



Neutral Citation Number:[2024] EWHC 2648 (Ch)

Case No: CR-2024-000970

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

7 Rolls Building
Fetter Lane; London,
EC4A 1NL

Date: 21 October 2024

Before:

MR JUSTICE THOMPSELL

IN THE MATTER OF:

**LIGHTSOURCE BP RENEWABLE ENERGY INVESTMENTS HOLDINGS
LIMITED**

AND IN THE MATTER OF THE COMPANIES ACT 2006

Martin Moore KC (instructed by Linklaters LLP) for the Applicant Company

Hearing dates: 16 and 21 October 2024

APPROVED JUDGMENT

This judgment was handed down in open court at 10.30 on 21 October 2024 by circulation to the parties or their representatives by email and release to The National Archives

Mr Justice Thompsell:

INTRODUCTION

1. This judgment relates to two hearings regarding a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 between the Company and its members (the Scheme) being promoted by Lightsource BP Renewable Energy Investments Holdings Limited (“the **Company**”). The Company is the holding company of a group which develops and operates utility-scale solar and battery storage assets internationally.
2. The Scheme, and the arrangements surrounding it, are somewhat complex, but the overall intention of the Scheme is relatively simple. The object of the Scheme is to effect the demerger of certain US assets (“the **US Assets**”) as a condition precedent to the completion of an acquisition by the largest shareholder, BP Alternative Energy Investments Limited (“**BP**”) of the shares in the Company that it does not already own.
3. The US assets are currently held by a wholly owned subsidiary of the Company Lightsource Renewable Energy US, LLC (“**LSBP US**”). Following the implementation of the Scheme, the demerged assets are to be held in a new joint venture company where the existing shareholders in the Company, other than BP will hold the same or a very similar interest in the new joint company as they do in the Company, and the Company will hold indirectly the remaining shares. The intended result is that when BP completes the acquisition of the other shares in the Company the current shareholders are all left with the same or almost the same interest indirect in the US Assets as they currently enjoy.
4. I am fortunate that much of the heavy judicial lifting in relation to this matter has already been undertaken by Edwin Johnson J, who considered the application for the Company to obtain permission to convene a meeting of the class of members excluding BP (the “**Participating Shareholders**”) to approve the Scheme. Whilst it was acknowledged that BP constituted a separate class of member, BP had consented to the Scheme so that there was no need for it also to be the subject of a separate class meeting.
5. Edwin Johnson J approved the application, provided a detailed judgment summarising the Scheme and the arrangements surrounding it, and made findings in relation to a number of legal issues. I do not think that I could improve on his summary of the Scheme and the surrounding arrangements, so I gratefully adopt it.
6. I also accept and see no reason to reopen his considered findings regarding the legal issues that he dealt with including:
 - i) that it was appropriate to regard the shareholders other than BP as a single class of members;
 - ii) that it was appropriate for each Participating Shareholder to have one vote at the meeting for each bonus share to be allotted to that Participating Shareholder;

- iii) that the prohibition in section 641(2A) which prevents a company reducing its capital as part of a Scheme by virtue of which a person is to acquire all the shares in the Company is not engaged by the reduction in capital that forms an element of this Scheme;
 - iv) that the principle in *Re Rylands-Whitecross Limited* (21 December 2023 - unreported) to the effect that the court will not as a matter of discretion, sanction a scheme to confirm the reduction of capital, in circumstances where the relevant scheme gives effect to a transaction that the parties could effect without the court’s intervention, did not apply to the facts of the Scheme).
7. By a Claim Form dated 25 April 2024 the Company sought first an order sanctioning the Scheme. I approved such an order on 16 October 2024 and said then that I would give my reasons at the later hearing – the hearing today, 21 October 2024. At today’s hearing I have also approved an order confirming an associated reduction of capital (“the **Reduction of Capital**”) necessary to bring the Scheme fully into effect. It was necessary to hold the confirmation of the Reduction of Capital hearing after Part I of the Scheme has been completed because a court cannot confirm the Reduction of Capital of a Company before that time. This is the effect of *Re TIP-Europe Limited [1988] BCLC 231*.
8. I am greatly indebted to Mr Michael Moore KC who has taken me through the complexity of the Scheme and also has provided a reminder of the matters on which the court needs to be satisfied before it exercises its discretion to approve a scheme.

THE REQUIREMENTS FOR APPROVAL OF A SCHEME

9. Morgan J held in *Re TDG plc [2009] 1 BCLC 445* that there were four matters which required attention when the Court was considering whether to sanction any proposed scheme of arrangement. Those matters may be summarised as four conditions:

Condition (A): the Court must be satisfied that the provisions of the statute have been complied with;

Condition (B): the Court must be satisfied that the class of shareholders that is the subject of the Court meeting was fairly represented by those who attended the meeting, and the statutory majority were acting bona fide and not coercing the minority in order to promote interests adverse to those of the class they purport to represent;

Condition (C): an intelligent and honest person, a member of the class concerned and acting in respect of their own interest, might reasonably approve the scheme; and

Condition (D) there must be no blot on the scheme.

THE SATISFACTION OF THE REQUIREMENTS

Condition (A) Compliance with the statutory provisions

10. The requirements of s.897 of the CA 2006 have been satisfied in that a detailed Scheme Document has been made available to the shareholders of the Company, including the explanatory statement required by s.897(2) and including disclosure of the interests of the directors of the Company.
11. I am satisfied that the Scheme Document was distributed to the shareholders in the manner specified by the order made by Edwin Johnson J on 1st May 2024 and that notice was duly given of the court meeting.
12. As required, the Scheme had been approved at the Court Meeting of the Participating Shareholders. This meeting was held on 4th June 2024 and the Scheme was approved unanimously. The number of shareholders present and voting in person or by proxy amounted to 66.7% of the number of Participating Shareholders and represented 90.75% of the Bonus Shares to be issued.
13. This represents very substantial support and it is clear that the requirement for approval by shareholders at this meeting has been met.

Condition (B) Fair representation

14. Secondly, 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. There has been no suggestion otherwise. Neither has there been any suggestion that, the statutory majority were not acting bona fide or that any shareholder has been coerced to promote interests adverse to those of the class they purport to represent. There has been no objection to the Scheme from any of the Shareholders who failed to attend or to appoint a proxy to attend the Court Meeting.
15. I considered that there was no material flaw in the voting arrangements. It seems that there was an inadvertent failure in providing one shareholder with the requisite notice, but this in no way invalidates the meeting.
16. BP itself was not in the class of members required to vote. However, it has confirmed hearing that it will undertake to be bound by the Scheme, and this was recorded in the Order that I approved.
17. In summary, the statutory criteria were satisfied, with no suggestion of coercion or of any voting in bad faith.

Condition (C) The reasonable approval of the intelligent and honest person

18. As to the third question, whilst there have been some point of detail which I explored with Counsel and deal with in relation to the fourth question, taking the Scheme as a whole, it seems to me one that it would be reasonable for an intelligent and honest person who was one of the Participating Shareholders to approve. The proposals give effect to an entirely rational commercial transaction. The Scheme's terms were set out fully in the Scheme Document.

The commercial background to the Scheme was fully explained in the materials made available to the Shareholders and was in any event known to them as signatories to the Share Purchase Agreement (“SPA”).

