

FEDERAL COURT OF AUSTRALIA

Colley, in the matter of PF Group Holdings Pty Ltd (Administrators Appointed) [2024] FCA 792

File number(s): NSD 927 of 2024

Judgment of: **SHARIFF J**

Date of judgment: 18 July 2024

Catchwords: **CORPORATIONS** – application for extension of time to convene second meeting of creditors – ss 439A and 447A of the *Corporations Act 2001* (Cth) – administrators appointed – discretion exercised to extend time to convene second meeting of creditors

Legislation: *Corporations Act 2001* (Cth) ss 435A, 436C, s 439A, 447A

Cases cited: *ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; application by Walker (No 5)* [2008] FCA 1947
ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; an application by Walker (No 7) [2009] FCA 454
Albarran, in the matter of Bonza Aviation Pty Ltd (Administrators Appointed) [2024] FCA 575
Algeri, in the matter WBHO Australia Pty Ltd (Administrator Appointed) (No 2) [2022] FCA 234
Carter, in the matter of SFM Australasia Pty Ltd (Administrators Appointed) ACN 105 317 333 (No 2) [2009] FCA 419
Clubb (administrator), in the matter of Town Tavern Blacktown Pty Limited (administrators appointed) (receivers and managers appointed) [2024] FCA 405
Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed) [2017] FCA 635
Deputy Commissioner of Taxation v Scottsdale Homes No 3 Pty Ltd (No 2) [2009] FCA 190
Ex parte Vouris; in the matter of Marrickville Bowling & Recreation Club Ltd (under Administration) [2008] FCA 622
Fincorp Group Holdings Pty Ltd & Ors [2007] NSWSC 363
Fitzgerald, in the matter of Primebroker Securities Limited

(Administrator Appointed) (Receivers and Managers Appointed) [2008] FCA 1247
Hall, in the matter of Australian Capital Reserve Limited (Administrators Appointed) [2007] FCA 1328
In the matter of BBY Limited [2015] NSWSC 974 at [7];
Gothard, in the matter of Jewel of India Holdings Pty Ltd (Administrators Appointed) [2019] FCA 1289
LED Builders Pty Ltd (Administrators Appointed), in the matter of LED Builders Pty Ltd (Administrators Appointed) and Ors [2008] NSWSC 633
Lombe re Australian Discount Retail Pty Ltd [2009] NSWSC 110
Lombe, in the matter of Babcock & Brown Ltd (Administrators Appointed) [2009] FCA 349
Mighty River International v Hughes [2018] HCA 38; (2018) 265 CLR 480
Quinlan, in the matter of Halifax Investment Services Pty Ltd (Administrators Appointed) [2018] FCA 1891
Re Octaviar Limited (Administrators Appointed) (Receivers and Managers Appointed (ACN 107 863 436)) [2008] QSC 272
Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) [2009] NSWSC 585; 72 ACSR 352
Silvia, in the matter of Austcorp Group Limited (Administrators Appointed) [2009] FCA 636
Silvia, in the matter of Austcorp Group Ltd (Administrators Appointed) [2009] FCA 636
Sims, in the matter of Destra Corporation Ltd [2008] FCA 2002
Stewart, in the matter of Kleins Franchising Pty Ltd (Administrators Appointed) (ACN 007 348 236) [2008] FCA 721
Stimpson, in the matter of Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) v Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) [2016] FCA 935
Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619, in the matter of Uni-Aire Security Pty Ltd (Administrators Appointed) ACN 085 430 619 [2006] FCA 1423
Worrell, in the matter of Storm Financial Ltd (Receivers and Managers Appointed) [2009] FCA 70

Division: General Division

Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	46
Date of hearing:	18 July 2024
Counsel for the Plaintiff:	Mr M L Rose
Solicitor for the Plaintiff:	Clifford Chance

ORDERS

NSD927 of 2024

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) (ACN 622 782 512)

**ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT
AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS
JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS
OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 622 776 765) AND PF MANAGEMENT
HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED)
(ACN 622 782 512)
Plaintiff**

ORDER MADE BY: SHARIFF J

DATE OF ORDER: 18 JULY 2024

THE COURT ORDERS THAT:

1. The originating process dated 16 July 2024 be returnable *instanter* and *ex parte*.
2. Pursuant to s 439A(6) of the *Corporations Act 2001* (Cth) (the **Act**), that the period within which the plaintiffs must convene the second meeting of creditors in respect of each of PF Group Holdings Pty Ltd (Administrators Appointed) ACN 622 776 765 and PF Management Holdings Pty Ltd (Administrators Appointed) ACN 622 782 512 (the **Companies**) under s 439A of the Act (**Second Meetings**) be extended to 18 September 2024.
3. Pursuant to s 447A(1) of the Act, that Part 5.3A of the Act is to operate in relation to each of the Companies such that, notwithstanding s 439A(2) of the Act, the Second Meetings may be held together or separately any time during the period during, or within five business days after the end of, the convening period as extended in Order 2 above.
4. The plaintiffs, within seven business days of making these Orders, are to take all reasonable steps to give notice of the Orders to the Companies' creditors (including the persons claiming to be creditors), by means of a circular:

- (a) to be published on the website maintained by the administrators in respect of the administration of the Companies;
 - (b) to be sent by email transmission to creditors for whom the plaintiffs have current email address; and
 - (c) to be sent by ordinary post to creditors for whom the plaintiffs have only a postal address.
- 5. Pursuant to s 447A(1) of the Act, that Part 5.3A of the Act is to operate such that the requirement on the plaintiffs to issue notices under s 75-225(1) and s 75-15 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) be modified such that notice of the Second Meetings will be validly given to any creditors by, not less than five business days prior to the date of the proposed meetings:
 - (a) giving such notice electronically by email sent to the email address of any creditor (including persons claiming to be creditors) of the Companies for whom or which the plaintiffs hold an email address; or
 - (b) sending such notice to the postal address or facsimile number, or otherwise as provided for by the Act or the *Corporations Regulations 2001* (Cth), to any creditors not being a creditor referred to in sub-para (a); and
 - (c) causing such notice to be published in ASIC Published Notices website located at: <https://publishednotices.asic.gov.au/>.
- 6. The following parties have liberty to apply on giving all other interested parties not less than 3 business days' notice:
 - (a) any person who can demonstrate sufficient interest (including any creditor of the Companies) for the purpose of modifying or discharging Orders 2 and 3 above; and
 - (b) the plaintiffs, for the purpose of seeking any further extension of the convening period.
- 7. The costs of and incidental to this application be costs in the voluntary administration of the Companies and be paid out of the assets of the Companies.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SHARIFF J:

INTRODUCTION

- 1 On 26 June 2024, the plaintiffs were appointed as joint and several voluntary administrators (together, the **Administrators**) of **PF Group Holdings** Pty Ltd (Administrators Appointed) ACN 622 776 765 and **PF Management Holdings** Pty Ltd (Administrators Appointed) ACN 622 782 512 (together, the **Companies**), pursuant to s 436C of the *Corporations Act 2001* (Cth) (the **Act**).
- 2 Following the appointment of the Administrators, the first meeting of the Companies' creditors was held on 8 July 2024. By operation of s 439A of the Act, the second meeting of the Companies' creditors must occur by 24 July 2024, unless the time for the convening of that meeting is extended by an order of the Court.
- 3 By an originating process filed on 16 July 2024, the Administrators seek an order pursuant to s 439A(6) of the Act permitting the extension of the convening period within which the second meeting of the Companies' creditors must be convened to 24 September 2024. The Administrators also seek other ancillary orders, including an order allowing for the electronic notification of creditors pursuant to s 447A of the Act. I heard the application in my capacity as Commercial and Corporations Duty Judge on 18 July 2024.
- 4 In support of the application, the Administrators relied on:
- (a) the affidavit of Mr Andrew Scott (one of the co-appointees), sworn on 16 July 2024, together with exhibit AJS-1;
 - (b) a further affidavit of Mr Scott, sworn on 17 July 2024, together with its annexures.
- 5 Mr Rose of Counsel, who appeared for the Administrators, also filed a helpful written outline of submissions, to which I have had regard.
- 6 The essential reasons for the extension of time are that the Administrators require further time to facilitate and conclude a sale process that is presently being conducted by them, including to allow time for any deed of company arrangement (**DOCA**) to be proposed, and to allow further investigations and other work to continue to provide a more fulsome report to the Companies' creditors.

7 For the reasons which follow, I am satisfied that the time for convening the second meeting of the Companies' creditors should be extended to 18 September 2024.

BACKGROUND

The Companies' business and assets

8 The Companies are the parent companies of 22 Australian and New Zealand subsidiaries (together, the **Panthera Group**). Five of these subsidiaries are dormant. All of the subsidiaries except one are wholly-owned subsidiaries of the Companies.

9 The Panthera Group is headquartered in Brisbane and is one of Australia's largest debt buyer and debt collection businesses. It currently employs approximately 200 people across three offices in Brisbane, Melbourne and Echuca.

10 The Panthera Group's operations include debt ledger acquisition and debt collection companies, a credit recovery company for businesses and government agencies, and formerly, a consumer finance provider for non-conforming borrowers, which is now in a collect out phase.

11 From about 2020, certain entities in the Panthera Group have been the subject of investigations (and in some cases, fines) from the Australian Competition and Consumer Commission and Consumer Affairs Victoria.

12 On 16 January 2024, and prior to the Administrators' appointment, PricewaterhouseCoopers (**PwC**) (the firm of which each of the Administrators is a partner) was engaged by BSI PF Lender LP (**Brookfield**), the secured creditor of the Companies, to undertake an investigative accountant's review of the Panthera Group. That engagement ran over an eight-week period, culminating in the production of an investigative accountant's report. As Mr Scott explains, the purpose of that engagement was, amongst other things, to review the financial performance and covenant compliance of the Panthera Group, to review and comment on the Panthera Group's non-core businesses and potential options being considered by management for those businesses, and to provide comment on options available to Brookfield for enforcement.

13 Following that review, on 26 June 2024, the Administrators were appointed by Brookfield as voluntary administrators of the Companies. This occurred on the basis that Brookfield asserted that there had been events of default that had occurred and were continuing, and, on that basis, it exercised its statutory right to place the Companies into administration. Notwithstanding

PwC's prior involvement as investigative accountants, the plaintiffs have declared their independence as to their appointment as Administrators.

14 Since the time of their appointment, the Administrators have conducted extensive investigations into the affairs of the Companies. The Administrators caused resolutions to be passed by PF Management Holdings, in its capacity as the shareholder of both PF Management Group Pty Ltd and United Finance Group Pty Ltd, with the effect of removing Messrs Jamie Hough and Mathew Hough as the directors of those companies and replacing them with Mr Frank Terranova (the Panthera Group's Chief Financial Officer). Mr Scott explains that the Administrators considered that those appointments were in the best interests of the Companies as Messrs Hough and Hough were engaged in long standing and significant disputes with each other, and as such, were unable effectively, efficiently and properly to govern those Companies' affairs. Following Mr Terranova's appointment, he in turn caused Messrs Hough and Hough to be replaced by himself at the level of each other Australian subsidiary in the Panthera Group, and for Mr Ryan Shaw to be appointed as an independent director at the level of each Australian subsidiary in the Panthera Group.

15 On or about 28 June 2024, the Administrators caused to be issued their initial notice to the creditors of the Companies, and on 8 July 2024, the first creditors' meetings of the Companies were held both virtually and at the offices of the Panthera Group in Brisbane.

The Companies' creditors

16 Based on his and his co-appointees' investigations to date, Mr Scott explains that the Companies have the following claims against them by creditors, or persons claiming to be creditors.

Secured creditors

17 Brookfield is the secured creditor of the Panthera Group, holding a number of securities over companies within the Panthera Group, including each of the Companies.

18 As at 26 June 2024, Brookfield claimed (via its proof of debt submitted ahead of the first meetings of creditors of the Companies) that the value of its secured debt in respect of the Companies was approximately \$151,129,486.

19 As Mr Scott explains, although the Administrators have not formally adjudicated on proofs of debt or claims at this stage, he considers on present information that this amount represents a

fair estimate of the principal, interest, and costs that are owed by the Companies to Brookfield as at 26 June 2024.

Ordinary unsecured creditors

20 Based on the Administrators' investigations to date, and based on the debts claimed (but not admitted at this stage by the Administrators) by creditors, other than Brookfield, PF Group Holdings has claims against it by:

- (a) the Australian Securities and Investments Commission (**ASIC**), in the sum of \$310;
- (b) Jamie Hough/HJK Investments Pty Ltd in the sum of \$187,523.78; and
- (c) Mathew Hough, in the sum of \$194,074.38.

21 There are no other claims made by persons claiming to be creditors against PF Management Holdings at this time.

Contingent creditors

22 Mr Scott explains that, in his view, the Companies may have claims against them by approximately 257 contingent creditors, in circumstances in which the Companies are each, together with their subsidiaries, parties to an ASIC Deed of Cross Guarantee dated 25 May 2023. Mr Scott further explains that:

- (a) approximately 207 of these contingent creditors are employees of the subsidiaries and four of these contingent creditors are contractors to the subsidiaries;
- (b) approximately 21 of these contingent creditors are trade creditors of the subsidiaries;
- (c) approximately 21 of these contingent creditors are providers of rented or hired goods to the subsidiaries and have registered security interests on the Personal Property Securities Register against the relevant subsidiaries; and
- (d) four of those contingent creditors are lessors of premises leased by Panthera Finance Pty Ltd and ARL Collect Pty Ltd (also used by the Panthera Group).

APPLICABLE PRINCIPLES

23 The relevant legislative scheme was recently outlined by Halley J in *Clubb (administrator), in the matter of Town Tavern Blacktown Pty Limited (administrators appointed) (receivers and managers appointed)* [2024] FCA 405 at [22]-[26]:

Part 5.3A of the Act concerns the administration of a company's affairs with a view to

executing a deed of company arrangement.

The object of Pt 5.3A is to maximise the chance of a company continuing in existence, or, if that is not possible, obtain a better return for the company's creditors and members than would result from an immediate winding up: s 435A of the Act.

Section 439A(2) of the Act provides that a subsequent meeting of the creditors must be held within 5 business days before, or within 5 business days after, the end of the convening period. The convening period is 20 business days beginning on the day the administration commences (assuming it is a business day, if not, the next business day) unless the administration begins in December or less than 25 days before Good Friday, in which case it is 25 business days: s 439A(5) of the Act.

The Court has power to extend the convening period: s 439A(6) of the Act. In exercising that power the Court is to have regard to the objects set out in s 435A of the Act: *Algeri, in the matter of WBHO Australia Pty Ltd (Admins apptd) (No 2)* [2022] FCA 234 at [16] (Beach J).

24 See also *Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed)* [2017] FCA 635 at [18]-[20] (Markovic J).

25 The principles applicable to an application for an extension under s 439A(6) of the Act are well established: *Mighty River International v Hughes* [2018] HCA 38; (2018) 265 CLR 480 at [72]-[73] (Nettle and Gordon JJ). The function of the Court on such an application is to:

... strike an appropriate balance between, on the one hand, the expectation that administration will be a relatively speedy and summary matter and, on the other, the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders: *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10] per Barrett J.

26 In exercising the discretion as to whether to extend the time for the convening of the second meeting of creditors, the authorities establish that various factors may be relevant: see *Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed)* [2009] NSWSC 585; 72 ACSR 352 at [13] (Austin J); *Silvia, in the matter of Austcorp Group Limited (Administrators Appointed)* [2009] FCA 636 at [18] (Lindgren J); *Stimpson, in the matter of Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed) v Eagle Boys Dial-A-Pizza Australia Pty Ltd (Administrators Appointed)* [2016] FCA 935 at [8]-[10]; *Algeri, in the matter WBHO Australia Pty Ltd (Administrator Appointed) (No 2)* [2022] FCA 234 at [15]-[17]. These factors include:

- (a) the size and scope of the business: *Lombe, in the matter of Babcock & Brown Ltd (Administrators Appointed)* [2009] FCA 349; *Worrell, in the matter of Storm Financial Ltd (Receivers and Managers Appointed)* [2009] FCA 70; *ABC Learning Centres Ltd*,

in the matter of ABC Learning Centres Ltd; application by Walker (No 5) [2008] FCA 1947;

- (b) complex corporate group structure and intercompany loans: *Lombe; Re Octaviar Limited (Administrators Appointed) (Receivers and Managers Appointed)* (ACN 107 863 436) [2008] QSC 272; *LED Builders Pty Ltd (Administrators Appointed)*, *in the matter of LED Builders Pty Ltd (Administrators Appointed) and Ors* [2008] NSWSC 633; *Hall, in the matter of Australian Capital Reserve Limited (Administrators Appointed)* [2007] FCA 1328;
- (c) lack of access to corporate financial records: *Sims, in the matter of Destra Corporation Ltd* [2008] FCA 2002; *Fincorp Group Holdings Pty Ltd & Ors* [2007] NSWSC 363;
- (d) the time needed to execute an orderly process of disposal of assets: *Carter, in the matter of SFM Australasia Pty Ltd (Administrators Appointed)* ACN 105 317 333 (No 2) [2009] FCA 419; *ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; an application by Walker (No 7)* [2009] FCA 454;
- (e) the time needed for thorough assessment of a proposal for a deed of company arrangement: *Silvia, in the matter of Austcorp Group Ltd (Administrators Appointed)* [2009] FCA 636;
- (f) where the extension will allow sale of the business as a going concern: *Lombe re Australian Discount Retail Pty Ltd* [2009] NSWSC 110; *Stewart, in the matter of Kleins Franchising Pty Ltd (Administrators Appointed)* (ACN 007 348 236) [2008] FCA 721; *Uni-Aire Security Pty Ltd (Administrators Appointed)* ACN 085 430 619, *in the matter of Uni-Aire Security Pty Ltd (Administrators Appointed)* ACN 085 430 619 [2006] FCA 1423;
- (g) more generally, that additional time is likely to enhance the return for unsecured creditors: *Deputy Commissioner of Taxation v Scottsdale Homes No 3 Pty Ltd (No 2)* [2009] FCA 190; *Fitzgerald, in the matter of Primebroker Securities Limited (Administrator Appointed) (Receivers and Managers Appointed)* [2008] FCA 1247; *Ex parte Vouris; in the matter of Marrickville Bowling & Recreation Club Ltd (under Administration)* [2008] FCA 622.

27 As recently observed by Jackman J in *Albarran, in the matter of Bonza Aviation Pty Ltd (Administrators Appointed)* [2024] FCA 575 at [12]:

An extension of the administration period to facilitate either (or both of): (a) the sale

of the business of the company as a going concern, so as to maximise the value of the company's assets; or (b) the progression and assessment of a DOCA proposal that may provide a better return to creditors than a winding-up, are central instances in which it will generally be appropriate for the court to extend the convening period. An additional factor in favour of extending the convening period is the need for creditors to have sufficient information at the second meeting to allow them to exercise their decision as to the future of the company in as informed a manner as possible.

THE ADMINISTRATORS' SUBMISSIONS

28 The Administrators submit that it is necessary that the convening period be extended to provide them with further time to enable the sale process presently being conducted in respect of the Companies' assets to continue, with a view to seeking to maximise the chances of the Companies, or as much as possible of their business, continuing in existence, or if that is not possible, seeking to achieve a better return for the Companies' creditors and members than would result from an immediate winding up of the Companies. The Administrators submit that an extension of the convening period will also allow them time to continue and to finalise their investigations into the affairs of the Companies, and more completely to report to the Companies' creditors.

Time is needed to allow the sale campaign to complete

29 Mr Scott has explained that prior to the Administrators' appointment, in about February 2024, Grant Samuel was engaged by PF Management Holdings to undertake a dual track sale process to test interest in a whole of business transaction or, alternatively, to sell individual parts of the Panthera Group's business. Shortly after their appointment, the Administrators considered the information and documents that were prepared for the purposes of, and the potential bidders that were identified out of, that sale process. Although some of the materials prepared in that sale process were of utility, to ensure that the Companies and/or their assets would be marketed as widely as possible with a view to maximising their sale price, the Administrators considered that a new sale process was necessary and appropriate.

30 In that context, and with the assistance of PwC's mergers and acquisitions team, the Administrators commenced a two-stage sale process following an initial call for expressions of interest involving:

- (a) the provision of key materials including information memoranda and financial models to allow interested parties to formulate a non-binding indicative offer; and
- (b) access to a comprehensive data room for short-listed parties to conduct detailed due diligence,

which in the Administrators' view would have the best chance of maximising the sale value of the Companies and/or their assets.

31 That sales process is primarily focused on a whole of business sale, although as Mr Scott observes, the Administrators also intend to consider and if possible to deal with other proposals if received.

32 The Administrators' sale process commenced on 5 July 2024, at which time the Administrators caused to be published in the *Australian Financial Review* an advertisement calling for expressions of interest in respect of a 100% sale of the Companies' shares in, or a recapitalisation of, the Panthera Group.

33 Since that date, the Administrators have been in contact with the 11 interested parties previously involved in the Grant Samuel sale process, five of whom contacted the Administrators seeking to lodge an expression of interest in the Administrators' sale process (two of these parties are Messrs Jamie Hough and Mathew Hough). The remaining six of those interested parties were contacted by the Administrators or their staff given their previous interest in the Grant Samuel sale process.

34 Mr Scott further observes that, as at 12 July 2024, there were approximately 16 new interested parties who have expressed interest in the Administrators' sale process who had not previously been involved in the Grant Samuel sale process. Mr Scott deposes to the Administrators' intention to liaise with the interested parties referred to above to confirm their funding capacity and transaction experience (with interested parties' responses being assessed, on a case-by-case basis, by the Administrators before a decision will be made as to whether particular interested parties will be invited to participate further in the Administrators' sale process).

35 The Administrators contemplate that the Administrators' sale process will require until 13 September 2024 to complete, based on the following indicative timeline:

Key event	Timing
Stage 1	
Confidentiality agreements circulated	Underway
Stage 1 Materials circulated to approved bidders	Monday, 22 July 2024
Due date for submission of non-binding indicative offers	4:00pm (AEST) on Monday, 5 August 2024

Stage 2	
Short-listed parties notified	Monday, 5 August 2024
Stage 2 data room and Q&A function opens to short-listed parties	Monday, 5 August 2024
Due diligence sessions with the Panthera Group's management team	From Tuesday, 6 August 2024
Transaction documents uploaded to data room	W/C Monday, 12 August 2024
Submission of final offer and marked up transaction documents	Friday, 31 August 2024
Final negotiations with preferred bidder(s) and execute transaction documents	Friday, 13 September 2024

36 I was informed by Counsel for the Administrators that the abovementioned timeline has been disclosed to the interested parties.

37 Mr Scott's opinion is that the Administrators' sale process is likely to take approximately eight weeks before proposals will be received from potential bidders that are likely to be in a form that can be put to the Companies' creditors.

The need for more time to report to creditors

38 As Mr Scott further explains, at this early stage, it has been difficult for him to form an opinion on what will be in creditors' best interests, and to report meaningfully or in any depth on that opinion and the financial position of the Companies. It is his view that in the absence of the extension sought, the Administrators would be required to make a recommendation to creditors based on an incomplete sale process in respect of the Companies and/or their assets, which would likely require that the second meetings be adjourned until the necessary work and investigations could be undertaken, which in turn would lead to a substantial and avoidable expenditure of creditor funds.

Notice to creditors and potential detriment

39 Creditors were notified of the Administrators' consideration of whether an extension of the convening period might be required at the first meetings of creditors, held on 8 July 2024.

40 On or about 11 July 2024, the Administrators have notified each of Brookfield and Messrs Hough and Hough (and their corporate vehicles) to inform them of the Administrators' intention to seek the eight-week extension to the convening period referred to above and to

enquire as to whether they had any objection to that course being taken. Notice of this application has also been given to ASIC.

41 The Administrators were not informed of any opposition to the application.

CONSIDERATION

42 Having regard to the statements of principle above, and the circumstances of the Companies, I am satisfied that it is appropriate that an extension of the convening period be granted.

43 I am satisfied that the objects of s 435A of the Act are best served by the extension sought, and the extension sought will provide time for any sale to occur and a DOCA to be entered into, if that need arises. I am also satisfied that the extension will allow time for the Administrators to meaningfully report to creditors on the affairs of the Companies, in advance of the second meetings of creditors.

44 I am satisfied that:

- (a) this application for the extension of the convening period is made before the convening period expires, and it is the first application;
- (b) the extension sought is for a reasonable period of eight weeks. I consider that this period is reasonable given:
 - (i) the need to conduct further investigations into the affairs of the Companies, particularly where those affairs are intermingled and ongoing;
 - (ii) in particular, the need for further time to allow the possible sale or recapitalisation of the Companies' assets to be achieved, and the likely timeframes for that to occur; and
 - (iii) the need generally for the Administrators to continue to carry out their investigations;
- (c) creditors will not be materially prejudiced by the extension;
- (d) the orders proposed make provision for any person who can demonstrate sufficient interest to apply to the Court for modification of those orders; and
- (e) there is no winding-up application on foot in respect of the Companies.

45 The Administrators also seek orders providing for the electronic provision of reports and other documents to the Companies' creditors. Orders in the nature of those sought by the Administrators (insofar as it concerns electronic notification) in this application have been

made in a number of cases: see, eg, *In the matter of BBY Limited* [2015] NSWSC 974 at [7]; *Gothard, in the matter of Jewel of India Holdings Pty Ltd (Administrators Appointed)* [2019] FCA 1289; and *Quinlan, in the matter of Halifax Investment Services Pty Ltd (Administrators Appointed)* [2018] FCA 1891. I am satisfied that these orders are appropriate in that they will fulfil the objective of notifying as many creditors of the Companies' as quickly and cheaply as possible and will conserve the limited assets of the Companies for the benefit of creditors.

DISPOSITION

46 For the above reasons, I will make the orders that are sought.

I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Shariff.



Associate: L Pickering

Dated: 18 July 2024