

ENGLAND AND WALES / JUDGMENT

DSTBTD Limited, Re

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Neutral Citation Number: [2025] EWHC 2366 (Ch) Case No: CR-2025-003922 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMPANY AND INSOLVENCY LIST (ChD) Royal Courts of Justice Strand London, WC2A 2LL Friday, 1 August 2025 BEFORE: SIR ALASTAIR NORRIS (sitting in retirement)

In the Matter of DSTBTD LIMITED And In the Matter of the Companies Act 2006 Mr Andrew Mace of Counsel instructed by Lewis Silkin LLP.

APPROVED JUDGMENT

Digital Transcription by Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk (Official Shorthand Writers to the Court) This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ SIR ALASTAIR NORRIS: 1. DSTBTD Limited is a private limited company incorporated in England and Wales. It trades under the name “Distributed” as (in effect) an introducer of vetted freelance software developers to client projects via a digital platform. It is a small company which embarked on what can now be seen as a period of overexpansion in at least two respects. First, by more than doubling its sales and management team, thereby generating a much higher cost base. Secondly, by seeking large projects at low margins in order to establish itself in the market. 2. Trading in this way failed to produce sustainable growth and financial pressure built up. The original institutional and

venture capital equity funders declined further investment. The gap was in part covered by extra debt but this proved insufficient to recover the growing gap. So, in September 2024, the business was sold to DNY Investment Holding Limited ("DNY"), which also acquired the outstanding bank debt. The new owners and management carried out an operational restructuring, but the historic debt burden was such that a financial restructuring was also required in order to avoid insolvency. 3. The negotiations for this began in the spring of 2025 and it eventuated in a proposed restructuring plan under part 26A of the Companies Act 2006. This plan is now before me for approval. Distributed's indebtedness may be summarised (perhaps not with total accuracy) as follows. There is the balance of £866,000 due to HMRC in respect of preferential claims for unpaid PAYE, national insurance, IR35 deductions and VAT. There is approximately £600,000 due to trade creditors. There is approximately £140,000 due to HMRC in respect of unsecured claims for unpaid tax. Finally, there is about £4.7 million due to trade suppliers and to connected party creditors in respect of unsecured loans i.e. to DNY and its subsidiaries (which took over the debt burden at the time of the September 2024 acquisition). 4. It is proposed to restructure this indebtedness in the following way. First, new money restructuring finance of £350,000 has already been made available by a subsidiary of DNY, pending the progress of the plan. Of this £350,000, £300,000 is to be paid to HMRC in respect of its preferential claims and £50,000 is to be distributed to the other Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ unsecured creditors. Because of the size of the connected party claims, the connected parties have agreed to waive their claim to a dividend in this distribution for the sum of £1, thereby enhancing the return to the other unsecured creditors. 5. Certain liabilities are excluded from the scope of Distributed's proposed financial restructuring plan, critically redundancy payments and pension liabilities that arise on termination of an employee's contract and any sums due to freelance sub-contractors whose continued loyalty is critical to the continuation of the business. 6. The Court's approach to approval of such plans is, in the circumstances of this case, clear and I can address the relevant issues without extensive citation of authority. 7. It is first necessary to establish what would be most likely to occur absent an restructuring of Distributed's liabilities. HMRC issued a petition to wind up Distributed which was presented on 4 June 2025. That petition has not been proceeded with because of the negotiation of the restructuring proposal. But if the present proposal is not approved and that petition is proceeded with then some insolvency process inevitable. That process is probably a liquidation, since funding is certainly not available for a trading administration or for a phased wind down of the business. A pre-pack sale to a third party in an administration is a theoretical possibility but is unlikely in practice, given that it would require an assignment of all of Distributed's contracts with clients. In any event, on the evidence, a pre-pack sale would not produce a substantially different outcome to that achieved in the liquidation. No party has suggested that this analysis which was presented in the Explanatory Statement is wrong. Having made that factual finding as to the "relevant alternative" I can address what I think are seven issues for decision. 8. First, there are threshold jurisdictional considerations. This can be very shortly dealt with because it underpins the order made at the convening hearing. As counsel has submitted, there is no issue that Distributed is "a company" and that the plan is a "compromise" or "arrangement" for the purposes of Part 26A. I am also satisfied that

each of the two jurisdictional requirements of section 901A of the Companies Act 2006 is satisfied. Distributed has plainly encountered financial difficulties which now affect Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ its ability to carry on as a going concern. The purpose of the plan is plainly to mitigate the effect of those difficulties and to prevent insolvency measures. 9. Second, the constitution of the plan meetings. Again, this was dealt with by the convening order dated 25 June 2025. Adam Johnson J directed the holding of two meetings. First, a meeting of preferential creditors to be attended by the sole member of that class, namely HMRC; and secondly, a meeting of the unsecured creditors. A decision was reached after debate at the convening hearing about whether the connected party creditors (whose entitlement under the plan is very different from that of other unsecured creditors), should constitute a separate class. There is no need to revisit that decision. I am accordingly satisfied with the constitution of the plan meetings. 10. The third issue is whether there has been compliance with the statutory conditions and with the term of the convening order. I have reviewed the evidence, which is unnecessary to detail. I am satisfied that the statutory requirements and those of the convening order have been complied with in the preparation and consideration of the restructuring plan. 11. The fourth question is whether the statutory majority had been achieved. Section 901F

