



NYX Gaming Group Limited
Royal Court
19th January 2018

JUDGMENT
5/2018

Re a Scheme of Arrangement pursuant to the Companies Law 2008

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

IN THE MATTER OF:
NYX GAMING GROUP LIMITED

-AND-

A SCHEME OF ARRANGEMENT PURSUANT TO
PART VIII OF THE COMPANIES (GUERNSEY) LAW, 2008,
AS AMENDED

Application heard on: 5th January, 2018

Judgment issued on: 19th January, 2018

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court

Counsel for NYX Gaming Group Limited (“The Company”): Advocate T C Corfield;
Counsel for Bally Gaming and Systems UK Limited and Scientific Games Corporation (“SG”):
Advocate A Williams;
Counsel for William Hill Steeplechase Limited: Advocate A Horsbrugh-Porter;
Counsel for MacAndrews & Forbes Inc. (Shareholder of SG): Advocate J M Wessels.

Materials referred to in Judgment:

The Companies (Guernsey) Law, 2008, as amended (“The Law”) Part VIII.

Assura Group Limited (Royal Court 27/1/15);

In the Matter of Montenegro Investments Limited (In Administration) (Royal Court 23/2013);

Re Puma Brandenburg Limited (9/2017 and 27/2017).

Re Dorman Long & Company Limited [1934] Ch. 635;

In the Matter of DX Holdings and Other Companies [2010] EWHC 1513 (Ch);

Sovereign Life Assurance Company v Dodd [1892] 2 QB 573;

Re TDG plc [2008] EWHC 2334 (Ch).

JUDGMENT

Background

1. On 3rd November, 2017 the Court, exercising its jurisdiction under Part VIII of the Law (“Arrangements and Reconstructions”) ordered a Meeting of members of the Company to consider, and if approved to set in motion a proposed scheme to allow the acquisition of the company by Bally Gaming and Systems UK Limited, a wholly-owned subsidiary of Scientific Games Corporation. This Court Meeting subsequently took place in Las Vegas on 20th December, 2017.
2. At the present hearing, which was arranged for the purpose of sanctioning the Scheme of Arrangement in relation to this transaction, it was reported to the Court that:
 - (i) of those present and voting, 90% in number and representing 99.57% in value approved the Scheme;
 - (ii) 13 shareholders were entitled to vote at the Meeting. 10 voted by proxy, none in person. This amounted to 76.92% of those eligible to vote;
 - (iii) 69,252,646 shares were eligible to be voted. 72.24% voted, some 50,027,026 shares;
 - (iv) of those present and entitled to vote, 9 were in favour of the Scheme and 1 against. This represented 99.57% in favour, with 0.43% against.

Relevant Legal Considerations

3. It was submitted in the Company’s skeleton argument at paragraph 8 and orally that this “overwhelming” and “near unanimous” approval shown would ensure that the Court would be “slow to differ”, particularly as those voting in commercial matters were the best judges. This has been set out more than once in the English cases, e.g. Re TDG plc [2008] EWHC 2334 (Ch) at paragraph [30] by Morgan J (AB4/32 of the company’s bundle –“the bundle”):

“... the Court should show reluctance to differ from the views of the majority, and should certainly be slow to differ from the majority, on matters such as what an intelligent honest person might reasonably think.”

4. The function of the Court at the present stage is to be satisfied of various matters. These are well-established in cases both in England and, indeed, Guernsey. In Guernsey the relevant legislation and the role of the Court whose sanction is sought was set-out extensively in Re Puma Brandenburg Limited (9/2017) at first instance by the Bailiff, and on appeal by Bompas, JA (27/2017 CA) – see AB4/7 and 8 of the bundle. A convenient exposition of the requirements is found in the Deputy Bailiff’s judgment at paragraph 11 of Assura Group Limited (Royal Court 27/1/15) found at AB4/5 of the bundle:

“The requirements are that four things need to be considered:-

1. First the Court must be satisfied that the provisions of the Statute have been complied with.
2. It must be satisfied that in relation to the class of shareholders, the subject of the court meeting, was fairly represented by those who attended the meeting, and the statutory majority are acting *bona fide* and not coercing the minority in order to promote interests adverse to those of the class they purport to represent.
3. An intelligent and honest person, a member of the class concerned, and acting in support of his own interest, might reasonably approve the scheme.
4. There must be no blot on the Scheme.”

This decision followed that of the Bailiff in In the Matter of Montenegro Investments Limited (In Administration) (Royal Court 23/2013) at AB4/4, which itself alluded to the English case of Re TDG plc (supra).

It follows that each of these requirements needed to be considered in the present application.

5. In relation to the statutory requirements, it suffices to say that the Court Order of 3rd November, 2017 has been complied with in accordance with Sections 107(1) and 108 of the Law. The notices and other explanatory documents are comprehensive and detailed; the result of the Court Meeting has been fully reported. The various documents have been properly dispatched to the shareholders.
6. The provisions of Section 110(2) of the Law set out the fairness necessary in the procedure. This is, of course, not a creditors' scheme, where more opposition on questions of good faith and/or minority oppression, might be expected. In addition there is here only one class of shares. The relevant authorities were cited at the earlier hearing, going back to the long-established judgment of Bowen LJ in Sovereign Life Assurance Company v Dodd [1892] 2QB 573 at 582-3 (at AB2/11).

The results of the Court Meeting voting have already been referred to and show a very pronounced majority in favour of the proposals: 99.57% to 0.43%. It was mentioned that William Hill, who support the scheme, did not vote "out of an abundance of caution". The Court was addressed in some detail in the November 2017 hearing and there were no concerns in the context of either class composition or representation. Various English authorities support the approach taken on voting undertakings, e.g. in In the Matter of DX Holdings Ltd and Other Companies [2010] EWHC 1513 (Ch) (at AB4/33) at paragraph 6, where Floyd J made it clear that such a situation is not disapproved and indeed "there is much sense in securing this agreement in advance ...". No separate, illegitimately-favoured class sprung up in the present matter as a result of this element of the application.

7. The "intelligent and honest" person requirement has been in existence for a long time. Maugham J's exposition of this principle can be found in Re Dorman Long & Company Limited [1934] Ch. 635 (AB4/14), especially at 655-657. Maugham J goes back to cases in 1891 and 1893 and consistently with them concludes:

"In my opinion then, so far as this second duty is concerned, what I have to see is whether the proposal is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve."

The explanatory documents and letter are full and indeed voluminous. Perhaps of particular significance is the belief of the NYX directors, taking into account the opinions of NYX's financial advisors that the consideration in favour of approving the Scheme represents the highest value reasonably obtainable for the shares. The transaction itself, despite the large wedges of paper that have been produced, is in its nature straightforward and refreshingly free of the complexity that often envelops such matters. It is easy to understand. In all these circumstances, the requirement is fully met. To quote the words of the Bailiff in the Montenegro case (supra) at paragraph 15:

"In the present circumstances, there is no reason why the Court would substitute its own view for the commercial decision of the members. The investor members are sophisticated investors who are well able to take their own decisions as to how they wish to invest their funds."

8. The final matter is that there is no "blot" on the Scheme. As the Bailiff observed in the judgment just referred to, this is simply just another way of saying "the Court can take any

other factor into account in exercising its discretion” (following a submission from counsel). Taking a broad view of the particular circumstances in the present matter and noting that the Court has to exercise its discretion judicially and never be a rubber-stamp, there is no apparent blot on the Scheme. The familiar observation is made that each case falls to be decided on its own facts, and here the procedures have been followed assiduously and very full information imparted to those interested and the Court. It is also worthwhile to place on record that none of the very experienced Counsel instructed for other interested parties had any objections to the process.

Conclusion

9. It is for these reasons, which would have been much fuller had there either been opposition or some blemish or irregularity on the face of the papers, that the Scheme was approved, having met the appropriate legal requirements. The admirable preparation and presentation of the applications is appreciated.

J R Finch, O.B.E.
Judge of the Royal Court