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THE HIGH COURT

COMMERCIAL

[2012 No. 196 COS]

[2012 No. 50 COM]

IN THE MATTER OF READYMIX PLC AND

IN THE MATTER OF THE COMPANIES ACTS 1963 – 2009

ON THE APPLICATION OF READYMIX PLC

JUDGMENT of Mr. Justice Kelly delivered on the 16th day of May, 2012

Introduction

1. This is the petition of Readymix Plc (the Company), presented pursuant to s. 201 of the Companies Act 1963 (the Act), for the sanction of the court in respect of a scheme of arrangement. In the event of such an order being made, the court's confirmation of the reduction of the share capital of the Company is also sought, pursuant to s. 74 of the Act.

2. The Company's application is opposed by two of it's shareholders namely Messrs. Tom Goode (who holds 266 shares) and Seamus Maye (who holds two shares).

3. Prior to the presentation of the petition by the Company, I directed the holding of a meeting of the shareholders of the Company to be affected by the scheme so that they might consider it. That meeting was held in accordance with the court's directions.

4. The meeting took place on 5th April, 2012.

5. 294 shareholders were present or were represented at the meeting and voted in person or by proxy at it. The 294 shareholders represented 21,874,094 shares.

6. The resolution put to that meeting was to the effect that the scheme of arrangement proposed to be made between the Company and the holders of the *"scheme shares"* as defined in that scheme should be approved. It is that scheme which is the subject of this application.

7. 286 shareholders voted in favour of the resolution. They represented 19,694,692 shares. Eight shareholders voted against the resolution. They represented 2,179,402 shares. Thus, 96.94% of the shareholders by number voted in favour of the scheme with 3.06% against. The 96.94% voting in favour of the resolution represented 90.04% of the shares with the remaining 9.96% of the shares being represented by the 3.06% shareholders who voted against the scheme.

8. Mr. Maye owns 0.0000047% of the shares affected by the scheme. Mr. Goode owns 0.00063% of the shares affected by the scheme.

The Task

9. Before considering the objections, I will outline the task of the court on an application such as this.

10. In many cases where the court is asked to approve a scheme of arrangement, it does so in the context of a company which is insolvent. That is not the case here. Neither was it so in the case of *Colonia Insurance Ireland Limited* [2005] 1 I.R. 497, where I considered the relevant English authorities and set out what I believe are the issues with which the court should concern itself on an application of this sort. The five matters which I concluded had to be demonstrated to the satisfaction of the court are as follows:-

> (1) The court must be satisfied that sufficient steps have been taken to identify and notify all interested parties.
>
> (2) The statutory requirements and all directions of the court must be complied with.
>
> (3) The classes of creditors or shareholders as the case may be must be properly constituted.
>
> (4) There must no coercion present.
>
> (5) The scheme of arrangement must be such that an intelligent and honest man, a member of the class concerned, acting in respect of his interest might reasonably approve of it.

11. In considering each of those matters there are two overriding considerations to bear in mind. First, the court must not act as a rubber stamp for the decision of the company. In other words, it must apply a critical eye to the material placed before it. That said, the court should be slow to differ from the considered view of the majority.

12. I had to consider the matter again in the case of *Re Depfa Bank Plc* (Unreported, 2nd October, 2007) where I followed the earlier decision in *Re Colonia* which in turn followed English decisions in *Re Osiris Insurance Limited* [1999] 1 BCLC 182 and *Re English Scottish and Australian Chartered Bank* [1893] 3 Ch. 385.

13. My attention has been drawn to a more recent decision of Morgan J. in the Chancery Division in England in a case of *Re TDG Plc* [2009] 1 BCLC 445.

14. That judge summarised the matters that require attention on an application such as this in the following terms. He said:-

"(i) The court must be satisfied that the provisions of the statute have been complied with.

(ii) 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.

(iii) An intelligent and honest person, a member of the class concerned and acting in respect of his own interest, might reasonably approve the scheme of arrangement

(iv) There must be no blot on the scheme."

15. He went on to say:-

"It is also right to record that the court does not act as a rubber stamp simply to pass without question the view of the majority but, equally, if the four matters I have referred to are all demonstrated, 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."

16. Whilst Morgan J. reduced the relevant matters for consideration from five to four, in truth, there is little between them. An intelligent and honest person is, I think, unlikely to reasonably approve a scheme which has a blot on it.

Readymix

17. The Company is a public limited company and a leading manufacturer and supplier of concrete and concrete products for the construction industry and agriculture. It was established in 1965. For the financial year ending 31st December, 2011, it had a turnover of €45.1m and employed about 310 people at its operations in Ireland and the Isle of Man.

18. The authorised capital of the Company is €15,600,000 divided into 130m ordinary shares of €0.12 each. 109,645,169 ordinary shares have been issued and are credited as fully paid up.

19. 61.2% of the ordinary shares are held by companies within the Cemex Group. The Cemex Group is a global building material supplier which is established in Spain.

20. A company called Readymix Investments is a wholly owned subsidiary of Cemex España S.A. which is part of the Cemex Group of companies. The objects of Readymix Investments are to carry out the business of an investment holding company. The scheme envisages that the entire issued share capital of the Company, other than any shares legally or beneficially already held by any member of the Cemex Group, will be acquired by Readymix Investments. These are the 'scheme shares'. The consideration for the acquisition comprises cash with €0.25 being paid for each scheme share. The scheme shareholders are the holders of the ordinary shares of €0.12 each in the capital of the Company but excludes holders of ordinary shares legally or beneficially owned by any member of the Cemex Group.

21. The independent directors of the Company proposed the scheme and the meeting of shareholders comprised only the scheme shareholders.

22. The scheme intends that the scheme shares should be purchased for the consideration which I have mentioned and then they will be cancelled pursuant to ss. 72 and 74 of the Act. The reserve arising from the cancellation of the scheme shares will be capitalised to issue fully paid new shares to Readymix Investments or its nominees. As a result of all this the Company will become a wholly owned indirect subsidiary of Cemex España S.A.

The Takeover Panel

23. The independent directors, having taken the view that the scheme should proceed, were obliged to ensure that the transactions envisaged were conducted in accordance with the provisions of the Takeover Panel Act 1997 and the Takeover Rules. The Takeover Rules comprise general principles and rules designed to ensure fair and equal treatment of all shareholders in transactions such as the scheme in suit. If there is any doubt about whether a proposed course of conduct is in accordance with the general principles or rules then the Takeover Panel must be consulted.

24. On the evidence before me, there has been close liaison by the Company's advisers with the Takeover Panel. That Panel reviewed and commented on the circular document issued to the scheme shareholders before it was issued to them. In addition to the other documents and information provided to it, the panel was sent copies of all documents lodged by the Company in these proceedings. Furthermore, the panel was, by my direction, served with the petition grounding this application and did not appear before the court.

25. Having regard to the evidence, I am satisfied that the scheme and all of the procedures relating to it have been proposed and conducted in compliance with the Irish Takeover Rules. The Panel has not exercised or indicated any intention to exercise any relevant power in relation to the scheme.

Previous Proceedings

26. Both objectors make serious allegations about alleged wrongdoing and illegalities in the cement business. These include anticompetitive behaviour, selling below cost and cartel activities. Both objectors have through their companies sued CRH Plc., Irish Cement Limited, Roadstone Provinces Limited, Roadstone Dublin Limited, Tradburn Limited, Readymix Plc., Kilsaran Concrete Products Limited and CIP Limited. Those proceedings, bearing record No. [1996 No. 10658 P.], have not yet been brought to trial. They allege anticompetitive practices against CRH Plc and other defendants. All of these allegations are denied by the defendants including Readymix. The proceedings have been dormant from 2005 until June 2011 when the plaintiffs served notice of intention to proceed. The Company and the other defendants have now applied to have those proceedings dismissed. It is apparent that the plaintiffs in those proceedings have been making these allegations in this court for well nigh sixteen years but, for whatever reason, those proceedings have not yet been brought to trial.

27. More recently, in proceedings which commenced in 2010, Goode Concrete sued Cement Roadstone Holdings Plc., Roadstone Wood Limited and Kilsaran Concrete Limited. The plaintiff in those proceedings holds 16,000 ordinary shares in the Company and ceased trading earlier this year. One of it's directors is Peter Goode who is a son of Tom Goode. The Company is not a defendant in those proceedings. The principal allegation in those proceedings is that the defendants acted in concert to set prices which would effectively remove the plaintiff from the Dublin market. An application for an injunction in those proceedings was refused on 22nd February, 2011 and the action has not yet come to trial.

The Objections
28. Affidavits were sworn by Messrs. Tom Goode, Peter Goode and Seamus Maye on the last working day before the hearing of the petition. They were responded to by Mr. Roger Gonzales over the intervening weekend. I heard the petition on Tuesday, 8th May, 2012.

29. The affidavits sworn by way of opposition deal with an enormous breadth of material and contain many allegations of wrongdoing. It is important to point out that none of these allegations have been proved despite the opportunity to do so in the proceedings to which I have already referred.

30. Counsel for the objectors readily accepted that many of the allegations made on affidavit by them would not be capable of being adjudicated upon in these proceedings. He thus confined himself to three areas of objection. In fact only two of them (the latter two) could be regarded as objections properly so called.

31. The first area of objection related to an alleged defect in the online arrangements to deal with proxy votes. The second was a contention that the scheme of arrangement failed to give to the ordinary shareholder a true picture in respect of the proposed transaction. This was so because of an alleged inadequate explanation concerning payments that Cemex have received over the last six years from the Company. The third point is whether the scheme is appropriate for sanction when looked at in the light of the allegations which are made in respect of below cost selling and cartel activity by the Company. It is said that these activities have diminished the value of the shares over time. It is said to be unfair to ask ordinary shareholders to consider the scheme in circumstances where they have not been given the full picture in respect of these activities.

Reliefs
32. Counsel for the objectors indicated the reliefs which are sought.

33. First, the court is asked to refuse its sanction of the scheme. Alternatively, they ask that the scheme be approved but with modifications. In the event of being refused those reliefs, the objectors wish to obtain clarification from the Company in respect of the allegations made and/or to have a senior officer of the Company give undertakings to the court that the Company has not and will not be involved in illegal activities of an anticompetitive or price fixing type. Counsel acknowledges that much clarification has been obtained by the objectors from the contents of the replying application on this petition.

34. I will deal with the two substantive objections first and then turn my attention to the online proxy arrangements.

Payments to Cemex from Readymix
35. The allegation is that from August 2006, Readymix has been incurring enormous annual costs to Cemex for the use of its brand and other relatively minor matters. The objectors put the sum paid over the last six years as in excess of €12 million. They contend that these payments to Cemex were inappropriate. At the very least they say that they should have been thoroughly detailed in the scheme of arrangement and a comprehensive explanation given as to why such payments were made. By failing to do so, it is alleged that the scheme of arrangement failed to fairly or reasonably give a complete picture of the proposed transaction. Furthermore, it is said that the payment of these monies amounts, in effect, to an indirect funding by the Company of the purchase of its shares by Cemex.

36. In his replying affidavit, Mr. Gonzales deals with these contentions in some detail. He admits that payments have been made to Cemex by the Company. The payments are on foot of a commercial arrangement under which the Company uses 'Cemex way', which is an operating system developed by Cemex for its exclusive use and comprises a business model and information systems. When the system was introduced to the Company in 2007, it benchmarked the alternatives available in the market. The lowest development cost quoted for a comparable fully integrated system was of the order of €8m for installation only. Cemex also provides a range of technical, operating and product supports to the Company, for many of which no additional charge is made. The cost of the Cemex installation was €3.7m and the total cost to the end of 2011, including installation and all fees, has been €6.5 million. That is quite obviously a great deal less than the sum claimed by the objectors.

37. On the evidence before me, details of this arrangement have been fully set out in Readymix's Annual Accounts over a number of years. They were included in the notes to the financial statements for the years ended December 2008, 2009, 2010 and 2011. Furthermore, a detailed explanation of the arrangements was given in a letter from the Chairman to shareholders of 22nd April, 2010, which formed part of the notice convening the Annual General Meeting which took place on 25th May, 2010.

38. A circular was sent to the scheme shareholders in respect of the meeting which was convened by direction of the court. That circular was prepared under the supervision and with the approval of the Takeover Panel. The circular included the 2011 financial statements. Note 24, located at p. 83 of the circular, recorded that the Readymix Group renegotiated the fee scheme for these payments in 2009. That arrangement was ratified by shareholders at the Annual General Meeting held on 25th May, 2010.

39. Having regard to these matters, I am not satisfied that there has been an inadequacy of information provided to the scheme shareholders in respect of these payments. On the contrary, I think that the matter is sufficiently disclosed so as to apprise shareholders of the matter. In addition, there is a commercial justification for the payments made in return for value received. I further note that the amount which is alleged by the objectors to have been paid greatly exceeds the sum which was actually paid.

40. The objectors have not discharged the onus of proof in respect of this objection.

Anti-Competition/Below Cost Selling
41. Very serious allegations of anticompetitive activities and below cost selling are made by the objectors. However, Mr. Maye, at para. 7 of his affidavit, says:

> *"I am not seeking to have this court adjudicate in any way on alleged anticompetitive practices on the part of the company, or am I in any way seeking to advance any cause of action in relation to the 'Framus companies'. Rather, I believe that there is at least a prima facie case showing that minority shareholders have been oppressed in a manner that has caused an unprecedented (for a company in the construction material sector) collapse in the share price."*

42. In respect of this allegation, it has to be noted that no petition seeking relief under s. 205 of the Companies Act has even been brought by the objectors alleging oppression as a minority.

43. At para. 28 of his affidavit, Mr. Maye says:

> *"I appreciate the difficulty this Honourable Court will face in circumstances where I have not yet succeeded in conclusively proving price fixing, below cost selling and other cartel activities that I believe have contributed so substantially to the collapse in the company share price. These matters, as I have already averred to, are the subject of existing litigation. However, as a shareholder of the company, I feel it incumbent on me to make this honourable court aware that in my view, the scheme of arrangement does not adequately reflect the damage caused to shareholder value as a result of the various activities described by me, much of which has already been pleaded in the existing litigation."*

44. In his affidavit, Mr. Tom Goode says at para. 29:

> *"I appreciate the difficulty this Honourable Court will face in circumstances where I have not yet succeeded in conclusively proving price fixing, below cost selling and other cartel activities. However, as a shareholder in the company, I feel it incumbent on me to make this Honourable Court aware that, in my view, the scheme of arrangement does not adequately reflect the ongoing cartel activities in the cement, concrete and aggregate business."*

45. Those averments make it clear that the objectors are not at present in a position to prove the allegations which they make. That is so despite the fact that they have been engaged in litigation with the Company for the last sixteen years, making broadly the same allegations. For whatever reason, they have not brought their proceedings to trial. They cannot hope to achieve, by repeating allegations in these proceedings, a result with serious consequences for the Company and the vast majority of the scheme shareholders when they have not yet proved their case in the plenary proceedings which have languished on the books of the court for 16 years. Far from not *"conclusively proving"* the wrongdoing, they have not proved it at all.

46. Not merely that, but these allegations are denied under oath by Mr. Gonzales. He says, at para. 36 of his affidavit as follows:

> *"None of the allegations made by Mr. Goode, Peter Goode and Mr. Maye in relation to alleged anticompetitive behaviour or other alleged bad business practices are true and Mr. Goode, Peter Goode and Mr. Maye offer no evidence in support of their more serious allegations."*

He also points out that in the *Framus* proceedings, these allegations are denied both in pleadings and affidavits.

47. Mr. Gonzales's affidavit then goes on to deal specifically with the allegations. Between paras 38 and 45, he deals with the allegations in considerable detail.

48. I do not deem it necessary to lengthen this judgment by setting out the detailed denials and the specific information which is placed before the court by Mr. Gonzales in his affidavit. It is not necessary to do so since I do not consider that the objectors can, in this collateral way, ventilate claims which they could have had tried years ago. It would be grossly unfair to uphold these objections based, as they are, on general allegations which have been specifically denied in detail by the Company. The objectors have had ample opportunity to prove their claims in appropriate proceedings but have not done so. They may not seek to achieve the desired result by repeating them as objections to the sanctioning of the scheme. I disallow this objection.

Validity of Proxy Shares

49. This objection is dealt with in the affidavit of Mr. Tom Goode at paras. 8 to 10 of his affidavit. This is what he says.

> *"8. For the avoidance of doubt, I accept that a majority of shareholders at the court directed meeting on 5 April 2012 voted in favour of the scheme of arrangement. However, I have concerns in regard to how the company appears to have allowed proxy votes to be registered over the internet. I understand that people could log onto a website to allocate their proxy.*
>
> *9. I am concerned that the company may not have taken adequate precautions to ensure these proxies were validly executed. I beg to refer to a copy of the proxy form upon which marked with the letter TG4 I have signed my name upon prior to the swearing hereof.*
>
> *10. I do not wish this Honourable Court to be unduly delayed on what I see as important but procedural points. I say that if this Honourable Court is satisfied with the oral submissions the company makes in regard to why their proxy arrangements comply with their obligations and are fair, I will not seek to inspect the proxies or to investigate this issue further."*

50. The matter is explained in detail in the affidavit of Mr. Gonzales.

51. There were two forms of internet-enabled proxy facilities for shareholders in respect of the court directed meeting. His affidavit says as follows:

> *"33. Capita Registrars are an established professional company administration firm, who provide company administration services, such as delivery of meeting notices and similar materials for companies with large shareholder bases, including Readymix. Their services include registration facilities where a member of a relevant company may access proxy forms online by using secure login details and a password privately issued to that member to access proxy forms or other documents. (The facilities are secured in broadly the same way as internet banking facilities). The online facilities provided by Capita Registrars are made available for the benefit of company members who wish to transact their business online at their choice. These kinds of facilities are now routinely made available by registrar companies to members of large listed companies in many countries. A member's private documents, such as a form of proxy, cannot be accessed without the user ID supplied by Capita Registrars. Therefore, it is not possible for anyone other than members of the company to access the proxy forms.*
>
> *34. CREST also provides similar facilities to members who hold shares in Readymix, and indeed in a very large number of public companies in Ireland, the United Kingdom and elsewhere in uncertificated form. Again, the online facilities provided by CREST are industry-standard and are available at their choice to CREST members who transact their relevant business online. Access is only available to the member inputting the correct user ID supplied by CREST and the necessary password, so it is simply not possible for anyone other than members of the company to access the proxy forms.*
>
> *35. I note that while Mr. Goode expresses concern about these routine arrangements, he does not actually suggest that*

there is any evidence of failure of security in this case. He does not allege that he himself or an other person was able to access any secure proxy form through the internet. I am fully satisfied that the arrangements for online proxy access for Readymix operated by Capita and CREST, which are both established reputable service providers and market leaders, were sufficiently secure to protect the members of Readymix. Their facilities are routinely provided by both of these firms to a large number of client companies without complaint and I do not believe any cause of concern properly arises."

52. Mr. Tom Goode's affidavit refers to oral submissions to be made by counsel on this topic. Indeed, such submissions were made and I now deal with them. They went outside the concerns expressed in the affidavit of Mr. Tom Goode which have, in my view, been answered by Mr. Gonzales.

53. Two points are made by the objectors concerning proxy votes. The first relates to an alleged conflict between Article 60 of the Company's articles of association and the circular sent to shareholders.