- (1) of the 2006 Act provides that if a number representing 75% of the class, present and voting at a class meeting agree a plan then the court may sanction it. The plan meeting was held on 11 July 2025. The preferential creditors meeting approved the restructuring plan by the vote of its sole member, so there was a 100% approval. The unsecured creditors approved the proposal by 99.5% of those present and attending the meeting. 12. The fifth question is whether the court can safely rely on the outcome of those meetings. This involves three sub-issues. The first sub-issue is whether there was fair representation at the class meetings. As I have said, the preferential class meeting was attended by its sole member, so there was a 100% attendance and obviously fair representation. The unsecured creditors total some £5.426 million; of those, creditors with votes valued at £4.933 million voted or attended. So, there was about a 90% representation at that class. If one excludes the connected party creditors (who Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ obviously had interest not only as creditors but also as shareholders) there was still a very substantial fair representation of the other historic unsecured creditors. Doing a very rough calculation, it seems to me that there was about an 85% plus attendance of historic unsecured creditors other than connected party creditors, so there is no question of the connected party creditors having an overbearing influence upon the outcome of that class meeting. 13. The second sub-issue is whether there was sufficient information before those attending the meeting to enable those entitled to vote to decide whether the certain benefit provided by the plan (by reason of the injection of new money) was preferable to the possible return in the relevant alternative. The negotiations began with the Inland Revenue on about 16 April 2025. The Practice Statement Letter was circulated on 3 June 2025 to all creditors, and the draft Explanatory Statement was put on the dedicated plan website on 6 June 2025 and updated on 9 June 2025. I have considered this

Explanatory Statement from the perspective of an ordinary trade creditor (who is the key constituency, given that other scheme creditors were HMRC and the shareholding funders who were sophisticated and experienced participators). I am satisfied that from that perspective, the choice that had to be made, the factors that had to be taken into account, the prospective returns and the relevant risks were each clearly communicated to the historic unsecured creditors. I am satisfied that there was full and proper information provided and a decent period for consideration of that before the holding of the plan meetings. 14. The third sub-issue concerns the conduct of the plan meetings. I have considered the arrangements for the meetings. The class meetings were held at a sensible time and place and with appropriate proxy arrangements to enable full participation, and it is plain that there is no hint of oppression in the exercise of the voting rights. I have already drawn attention to the influence which the connected party creditors had, and the way in which that was not an overbearing influence.

15. Given that the court may rely on the outcome of the meetings, the sixth question is whether there is any reason for the court to depart from the creditors' views as to what was in their best commercial interests. Where there are no dissenting classes in a Part 26A application, the Court adopts the same approach as in relation to a scheme of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/arrangement under Part 26 of the 2006 Act: see AGPS Bondco Plc [2024] EWCA (Civ) 24 at [120]. The key aspect of that approach is what is often called "the rationality test" viz. whether an intelligent or honest class member, having regards to their class interests as such, might reasonably approve the proposed plan.
16. Counsel has submitted, and I accept, that I should answer that affirmatively. There is, in evidence, the results of a Hilco Appraisal Limited evaluation of the Distributed enterprise in the relevant alternative and the potential plan outcome. HMRC will receive in respect of its preferential claim under the plan, £34.06 in the pound. That compares with the likelihood of £4.05 in the pound in a liquidation or £7.08 in the pound in administration, so it is obvious why HMRC could reasonably approve the plan. The unsecured creditors, other than the connected party creditors, will under the plan receive £6.85 pence in the pound, compared with a nil return in any insolvency process according to the Hilco evaluation. It is true that the connected party creditors receive an entirely nominal return under the plan, but they would receive nothing according to the Hilco evaluation in a liquidation and they are connected to DNY who are the shareholders and plainly see an advantage in preserving the value of the shares, even if that means taking a haircut of very substantial proportions of their indebtedness. So, I have no doubts about affirmatively answering the question I pose. 17. The final issue to note and record is that there is no defect in the plan which would inhibit its implementation. 18. I shall therefore sanction the plan. 19. There is one final matter of which to dispose. As I have recounted, HMRC presented a winding-up petition on 4 June 2025, but it was not proceeded with because of the restructuring negotiations, and it was not advertised. HMRC is in the event in favour of the plan and indeed does not appear at today's hearing, although Counsel had a watching brief at the convening hearing. HMRC

intends to withdraw the petition, but it is not clear whether that has at the moment been achieved. It in any event consents to the dismissal of the petition with no order as to costs. In order to save costs and prevent a further hearing, and in case the petition has not already been withdrawn, I will dismiss the petition with no order as to costs. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 20. I conclude with one final observation. It is pleasing to see that the machinery of Part 26A is being successfully used by a small company in evident financial distress, and that the jurisdiction is not the preserve of the large corporation. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground, 46 Chancery Lane, London WC2A 1JE Email: civil@epiqglobal.co.uk This transcript has been approved by the Judge Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/

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