

In the matter of Namakwa Diamond Company NL (No. 3)
[2001] ATP 12

Catchwords:

Valuation in independent expert's report – allegation of deficiencies in valuation – valuation methodology – Panel declining to commence proceedings

Corporations Law (Cth), sections 638 and 765

Australian Securities and Investments Commission Regulations, r 20

On 11 May 2001, we decided that we had received insufficient evidence supporting the application by Majestic to commence proceedings on its allegations of deficiencies in the valuation of Namakwa in the independent expert's report prepared by Ernst & Young Corporate Finance Pty Ltd which accompanied the target statement issued by Namakwa on 23 April 2001.

These are our reasons for that decision.

1. The sitting Panel in this matter comprises Nerolie Withnall (President), Fiona Roche (sitting Deputy President) and Chris Photakis.
2. These are our reasons for declining, under Regulation 20 of the ASIC Regulations, to commence proceedings in relation to an application on 9 May 2001, by Majestic Resources NL (*Majestic*) for a declaration of unacceptable circumstances under section 657A and orders under section 657D of the Corporations Law. Majestic alleges that there are deficiencies in the valuation of Namakwa Diamond Company NL (*Namakwa*) in the independent expert's report prepared by Ernst & Young Corporate Finance Pty Ltd (**Ernst & Young**) which accompanied the target statement issued by Namakwa on 23 April 2001 (**the Valuation**).

Application

3. Majestic alleged that:
 - a) The Valuation assumes the existence of an economic resource when no exploration or drilling has been carried out on the project to establish the existence of such a resource.
 - b) The discounted cashflow (**DCF**) valuation methodology used in the Valuation is inappropriate to value the Namakwa Diamond Project as it premised on an economic model which presupposes the existence of an economic resource and is based on unsubstantiated assumptions for which there are no reasonable grounds.
 - c) The Valuation fails to disclose to Namakwa shareholders the value of the prospect if an economic resource is **not** discovered.

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- d) No drilling or other exploration work has been carried out on the properties to verify or support the diamond grades used in the assumptions.
- e) No sign-off by a "competent person" (within the meaning of the JORC Code) in respect of any of the above assumptions is provided in the Report.

Consideration

- 4. The Panel considers that the issues raised in paragraphs a. to d. above are matters of opinion which may be appropriately raised by Majestic in a supplementary bidder's statement in response to Namakwa's target's statement.
- 5. The Panel considers that the Valuation report is not a geological report of the type for which the JORC Code requires sign off by a "competent person" (as defined in the JORC Code). In addition, the Panel notes that Ernst and Young has only made statements about geological matters based on published geological reports which are held out to conform to the JORC Code.
- 6. The Panel notes that the assumptions used by Ernst & Young are carefully and clearly set out in the Valuation and therefore readers can readily make their own assessment of the value proposed by Ernst & Young and are unlikely to be misled.
- 7. The Panel considers that the issues raised in this application are distinguishable from those raised in Namakwa's application concerning Majestic's bidder's statement. The Panel's concerns in that case related to Majestic's assertion of facts which were not substantiable, this case is clearly concerned with matters of opinion which are open to rebuttal and discussion by Majestic.
- 8. The Panel notes that Ernst & Young proposes a net asset backing per Namakwa share of between \$0.42 and \$0.87. Since the date the Ernst & Young Valuation was released Namakwa shares have traded between \$0.26 and \$0.31.

CONCLUSION

- 9. The Panel does not consider the market has been misled.

Nerolie Withnall
President of the Sitting Panel
Decision dated 11 May 2001
Reasons published 15 May 2001