

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

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



No. CR-2023-005908

[2024] EWHC 946 (Ch)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 19 January 2024

Before:

MR JUSTICE MICHAEL GREEN

IN THE MATTER OF **TEN ENTERTAINMENT GROUP PLC**

- and -

IN THE MATTER OF PART 26 OF THE **COMPANIES ACT 2006**

MR A THORNTON KC (instructed by Shoosmiths LLP) appeared on behalf of the Company.

J U D G M E N T

(v i a M i c r o s o f t T e a m s)

MR JUSTICE GREEN:

- 1 This is the application of Ten Entertainment Group PLC (“the Company”) seeking sanction of a proposed scheme of arrangement between the Company and the holders of its ordinary shares of 1 penny each pursuant to Part 26 of the Companies Act 2006. The Company’s ordinary shares are admitted to trading on the Main Market of the London Stock Exchange.
- 2 Mr Andrew Thornton KC appears on behalf of the Company and has provided his ever helpful skeleton argument supplemented by very short oral submissions this morning. No one has appeared to oppose the application and proper notice of this hearing was given via the Regulatory News Service. As these things go, this is a fairly straightforward application and I will be sanctioning the scheme.
- 3 The Company carries on business providing family entertainment facilities primarily located at retail and leisure parks and the Company has a total of fifty-two centres across the UK.
- 4 The underlying commercial purpose of the scheme is to enable Neon Buyer Limited (“Bidco”) to acquire the entire issued and to be issued ordinary share capital of the Company. Bidco has been established for the purposes of the acquisition by investment funds advised by Trive Partners LP, a private equity firm based in Dallas, US, with over USD\$4 billion in regulatory assets under management. For every scheme share held at the scheme record time and transferred to Bidco under the scheme, a scheme shareholder will receive consideration of 412.5 pence in cash. The cash consideration offered pursuant to the scheme values the entire issued and to be issued share capital at approximately £287 million, and represents a premium of approximately 33.1 per cent to the price at which the Company’s ordinary shares were trading on the Main Market of the London Stock Exchange on 5 December 2023, that being the last trading date prior to the announcement of the proposed acquisition.
- 5 The scheme is between the Company and the scheme shareholders, but Bidco will become bound by the scheme by the provision of a conventional undertaking to the court that Mr Thornton has been instructed to give on its behalf. The scheme has no impact on creditors. The effect of the scheme on the Company’s share plans is described in paras.32-34 of the first witness statement of Mr Anthony Smith, who is a director of the Company. It is intended that any such rights be exercised once the scheme has taken effect and that the participants will receive the same consideration as payable pursuant to the scheme through the operation of a new provision set out in articles of association of the Company.
- 6 The scheme was unanimously recommended by the Company’s directors on the advice of their financial advisors Lazard & Co Limited. As the Practice Direction was not engaged, the convening hearing was held by Deputy ICC Judge Agnello KC on 18 December 2023 and she directed a single meeting of the scheme shareholders. All the shareholders were being offered the same deal, 412.5 pence per share, so this was entirely appropriate.
- 7 The directions as to the calling of the meeting and the notice being provided to the shareholders were complied with and the meeting was held on 11 January 2024. The Chair’s report shows that the resolution to approve the scheme was passed by the scheme shareholders, both as to a majority in number and the requisite majority in value. No questions were asked by scheme shareholders at the court meeting. At the meeting, twenty-one scheme shareholders voted in favour of the scheme holding 57,845,467 scheme shares. Six scheme shareholders voted against the scheme holding some 15,470 scheme shares. The majority was therefore 77.78 per cent in number, representing 99.97 per cent in

value. The turnout at the court meeting was 12.83 per cent in number and 84.47 per cent in value.

- 8 Three scheme shareholders cast votes both for and against the scheme and the Chair's report sets out the outcome based on the approach taken in *Re Equitable Life Assurance Society (No. 1)* [2002] BCC 319, and *Re Cardtronics PLC (Companies Act 2006)* [2021] EWHC 1617 (Ch), treating the shareholder as both a member in favour and a member against the scheme for the purposes of the majority in number test. Accordingly, the meeting was held in accordance with the directions of Deputy ICC Judge Agnello KC and the scheme was approved at the court meeting on a representative turnout.
- 9 Turning to the familiar four matters to consider on a sanction hearing as expounded by Morgan J in *Re TDG PLC* [2009] 1 BCLC 445:
- (1) The provisions of the statute have been complied with. There was a small blip in the notices as to the timings of two events but Mr Thornton has explained to me this morning, and as set out in Mr Smith's second witness statement, these were immaterial and were, in any event, announced to the market in good time.
 - (2) Secondly, there was fair representation at the meetings and there is no evidence to suggest that the statutory majority was acting other than *bona fide* or coercing the minority to promote interests adverse to those of the class.
 - (3) Third, the scheme is one that an intelligent and honest person, and member of the class concerned and acting in respect of his own interests might reasonably approve. In particular, the scheme:
 - (a) was unanimously recommended by the directors of the Company who had the benefit of advice from their financial advisor;
 - (b) was fully and properly explained to the scheme shareholders in the scheme document;
 - (c) was approved by the scheme shareholders at the court meeting; and
 - (d) provides for the scheme shareholders to dispose of their shares for a price significantly in excess of the price which they were trading before the announcement of the scheme.
 - (4) There are no blots on the scheme.
- 10 Mr Thornton very properly drew to my attention that Bidco had received irrevocable undertakings from directors in respect of their 0.73 per cent interest in the scheme shares, and from other shareholders in respect of a further 15.45 per cent of the scheme's shares. In addition, Bidco had received non-binding letters of intent from two holders of scheme shares and a breakdown of those irrevocable undertakings and letters of intent were set out in the scheme document. No additional consideration was provided to the shareholders who entered into those arrangements and the irrevocable undertakings and letters of intent do not give rise to any class issue (see *Re Telewest Communications plc (No. 1)* [2004] EWHC 924 (Ch)) and they therefore do not give rise to any concerns as to the exercise of discretion in this case.
- 11 As I have said, Mr Thornton has confirmed that, save for my sanction, there are no outstanding conditions as at the date of this hearing, as all other conditions will either have

been satisfied or waived by Bidco and, accordingly, upon the undertaking of Bidco to be bound by the scheme, I will sanction it and make the orders sought. I have received an updated order from you this morning and I will make the order in those terms.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.