54. Article 60 of the Company's Articles of Association deals with votes of members. It reads as follows:-

"(a) Votes may be given either personally or by proxy. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person and every proxy shall have one vote, so, however, that no individual shall have more than one vote, and on a poll every member shall have one vote for every share carrying voting rights of which he is the Holder. On a poll a member entitled to more than one vote need not cast all his votes or cast all the votes he uses in the same way.

(b) Subject to the Acts and to such requirements and restrictions as the Directors may, in accordance with the Acts, specify, the Company at its discretion may provide for participation and voting in a general meeting by electronic means.

(c) Subject to the Acts and such requirements and restrictions as the Directors may, in accordance with the Acts, specify, the Company may at its discretion provide for voting on a poll by correspondence. Where the Company permits votes to be cast on a poll by correspondence, it shall be required to count only those votes cast in advance by correspondence that it received before the date and time specified by the Company for that purpose, provided that such date and time is not more than 24 hours before the time at which the vote is to be concluded."

55. In the statement of procedures which was included in the circular sent to each member under the heading *"Appointment of Proxies"* at para. 6 there is to be found the following:-

"To be valid, the Form of Proxy must be returned by post to Capita Registrars, PO Box 7117, Dublin 2, Ireland or (during normal business hours) by hand to Capita Registrars, Unit 5, Manor Street Business Park, Manor Street, Dublin 7, Ireland, and in any event by no later than 10.15am on 3 April, 2012 or, if the extraordinary general meeting is adjourned, no later than 48 hours before the time fixed for the holding of the adjourned general meeting or (in the case of a poll) taken otherwise than at or at the same time as the extraordinary general meeting or adjourned general meeting, no later than 48 hours before the taking of the poll at which it is to be used."

56. Counsel argues that there is what he describes as *"some form of conflict"* between the provisions of the Company's articles and what he described as the scheme but what is in fact the circular accompanying the scheme which provides that the votes should be in 48 hours beforehand.

57. The criticism which he makes (if criticism it be) under this heading is between the relevant provision in the articles and para. 6 of the circular dealing with the appointment of proxies in the circular.

58. It is important to bear in mind that two meetings took place on 5th April, 2012. The first was the meeting which was directed by the court. That meeting was held pursuant to directions which I gave. One of the directions (at para. 4 of the curial part of the order) was that notice of the court meeting was to be sent to each holder of scheme shares in the capital of the Company together with a statement in substantially the form of a draft which was exhibited as *"CE3"* in an affidavit of Clare Egan which had been placed before me. That part of the order dealt with the circular. There was also to be sent a form of proxy for a holder of shares in the Company in the form of the draft which was exhibited as exhibit CE4 to the affidavit of Clare Egan. That was what was called during the hearing the *"blue proxy"*. That was the proxy that allowed for electronic voting. It contains notes on completion of the form of proxy and paras. 2 and 3 deal with the appointment of a proxy electronically using the Capita Registrar's website. Likewise, it dealt with appointing proxies using the CREST proxy systems. Thus, the proxy forms were sent having been approved of by the court.

59. The second meeting which took place was the extraordinary general meeting which was concerned with the reduction of capital whereby the scheme shares are cancelled. Immediately new shares are to be issued to Readymix Investment and, on cancellation, the scheme shareholders become entitled to their payment of 25c per share. So, it is argued, that any objection which may be taken on foot of the provisions of the articles is directed at the extraordinary general meeting rather than the court directed meeting. That may well be correct but I do not have to decide that question.

60. I am not satisfied that any point of substance has been made out by the objectors concerning an alleged conflict between the 24 hour and 48 hour notice provisions. There is no evidence at all of any confusion still less of any wrongful allowal or disallowal of proxy votes. It is not the function of the court to try a moot on to express views on *"some form of conflict"* between the documents in the abstract.

61. The second point which is made in respect of proxies arises pursuant to the provisions of Article 69 of the memorandum and articles of the Company. Paragraph B of that Article reads as follows:-

"Subject to the Acts, a member shall be entitled to appoint a proxy by electronic means only if the appointment and notification of appointment of proxy is made in such form and manner, and subject to such terms and conditions, as shall have been specified by the Directors from time to time for the appointment of proxies in electronic form. Such appointment shall be delivered to the Company in a manner specified by the Directors. The Directors may require any evidence that they think appropriate to satisfy themselves that the electronic appointment is genuine and may prescribe the method of determining the time at which any such appointment of proxy is to be treated as received by the Company. Any provisions of these Articles which are inconsistent with this method of appointment shall be of no effect in relation to any appointment made pursuant to this Article 69(b)."

62. The contention which is made is that it is not enough for the Company's directors to exercise their entitlements under this Article and decide the circumstances where a vote may be valid or not. It is, it is said, for the court to determine the adequacy of the provisions which the directors put in place to ensure that votes cast electronically were valid and cast by the appropriate person. When asked to identify any imperfection in the scheme touching upon this issue, counsel was unable to identify such defect. He alleged a paucity of information but did not go so far as to say that adequate provisions were not put in place.

63. I am satisfied that electronic voting is permitted by Article 60(b). Article 69 expands on that in the terms which I have quoted.

64. The circular was approved by the Takeover Panel. It sets out information considered appropriate by the Takeover Panel which has the obligation of overseeing acquisitions of this nature. In the present case, the shareholders were furnished with the circular which at p. 5 referred to electronic voting and detailed procedures were set out from p. 15 onwards. The form of proxy explained precisely what the procedures were. Thus, any shareholder knew precisely what had to be done in order to cast a vote by proxy. In fact, the blue proxy form made it clear that one could turn up at the court meeting and the extraordinary general meeting with a blue proxy and still cast one's vote. In other words, you were not obliged to cast it electronically.

65. Over and above all of this, both the proxy form and the circular and indeed the other documents made it clear that electronic voting was to occur through Capita Registrars and CREST. They utilise a sophisticated security system to ensure that only those entitled to vote get to do so. I am not satisfied that there was any deficiency in the information provided to shareholders. There is no evidence at all of any breakdown in the system. The directors behaved properly in utilising the Capita and CREST systems. There was no paucity information given to shareholders.

66. In these circumstances, I am unable to find that there is any validity in the issues raised concerning the proxy voting.

Some Observations

67. It is plain from the affidavits filed by the objectors that they have a wide range of complaints concerning the way in which they perceive the Company to have conducted its business. There is no doubt but that the share price has dropped very substantially over the last number of years. That is perhaps not surprising given that Readymix is active in the construction sector which has been amongst the hardest hit by the economic catastrophe that has befallen this country over the last few years. The Company's profitability collapsed during the period, with obvious losses for its share price. The price which is being offered under this scheme represents a premium of approximately 733% on the closing price of €0.03 per Company share on 18th January, 2012. The 25 cent price payable under the scheme gives a premium of approximately 150% on the average daily closing price of €0.010 per Company share for the six months up to the commencement of the offer period. Thus, although much below the share price of years ago, the scheme price is a substantial improvement on both the actual closing price and average price of the shares over the last nine months.

Conclusions

68. Having regard to the matters which I must take into account and which I have set out in the earlier part of this judgment, I am not satisfied that there is any validity in the objections which are now offered. All interested parties were notified of the scheme and the meetings. The court's directions and the statutory requirements have been complied with. The class of shareholders which was identified i.e. the scheme shareholders was the correct class. There has been no coercion present. I am satisfied that an intelligent and honest man, a member of the class concerned, acting in respect of his interest might reasonably approve of it. And, to use the words of Morgan J., there is no blot on the scheme.

69. I would not be justified on the evidence and, indeed, it would be unfair to the almost 97% of the shareholders who voted in favour of the scheme that their will should be set aside on this application.

70. I, therefore, grant the relief which is sought. I am not prepared to attach any modifications to the scheme. Neither am I prepared to require officers of the Company to give undertakings of the type which are sought. In the absence of evidence of wrongdoing, it would not be just to require officers of the Company to undertake that they have not been guilty of such or will not be guilty of such in the future.

71. In these circumstances, I accede to the application of the Company.