

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
(COMMERCIAL DIVISION)

Claim No: BVIHC (COM) 2020/0008
CONSOLIDATED CLAIM

BETWEEN:

RONGXINGDA DEVELOPMENT (BVI) LIMITED

Claimant

Appearances:

Mr Peter Ferrer, Ms. Marcia McFarlane and Mr. Chai Ridgers of Harneys for the
Applicant

2022 March 10 (Oral Judgment)
April 13 (Written)

JUDGMENT (No 2)

[1] **JACK, J [Ag.]**: This is an application for approval of a Scheme of Arrangement. The matter was last before me on 8th February, 2022, when I approved the calling of a meeting of creditors and determined that there should only be one class of creditor. That meeting was held on 3rd March, 2022. 95.9 percent of creditors by value attended that meeting and 98.15 percent of those present and voting approved the Scheme of Arrangement. It is fair to say that in those circumstances the degree of approval is overwhelming.

[2] The power of the Court to approve a Scheme of Arrangement is given by section 179A of the **BVI Business Companies Act 2004** provides: ¹

¹ No 16 of 2004, Laws of the Virgin Islands.

"(1) Where a compromise or arrangement is proposed between a company and its creditors or, any class of them, or between the company and its members or any class of them, the Court may, on the application of a person specified in subsection (2) order a meeting of the creditors or class of creditors or of the members or class of members as the case may be, be summoned in such manner as the Court directs.

(2) An application under subsection (1) may be made by, (a) the company...

(3) If a majority in number representing seventy five percent in value of the creditors or class of creditors or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement if sanctioned by the Court is binding on all the creditors, or the class of creditors or the members or class of members as the case may be, and also on the company, or in the case of a company in voluntary liquidation, or in liquidation under the Insolvency Act, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation."

[3] I do not need to read the rest of the section. Mr. Ferrer draws my attention to the case law on this matter. There is very little in this Territory, but this Court will apply the authorities from England where the Scheme of Arrangement system is very similar to that here. There is no doubt that the Scheme of Arrangement proposed produces a more favourable outcome to the creditors than the liquidation of the company. And that is amply borne out by the voting figures at the meeting heard on the 3rd March 2022.

[4] I am satisfied that that meeting was properly advertised. As I have said, there was a very large turnout by value of holders of the two Notes. One of the Notes is for US\$500 million. That matures in April, but there is no prospect of it being paid unless the Scheme of Arrangement is approved. The other Note is for US\$300 million. That was due in January but was not paid. And again, the return under the Scheme of Arrangement is likely to be much better than if there were a liquidation of the company.

- [5] I am satisfied that the statutory provisions have been complied with, that the Noteholders were fairly represented by those attending the meeting and that the majority acted *bona fide*. There is no objection presented before me by the small number of Noteholders who voted against the proposal and although the Court does not simply endorse the majority vote, in my judgment there are no grounds here on which the Court could properly refuse to sanction the Scheme of Arrangement proposed.
- [6] The Court will be slow to diverge from the result of a meeting and in this case, the creditors were represented and there are no grounds for going behind the vote which has been approved so overwhelmingly.
- [7] In those circumstances, I am satisfied that the scheme is reasonable and I approve it. It is right to say that it is not necessarily clear that the Scheme will be enforceable everywhere internationally. The two Notes are governed by New York law but steps are already in place to have the approval of the United States Bankruptcy Court of the Scheme of Arrangement.
- [8] In those circumstances, issues of international recognition it seems to me are of very little weight and certainly do not amount to a reason for refusing to recognize the Scheme of Arrangement and sanctioning it.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar