



Neutral Citation Number: [2021] EWHC 619 (Ch)

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

Claim No. CR-2020-004511

Rolls Building
Fetter Lane
London
EC4A 1NL

Tuesday, 16 February 2021

Before:

MRS JUSTICE BACON DBE

IN THE MATTER OF:

CODEMASTERS GROUP HOLDINGS PLC

MR A. THORNTON QC (instructed by **Gowling WLG**) appeared on behalf of the Applicant.

J U D G M E N T
(via Microsoft Teams)

(Transcript prepared without the aid of documentation)

MRS JUSTICE BACON:

Introduction

- 1 This is an application for sanction of a scheme arrangement between the scheme company, Codemasters Group Plc, and the holders of its ordinary shares (“the shareholders”), pursuant to s.899 of the Companies Act 2006.
- 2 The company is the holding company for a group that is a developer of high-quality racing games for games consoles, PCs and mobile devices. The group has around 756 employees at three locations in the UK and Kuala Lumpur, and its shares are listed for trading on the Alternative Investment Market.
- 3 The purpose of the scheme is to effect an acquisition of the entire issued and to be issued share capital of the company by Codex Games Limited, a wholly owned subsidiary of Electronic Arts Inc., a Delaware company. Codex was formed for the purposes of the proposed acquisition of the company. The proposal is for the shareholders to transfer their existing shares, in the company, to Codex for a payment of 604 pence cash for each share. That will represent a premium to each shareholder of around 72.6% on the closing price of their shares, on the date of an initial approach to the company by a previous bidder, Take-Two, and a premium of approximately 14.4% on the Take-Two acquisition proposal, which was for the shares to be acquired for a mixture of cash and equity in Take-Two.
- 4 The Take-Two proposal was due to be considered at a shareholders’ meeting on 21 December 2020. On 14 December, however, the directors of the company announced that they were withdrawing their recommendation of the Take-Two proposal and were, instead, recommending the cash acquisition proposed by Codex. The shareholders’ meeting scheduled for 21 December 2020 was therefore adjourned.
- 5 The new scheme was unanimously recommended by the directors of the company, who were advised for this purpose by Jefferies International Limited. Their reasoning was set out in a letter from the non-executive Chairman of the company to the shareholders, dated 7 January 2021. Prior to that, on 5 January 2021, ICC Judge Burton had made an order giving the company permission to convene a single meeting of the shareholders. That meeting took place on 3 February 2021, and the resolution to approve the scheme was passed by the required statutory majority.
- 6 I have before me the following witness statements.
 - (a) A witness statement dated 21 December 2020 from Frank Sagnier, the Chief Executive Officer of the company, made in support of the company’s application for permission to convene a meeting for the purpose of considering the proposed scheme.
 - (b) A witness statement dated 1 February 2021 from Dawn Bolton, an Assistant Relationship Manager at Link, the appointed registrar of the company.
 - (c) A witness statement dated 1 February 2021 from Joseph Cotterell, the Managing Director of Sterling, the printers appointed by the company in connection with the proposed scheme.
 - (d) A witness statement dated 4 February 2021 from Dr Gerhard Florin, the non-executive Chairman of the company.

- 7 No shareholder appeared at the hearing today, nor has any person given notice that they wish to object to the scheme. I have, however, been shown correspondence between the directors of Codemasters and two former minority shareholders of a company called Slightly Mad Studios (“SMS”) which was acquired by Codemasters in November 2019 for a mixture of cash and equity. One of those shareholders, Gamesmania, has now sold its shares in Codemasters; the other, Star Rise Ventures (“SRV”), remains a shareholder. I will address this correspondence when considering the matters relevant to the exercise, of my discretion, to approve the scheme.

Legal test

- 8 The court’s approach to the question of whether to sanction a scheme of arrangement pursuant to s.899 of the Companies Act 2006 has been summarised by Morgan J in *Re TDG Plc* [2009] 1 BCLC 445, §29, as involving four principle matters:
- (a) whether the statutory provisions have been complied with;
 - (b) whether the class was fairly represented at the meeting and whether there was any coercion of the minority by the majority;
 - (c) whether the scheme was a fair scheme which a member of the class concerned, acting in respect of their own interests, could reasonably approve; and
 - (d) whether there is any blot in the scheme, in other words a defect which would make it unlawful or inoperative.

