper meeting. I am equally satisfied that the majority that was obtained was a *bona fide* majority and the minority were not coerced.
 - (3) An intelligent and honest person, a member of the class concerned and acting in respect of his own interest or her own interest might reasonably approve the scheme. This requirement is closely related to the second one just considered, and it seems to me that there was, in this case, ample reason for an intelligent and honest person to approve the Scheme. The fact is that the Scheme provides a significant premium to

the Scheme shareholders. The Scheme was unanimously recommended by the directors of StatPro, was fully and properly explained in the documents that were presented to the Scheme shareholders, was overwhelmingly supported by the Scheme shareholders at the court meeting and has been the subject of advice to the directors by Panmure Gordon (UK) Ltd. In these circumstances it seems to me that an intelligent, honest person could reasonably approve the scheme.

(4) I must be satisfied that there is no “blot” on the Scheme. A “blot” is some technical or legal defect, outwith the statutory framework that I have described, which justifies the court in declining to sanction the scheme. In this case, I can see that no technical or other flaw in the Scheme that would justify withholding my sanction on that ground.

12 Accordingly, I find that all requirements identified by Morgan J are satisfied and therefore it is appropriate that I make the order sought and approve the Scheme.