Lexis®Nexis Case Summaries

Re Torotrak plc (in liquidation);
Bevan and another (as the joint liquidators of Torotrak Plc (in liquidation))

[2023] EWHC 115 (Ch), [2023] All ER (D) 18 (Feb)

The Chancery Division made rulings in respect of a surplus of some £304,859.20 (before deduction of costs and expenses) in the creditors' voluntary liquidation of a company. The court ruled as to, among other things, the appropriate method by which the members of the company should be traced, and to whom the liquidators could make a distribution of the surplus.

Catchwords

COMPANY – ADMINISTRATION – DIRECTIONS

Background

The proceedings concerned a company that first entered into administration in December 2017. The applicants' joint liquidators were appointed as such when the administration was effectively converted to a creditors' voluntary liquidation following the creditors' refusal to approve the original administrators' proposals. There were understood to be in the region of some 8,759 members of the company, some 96% of which were individuals. The liquidators' concern was to make a timely distribution of the surplus in the creditors' voluntary liquidation of the company and to bring the liquidation to a close so as to minimise the costs, which would ultimately fall to be borne by, and thus reduce, the surplus available to members.

The liquidators sought the court's directions, pursuant to s 112 of the Insolvency Act 1986 (IA 1986), in respect of the surplus of some £304,859.20 (before deduction of costs and expenses).

Issues and decisions

Whether, first, further steps should be taken to trace members, what steps were proportionate, and how the cost of taking those steps should be financed. Second, to whom the liquidators could make a distribution of the surplus, and when. Third, in what proportions the liquidators could make any such distributions. Fourth, general considerations in respect of the proposed distribution of the surplus by the liquidators.

The appropriate solution was to require the liquidators to write to the known shareholders at their last-known addresses, inviting claims to be made within an appropriate period of time, and making it clear that no such claims would be considered after that cut-off date. The letter ought to make clear the limited amount that was likely to be payable, by way of dividend, which could discourage those who had only a very small economic interest in any dividend from seeking to pursue the matter. The letter also ought to make it clear what form of evidence was required in the case of those who might have succeeded to any interest of a deceased or dissolved member of the company (see [42] of the judgment).

In addition to such letters, a single advertisement would be placed in the London Gazette, also containing a similar cut-off date for claims, and similar information. Finally, notice ought to be given on the portal maintained by the joint liquidators, in respect of the company (see [43], [44] of the judgment).

Since all the creditors had been paid in full, no creditor needed to be given notice of the present application (see [48] of the judgment).

The applicants' remuneration would be increased from the present capped fee of £260,000, and be on a time-costs basis, for any additional work involved in the distribution of the surplus in excess of the work assumed by the caveats set out at para 9.4 of the applicants' progress report, dated 8 June 2022, in respect of the period April 2021 to April 2022. That was the appropriate basis for increasing their capped remuneration (see [50] of the judgment).

The order would include provision for any distribution on that basis to be deemed a good and sufficient receipt for the applicants, and to release the applicants, and relieve them from any liability in distributing the surplus in accordance with those provisions (see [51] of the judgment).

It was appropriate for the court to give the liquidators prospective relief in respect of the distribution of the surplus in accordance with the court's order. That was consistent with the equitable jurisdiction that had been recognised in the case of trusts under the relevant jurisdiction (see [54] of the judgment).

Compania de Electricidad de la Provincia de Buenos Aires Ltd, Re [1978] 3 All ER 668, [1980] Ch 146 *considered*

Courts plc (in liq), Re [2008] All ER (D) 83 (Oct), [2008] EWHC 2339 (Ch), [2009] 2 All ER 402 *considered*

International Sections Ltd (in creditors' voluntary liq), Re [2009] All ER (D) 48 (Feb), [2009] EWHC 137 (Ch) *considered*

MF Global UK Ltd, Re [2013] 1 WLR 3874, [2013] EWHC 1655 (Ch) *considered*

Judgment date
5 January 2023

Judge
Judge Hodge KC (Chancery Division)

Representation
Lisa Linklater KC (instructed by Eversheds Sutherland (International LLP) for the applicants.