



In the matter of Kaefer Technologies Limited

[2004] ATP 8

Catchwords:

Voluntary administration – allegation of use of Part 5.3A administration process to obtain control – preliminary investigation by Panel – Panel declining to commence proceedings

Corporations Act 2001 (Cth), Part 5.3A and section 657A(2)

Pasminco [2002] ATP 6

On 21 May 2004, the Panel issued a Media Release concerning an application in relation to the affairs of Kaefer Technologies Limited. These reasons are substantively based upon the Panel’s comments in the Media Release.

THE PROCEEDINGS

1. The Panel has considered the application (**Application**) by Mr G. F. Pauley and Dr G. B. Elkington (**Applicants**) dated 12 May 2004 alleging that unacceptable circumstances exist in relation to the affairs of Kaefer Technologies Ltd (**KAE**). It has decided not to conduct proceedings in relation to the Application.

BACKGROUND

2. The Applicants are shareholders of KAE who allege that unacceptable circumstances arise in relation to the placement of KAE into voluntary administration. The Applicants allege that the major shareholder of KAE, Kaefer Isoliertechnik GmbH & Co KG (**KG**), and the KAE board have together undertaken a series of actions to enable KG to obtain control of KAE without making a takeover bid.

FACTUAL INVESTIGATIONS

3. A critical element to the alleged unacceptable circumstances was the appointment by the directors of KAE of Clifford Rocke and Jeffrey Herbert of PPB (**Administrators**) as voluntary administrators under section 436A of the Corporations Act 2001 (**Act**). The Panel is aware that, in general, the supervision of administrators and companies in administration is the role of the Courts and of the committee of creditors which, in this case was appointed on 30 April 2004. It notes that one of the applicants, Mr Pauley, is a member of the committee of creditors and, accordingly, involved in the supervision of the conduct of the Administrators in that capacity. However, as the decision of the Panel in *Pasminco [2002] ATP 6* shows,

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issues relating to compliance with the provisions of Chapter 6 of the Act or conduct which may offend the policies, or avoid the protections, of that Chapter can arise in the context of an administration.

4. Accordingly, before making its decision on whether to conduct proceedings, the sitting Panel sought, and obtained, further factual material from KAE and the Administrators. This factual material, when combined with material contained in the Application and other material available in the public domain to which the Panel had regard (such as media releases and documents lodged by KAE with ASX and/or ASIC) has caused the sitting Panel to conclude that it would be unable to reach the view that the circumstances affecting KAE at present would be unacceptable because:
 - (a) of their effect on an acquisition or proposed acquisition, by a person of a substantial interest in KAE or any other company; or
 - (b) of their effect on the control, or potential control of KAE or any other company; or
 - (c) they are or give rise to a contravention of the takeovers provisions (i.e. Chapters 6, 6A, 6B or 6C of the Act).
5. In particular, none of the material before the Panel gave any support to a view that either the directors of KAE, in making the decision to appoint the Administrators, or the involvement of KAE's parent company, KG, in either that decision or the proposed conduct of the administration of KAE gave rise or could have given rise to unacceptable circumstances in relation to KAE in the sense used in Chapter 6 of the Act.
6. The Panel notes that the policies of Chapter 6, as set out in section 602, and the protections provided by Chapter 6 are concerned to ensure that shareholders are treated equally as between themselves and that bids occur in an efficient, informed, competitive and well-regulated market. In general, the appointment of the Administrators affected all shareholders in KAE equally, so that any detriment suffered by the Applicants was also shared by KG. The Panel could not identify any circumstance in the current situation which pertained to control or potential control of KAE in the sense used in Chapter 6 (that is, as it pertained to control of KAE by its shareholders) that is, or threatens to be, unacceptable.
7. As the material provided to the Panel by KAE and the Administrators only confirmed the view that the Panel had formed following its own consideration of the Application, it did not request any comments or submissions on that material, or any further information, from the Applicants.

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DECISION

8. Accordingly, under Regulation 20 of the ASIC Regulations, the sitting Panel decided not to conduct proceedings on the Application.
9. The sitting Panel is Andrew Lumsden (sitting President), Norman O'Bryan SC (deputy President) and Robyn Ahern.

Andrew Lumsden

President of the Sitting Panel

Decision dated 21 May 2004

Reasons published 25 May 2004