

SUPREME COURT OF QUEENSLAND

CITATION: *Re Facilitate Digital Holdings Limited (No.2)* [2013] QSC 345

PARTIES: **FACILITATE DIGITAL HOLDINGS LIMITED**
ACN 093 823 253
(applicant)

FILE NO/S: BS 10058 of 2013

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 9 December 2013

DELIVERED AT: Brisbane

HEARING DATE: 9 December 2013

JUDGE: Philip McMurdo J

ORDERS: **1. Pursuant to section 411(4)(b) of the Corporations Act 2001 (“the Act”), the scheme of arrangement between the applicant and its shareholders which is annexure A to this order be approved.**

2. Pursuant to section 411(12) of the Act, the applicant is exempted from compliance with section 411(11) of the Act in relation to this order.

3. The applicant is to lodge a copy of these orders with the Australian Securities and Investments Commission as soon as practicable.

CATCHWORDS: CORPORATIONS – ARRANGEMENTS AND RECONSTRUCTIONS – SCHEMES OF ARRANGEMENT OR COMPROMISE – APPROVAL OF SCHEME BY COURT – EXERCISE OF COURT’S DISCRETION – GENERALLY – where applicant seeks approval of a scheme of arrangement – where scheme provides for shares in the applicant to be acquired by another company upon the basis that for each share in the applicant company, the acquiring company will issue 1.216 shares in its company – whether the court should approve the scheme of arrangement

Corporations Act 2001 (Cth), s 411

COUNSEL: N H Ferrett for the applicant

SOLICITORS: Cooper Grace Ward for the applicant

HIS HONOUR: This is an application under section 411 of the Corporations Act for approval of a scheme of arrangement. The scheme is between the applicant, Facilitate Digital Holdings Limited, and its shareholders and it involves the acquisition of shares in that company by the company Adslot Limited upon the basis that for each share in the applicant company, Adslot will issue 1.216 shares in Adslot. The scheme was considered at a meeting of shareholders on 4 December as convened according to the court's order of 30 October. No party other than the applicant appears on this application and no notice of an intention to appear has been given. The non-appearance of any other party is consistent with what occurred at the meeting where no shareholder voted against the proposed scheme.

At the meeting, nearly 154,000,000 shares were voted and all but 10,000 were voted in favour of the resolution. The holder of those 10,000 abstained from voting. The material has been sent to the Australian Securities and Investments Commission by letter dated 6 December 2013. A senior lawyer for ASIC has advised that under section 411(17)(b) of the Corporations Act, the Commission has no objection to the proposed scheme. Further, I am satisfied that the scheme has not been proposed to enable any person to avoid the operation of any provision of chapter 6 of the Act.

The evidence proves that the explanatory booklet which I approved at the first hearing was duly posted to shareholders in the terms which I approved, including the particular terms which I prescribed by paragraph 3 of my orders made on 30 October. I'm also satisfied that the booklet was duly lodged with ASIC and it was registered by ASIC. I'm satisfied that the meeting was duly held and it should appear from what I have said already that the necessary majorities in favour of the resolution were obtained. The hearing has been duly advertised and, as I've said already, there has been no appearance other than on behalf of the applicant company.

The proposed scheme of arrangement was described in my previous judgment. As I then noted, it was supported by independent expert opinion that the scheme was fair and reasonable and in the best interests of shareholders.

There is nothing in the evidence as to what has occurred since the first hearing to indicate that the merit of the scheme, so far as shareholders are concerned, is any different. That is consistent with the overwhelming support for the scheme by the voting at the meeting.

All conditions precedent or relevant conditions precedent have been fulfilled.

In summary, I am satisfied that this scheme should be approved. It was submitted for the applicant that in accordance with what was said by Conti J in *Re CSR Limited* (2003) 45 ACSR 107, on a hearing such as this, the court must consider whether intelligent, honest and reasonable people acquainted with the terms of the scheme would be prepared to enter into it. I am satisfied that such a test is met in this case.

It is appropriate to exempt the company from the requirements of section 411, subsection (11).

Therefore, it will be ordered that, pursuant to section 411, subsection (4)(b) of the Corporations Act, the scheme of arrangement between the applicant company and its shareholders be approved. It will be further ordered that the company be exempted from compliance with section 411, subsection (11) in relation to that order.