

Court of Appeal Clarifies the Law on Interpretation of a Company's Articles

In its recent decision in *Dnanudge Limited v Ventura Capital GP Limited (on behalf of others)* [2023] EWCA Civ 1142, the Court of Appeal adopted a corrective interpretation of a company's Articles of Association in order to remedy what the Court of Appeal found was "plainly wrong" in the drafting of the Articles from a commercial point of view.

The dispute between Dnanudge Limited (the "**Company**") and Ventura Capital GP Limited ("**Ventura**") arose when the Company took the view, having received a notice from a majority of its investors (an Investor Majority under its articles) to convert Ventura's Series A Preference Shares to Ordinary Shares, that Ventura's Series A Preference Shares stood automatically converted. Article 9.2 of the Company's Articles provided that the Series A Preference Shares would automatically convert to Ordinary Shares upon notice in writing from an Investor Majority.

An Investor Majority could be achieved (and was achieved) without the consent of Ventura, which was the holder of the Series A Preference Shares. Ventura argued that Article 9.2 of the Articles was subject to the restriction under Article 10.1 which stated that the special rights attaching to any class of share could only be varied or abrogated with the written consent of 75% of the holders of the relevant class of shares. Although Article 9.2 was not expressly qualified by Article 10.1, Ventura argued that, in order for the Articles to make commercial sense, Ventura's prior consent under Article 10.1 was required before its shares could be converted.

The Company argued that since the shares were being converted from one class to another, there was no variation or abrogation of the rights attaching to a particular class of shares and that Article 10.1 therefore had no application.

In his leading judgment, Lord Justice Snowden held that in the present instance the Court should employ a corrective construction of the Articles as it was clear that the Articles did not read as the drafter had intended. The Court was satisfied that it was appropriate to imply protections for the Series A Preference Shareholders' special rights

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(in particular, the right contained in Article 10.1) to the provisions pertaining to the conversion of shares (the provision at Article 9.2), as the absence of an express protection to the Series A Preference Shareholders' rights was incoherent with a "commercially sensible scheme for the articles as a whole".

The Court noted that the process of "conversion" of shares is not one that is prescribed by English company law, and it is not dealt with under the Companies Act 2006. The Court held that as a matter of ordinary language, the term "abrogation" in Article 10.1 was apposite to describe the effect of the process by which the special rights forming part of the bundle of rights attaching to all of the Series A Shares entirely cease to apply to the shares when they become Ordinary Shares.

The Court found that the conversion of Ventura's Series A Preference Shares to Ordinary Shares was void. It was held that upon the basis of the corrective interpretation, an Investor Majority for the purposes of Article 9.2 could only be formed with the relevant class consent required under Article 10.1.

The decision demonstrates that in circumstances where the drafting of a document is found to be commercially incoherent or irrational, the Courts are willing to step in to give effect to what the Court finds is the commercial agreement between the parties.

The Court also noted that when construing Articles of Association, which are a publicly registered document, the admissible extrinsic evidence was limited to documents that would be available to a third party from the public file maintained by the Registrar of Companies at Companies House.

Dorsey & Whitney (Europe) LLP (Matthew Blower and Shamilee Arora) acted for the Company at first instance and at the Court of Appeal.