



Friday, 5 October 2007

Bowen Energy Limited – Panel Declines to Commence Proceedings

The Panel has declined to commence proceedings in relation to an application by Mr Frank Farrall (**Mr Farrall**) of 21 September 2007 (**Application**) (see [MR 07/71](#)). The Application related to the conduct of Bowen Energy Limited (**Bowen**) entering into an MOU, Investment Agreement and Funding Agreement with Bhushan Steel Limited and Bhushan Steel Australia Pty Ltd (together **Bhushan**).

In his Application, Mr Farrall submitted that Bhushan acquired a degree of economic and managerial control of Bowen and its assets in circumstances where Bowen shareholders had not been afforded the opportunity to consider the merits of the proposal either by way of a shareholder meeting or compliance with Chapter 6 of the *Corporations Act (Cth)* 2001 (**Act**).

Mr Farrall sought a declaration of unacceptable circumstances, and orders (among other things):

1. that the issue of 2,500,000 shares (and 625,000 options) pursuant to the Investment Agreement be declared void;
2. preventing Bowen issuing any further shares under the Investment Agreement without shareholder approval and disclosure to shareholders of the effect on the control of Bowen;
3. preventing Bowen from drawing down the facility under the Funding Agreement; and
4. preventing Bhushan from voting their shares in favour on any shareholder approval in relation to the MOU, Investment Agreement or Facility Agreement.

Following the Application, Rocklands Richfield Limited's shareholders voted in favour of an alternative proposal to Bowen's bid (with China Coal and Coke Ltd). Bowen announced the triggering of a defeating condition and that the Funding Agreement had been terminated.

The Panel considered the remaining aspects of the Application and decided that there was no reasonable prospect that it would make a declaration of unacceptable circumstances if it commenced proceedings. Accordingly it declined to commence proceedings.

Because:

1. Bowen had not yet issued shares to Bhushan that exceed the 15% threshold in ASX Listing Rule 7.1; and
2. there is opportunity for Bowen to obtain shareholder approval before it is required under the Investment Agreement to issue shares to Bhushan that would exceed the 15% threshold,

the Panel did not consider that anything existed that would be likely to give rise to unacceptable circumstances in relation to the issue of shares under the Investment Agreement.

The Panel regarded disclosure of the Investment Agreement as important, but noted that it had since been released on ASX.

The Panel did not consider that anything existed in relation to the acquisition of voting shares by Bhushan that would be likely to give rise to unacceptable circumstances because:

1. the 20% threshold in section 606 had not yet been exceeded by Bhushan;
2. the 20% threshold in section 606 is not necessarily going to be exceeded by Bhushan;
3. if the 20% threshold in section 606 is to be exceeded by Bhushan in the future, that could be done in circumstances that the Panel would not consider to be unacceptable; and
4. there was nothing else that appeared likely to give rise to unacceptable circumstances in relation to control, or the acquisition of voting shares by Bhushan under the Investment Agreement.

The President of the Panel appointed Nerolie Withnall (sitting President), Byron Koster (sitting Deputy President) and Heather Zampatti as the Panel to consider the Application.

The Panel will publish its reasons for decision in due course on its website.
www.takeovers.gov.au.

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