Discussion

- 9 In the present case, I am satisfied on the basis of the evidence before me that the relevant provisions of the Companies Act were complied with:
- (a) The scheme meeting was convened in accordance with the convening order of ICC Judge Burton, which, among other things, gave directions as to the dispatch of the scheme document to the shareholders. The witness statements of Dawn Bolton and Joseph Cotterell set out the steps taken by the company to comply with the notice requirements set out in the convening order.
 - (b) Since all shareholders were offered the same deal under the terms of the scheme, it was appropriate to call a single meeting of the shareholders as one class to consider the scheme.
 - (c) The notice convening the meeting was accompanied by an explanatory statement, which explained the effect of the scheme on the shareholders and set out the interests of the directors of the company and the effect on those interests of the arrangement. That statement included a list of the shareholdings of the directors of the company.
 - (d) The shareholders’ meeting took place on 3 February 2021, via the Lumi virtual meeting platform. The scheme was approved by the requisite majorities of the shareholders, both in number and value, with 63 of the 76 shareholders who participated voting in favour, representing 82.89% in number and 98.61% in value. That is significantly above the requirement of 75% by value set out in s.899 of the Companies Act. The turnout of the meeting was 23.68% in number and 45.88% in value.
- 10 I am also satisfied that the class was fairly represented at the meeting. The turnout at the meeting represented, as I have just noted, over 45% in value of the shareholders. There is no evidence that the majority of the shareholders who voted in favour were acting other than *bona fide* or coercing the minority who voted against the scheme.

- 11 I also consider that the scheme is a fair one which a member of the class might reasonably approve. It was unanimously recommended by the directors of the company, with advice from Jefferies International Limited. It was fully and properly explained to the shareholders in the letter from the non-executive Chairman of the company and the accompanying explanatory statement, and it was approved at the shareholders' meeting by a very strong majority of those present.
 - 12 I have also not, on the evidence before me, identified any matter that would render the scheme unlawful or inoperative, such as to represent a blot or defect in the scheme.
 - 13 The last matter that I need to consider in the exercise of my general discretion is the correspondence that I have mentioned with the former shareholders of SMS, Gamesmania and SRV. As I have already set out, GamesMania has now sold its shares. That leaves SRV which, at the time of the shareholders' meeting, held around 100,000 of the shares of Codemasters in two blocks. That, I understand, represents less than 0.01% by value of the shareholding of Codemasters. One of the blocks of shares held by SRV was voted in favour of the arrangement; the other block of shares was not voted.
 - 14 GamesMania and SRV, in their correspondence, have expressly said that they do not seek to oppose the scheme of arrangement. The concern that they express is rather that the acquisition of Codemasters by Codex might imperil their rights under the sale and purchase agreement for SMS in November 2019. In particular, queries are raised regarding the provisions in that sale and purchase agreement regarding the earn-out of the former shareholders if certain EBITDA targets are met by SMS for the three years commencing 1 January 2020 and ending on 31 December 2022. Under the terms of the acquisition agreement for SMS, the earn-out was to be satisfied by a mixture of cash and equity, but the provisions of the scheme mean that, in practice, this will be converted into an entirely cash consideration fixed at the price per share that is now being paid under the scheme.
 - 15 As set out in the response to the correspondence by the directors of Codemasters, the scheme does not in fact affect the contractual arrangements under which SMS was sold, including the provisions as to any potential earn-out. The only material effect for practical purposes is the point that I have just mentioned that, insofar as further consideration is paid under the earn-out arrangements, the price for that in terms of the cash equivalent of the shareholding locks in the current share price being paid under the scheme. That, however, represents a significant premium over the current share price, and I am satisfied that this does not undermine the fairness of the scheme; nor does it present any reason why I should exercise my discretion not to sanction the current scheme.
 - 16 In conclusion, on the basis of the matters set out above, I consider that it is appropriate to sanction this scheme, and I will so order.
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