19. Accordingly, the third question for the Court has been answered satisfactorily.

Condition (D) The absence of a blot on the Scheme

20. Turning to the fourth question, there were a few points of detail within the scheme or the wider arrangements surrounding it which I wished to explore with Counsel. These related to certain drafting matters within the scheme and the draft articles
21. First, owing to certain commercial matters, completion under the SPA did not occur on 2 July 2024 as previously expected, and the parties entered into an amended and restated SPA on 2 August 2024 to address certain matters affected by such delay. The Shareholders were notified of the new dates for the Court hearings to sanction the Scheme and confirm the Reduction of Capital by the Company by email on 30 September 2024.
22. I was concerned to establish that this delay did not affect the Scheme or the Reduction of Capital. In particular I was concerned that had there been a material change in the valuation of the Company between the date that the SPA were signed and the date of the hearing to approve the Scheme, this might have had an effect in changing the relative interests between the holders of each class of share, and this might cause the Scheme to operate in a way that shareholders had not originally expected.
23. I accepted Counsel’s assurances that this was not the case. First, Counsel was not aware of any likely material change in the valuation over this period. Secondly, as the Company had already produced returns such that each level in the waterfall of shareholders rights was now participating in profits, changes in valuation should not affect the extent which each class of shareholder would participate in the distribution *in specie* of the interests in the new company that was holding the US assets.
24. Secondly, I was concerned that it was ambiguous within the draft Order whether the effect of the Order would be to override company law requirements regarding the maintenance of capital in relation to the arrangements for passing the new company up the corporate chain. Also, as one of the companies was a Delaware company, and I have not had advice on Delaware law, I worried that there might be a risk that I was proposing something that might be contrary to that law. Mr Moore explained that this was not the intention of the Order. The intention was that the various steps passing the asset up the chain would be undertaken in full compliance with applicable law. In order to assuage my concern, he accepted my proposal that we make a small change in the drafting of the Order to reflect this.

25. Thirdly, I had a small concern relating to some infelicitous drafting in the new article to be inserted by the Scheme into the Articles of Association, which I considered to be ambiguous. Mr Moore pointed out to me that any ambiguity arising on the face of this would easily be dispelled by reference to the Scheme Document, which explained the intended effect, and that any case the drafting question would have no practical effect since it related to the description of different classes of share, and this would be of no importance once BP acquired all the shares. After consideration of those points, I was happy not to propose any changes to the drafting of the Scheme.
26. In the absence of any remaining concerns that might amount to a blot on the scheme I was happy to approve the Order.

THE REDUCTION OF CAPITAL

27. At a general meeting of the Company held on the same date an act special resolution all reducing the capital of the Company was passed unanimously by those shareholders in the Company entitled to vote at general meetings.
28. The jurisdiction of the Court to prove a reduction of capital is derived from Sections 641 onwards of the Companies Act 2006.
29. To approve a reduction, the court needs to be satisfied in relation to the following five matters. The first of these is self-evident from the terms of Section 641. The second to fourth propositions are taken from the judgment of Harman J in *Re Ratners Group Plc* [1988] BCLC 685 at 687b-d. The final proposition is derived from the judgment of Harman J in *Re Thorn EMI Plc* [1989] BCLC 613 616d. The five matters are as follows.
30. First, the resolution reducing capital must be a validly passed special resolution. The special resolution required by s.641(1)(b) of the CA 2006 was passed and indeed this has already been cited in the Order of the Court made on 4th October 2024.
31. Secondly, The shareholders must be treated equitably in relation to the reduction. Shareholders do not all have to be treated in the same manner provided that any unequal treatment is either in accordance with the rights attached to any class or the consent of those affected by such treatment has been properly obtained or does not otherwise prejudice them. In the current case I consider this requirement to be met: the Reduction of Capital affects all the holders of the Bonus Shares uniformly and is made with the consent of BP, the only other shareholder.
32. Thirdly, the proposals must have been properly explained to the shareholders so that they can exercise an informed judgment upon them. This requirement has been met. The Scheme Document properly explains that part of the proposals involving the Reduction of Capital.

33. Fourthly, The resolution must be proposed for a discernible purpose. The discernible purpose of the Reduction of Capital is clear and is an essential feature of the proposed demerger as it is the mechanic by which it is to be effected and it also allows effect to be given to the purchase of shares in the Company by BP from the other shareholders.
34. Fifthly, The creditors of the company must not be prejudiced. The creditors of Company are not prejudiced by the Reduction of Capital because there are none. Further, the hearing of the Claim Form was advertised in the Times on 8 October 2024 in accordance with the Order of the Court and this provides a safeguard against the possibility that there were creditors of which the Company was unaware.

CONCLUSION

35. The Scheme, and the Reduction in Capital are two elements in a complex transaction between BP and the other shareholders in the Company. All the necessary formalities have been met and there is no commercial or legal reason why the court should not sanction the Scheme or the Reduction of Capital and I have been happy to confirm the necessary Orders in relation to both matters.