

15 March 2023

Dear Sir/Madam

RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED)
ACN 160 820 146

RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED)
ACN 634 410 138

RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED)
ACN 104 934 358

MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED)
ACN 149 767 911

RICHSTONE PLUMBING VIC PTY LTD IN ITS OWN RIGHT AND ATF RICHSTONE EQUIPMENT HIRE TRUST (ADMINISTRATORS APPOINTED)
ACN 644 094 897

RICHSTONE VIC PTY LTD (FORMERLY RICHSTONE MANUFACTURING & EQUIPMENT PTY LTD) (ADMINISTRATORS APPOINTED)
ACN 634 950 628

RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED)
ACN 131 701 712

("THE COMPANIES")

We refer to our appointment as Joint and Several Voluntary Administrators of the Companies (**Administrators**) on 3 March 2023 and to our circular to creditors dated 7 March 2023.

On 10 March 2023, the Administrators entered into various agreements with respect to the business and assets of the Companies, the effect of which was that the Companies' business and assets have been sold to Richstone Victoria Pty Ltd and certain related entities (**Richstone Victoria**), and that Richstone Victoria and its related entities is now carrying on that business with immediate effect. (**Sale Transaction**)

As part of the Sale Transaction, all employees of the Companies were transferred and all of the accrued employee entitlements were assumed by Richstone Victoria.

The Commonwealth Bank of Australia (the **Bank**) is a secured creditor of the majority of the Companies' assets. As a condition of providing their consent to the Sale Transaction, the Bank required that the Administrators obtain Court approval for the Sale Transaction. We therefore made an urgent application to the Supreme Court of Victoria (in proceeding number S ECI 2023 00921), which was heard by Justice Delay on the afternoon of 10 March 2023.

At the hearing, the Court made orders to the following effect:

- The Administrators were "justified and otherwise acting reasonably" in entering into the Sale Transaction;
- The convening period for the second meeting of creditors of the Companies was extended to a date no later than 14 June 2023 (with the ability to hold the meeting at any time during, or within five business days after, the extended period); and
- Certain potential personal liability of the Administrators was limited.

Copies of the Order and the Judgement are attached and are also available for download on our firm website:

<https://briferrier.com.au/about-us/current-matters/richstone-plumbing-group-of-companies>.

Should you have any queries, please contact Joshua May of this office on 03 9622 1800.

Yours faithfully



DAVID COYNE

JOINT AND SEVERAL ADMINISTRATOR

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST**

S ECI 2023 00921

**IN THE MATTER OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 104 934 858)**

BETWEEN:

**DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR
CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS
OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 104 934 358) MODULAR PREFAB
SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED)
(ACN 149 767 911), RSG BUSINESS SERVICES PTY LTD
(ADMINISTRATORS APPOINTED)
(ACN 634 410 138), RICHSTONE PLUMBING VIC PTY LTD
PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094
897), RICHSTONE AUSTRALIA GROUP PTY LTD
(ADMINISTRATORS APPOINTED) (ACN 160 820 146),
RICHSTONE VIC PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 634 950 628), RICHSTONE
ADMINISTRATION PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 131 701 712) & ORS (according to the
Schedule)**

First Plaintiffs

ORDER

JUDGE:	The Honourable Justice Delany
DATE MADE:	10 March 2023
ORIGINATING PROCESS:	Originating Process filed on 9 March 2023
HOW OBTAINED:	At the return of the Originating Process
ATTENDANCE:	V Bell, counsel for the plaintiffs C Van Proctor, counsel for the Commonwealth Bank of Australia N Frenkel, counsel for Richstone Victoria Pty Ltd
OTHER MATTERS:	N/A

THE COURT ORDERS THAT:

Leave to amend the originating process

1. The plaintiffs have leave to amend the originating process filed 9 March 2023 in the form annexed to this Order.



Proposed sale of business

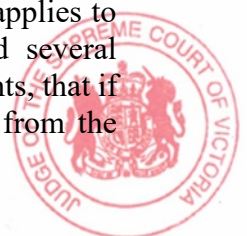
2. Pursuant to section 90-15 of the Insolvency Practice Schedule (Corporations) being schedule 2 of the *Corporations Act 2001* (Cth) (the ‘Act’), the first plaintiffs are justified and otherwise acting reasonably in causing the companies to enter into and complete the Transaction Documents (as defined in clause 1.1 of the document styled “Asset Sale Deed” appearing at page 5 of exhibit “DJC-2” to the affidavit of David John Coyne affirmed 10 March 2023).

Extension of convening period

3. Pursuant to section 439A(6) of the Act, the period in which the first plaintiffs must convene the meetings, required by section 439A(5)(b) of the Act, of the creditors of:
 - (a) Richstone Plumbing Pty Ltd (Administrators Appointed) (ACN 104 934 358);
 - (b) Modular Prefab Solutions VIC Pty Ltd (Administrators Appointed) (ACN 149 767 911);
 - (c) RSG Business Services Pty Ltd (Administrators Appointed) (ACN 634 410 138);
 - (d) Richstone Plumbing VIC Pty Ltd (Administrators Appointed) (ACN 644 094 897);
 - (e) Richstone Australia Group Pty Ltd (Administrators Appointed) (ACN 160 820 146);
 - (f) Richstone VIC Pty Ltd (Administrators Appointed) (ACN 634 950 628); and
 - (g) Richstone Administration Pty Ltd (Administrators Appointed) (ACN 131 701 712).(together, the ‘companies’) is extended by eight weeks to **14 June 2023**.
4. Pursuant to section 447A of the Act, Part 5.3A of the Act is to operate in relation to each of the companies as if the meeting of its creditors may be convened and held at any time during the convening period as extended by paragraph 3 above, or within five (5) business days thereafter, notwithstanding the provisions of section 439A(2) of the Act.

Limitation of Plaintiffs’ liability

5. Pursuant to section 447A of the Act, Part 5.3A of the Act is to operate such that:
 - (a) the liabilities of the first plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the terms of the Transaction Documents, will be limited in the manner provided for by the Transaction Documents;
 - (b) the operation of section 443A(2) of the Act is modified, so far as it applies to the liability of the first plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the Transaction Documents, so as to permit the liability of the first plaintiffs to be limited in the manner provided for by the Transaction Documents; and
 - (c) the operation of section 443A(1) of the Act is modified, so far as it applies to the liability of the first plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the Transaction Documents, that if the indemnity of the first plaintiffs under section 443D of the Act from the



Companies is insufficient to meet any amount for which the first plaintiffs may be liable arising out of or in connection with the Transaction Documents, then the first plaintiffs will not be personally liable to repay any such amount to the extent of that insufficiency.

General

6. The first plaintiffs must take all reasonable steps to cause notice of this order to be given, within two (2) business days of authentication of the order, to:
 - (a) creditors (including persons or entities claiming to be creditors) of each of the Companies, by:
 - (i) email to any creditors of the Companies known to the first plaintiffs, where the email address of the creditor is also known to the first plaintiffs; and
 - (ii) placing scanned, sealed copies of the amended originating process and this Order on BRI Ferrier's web site; and
 - (b) the Australian Securities and Investments Commission.

Other

7. The first plaintiffs have liberty to apply for a further extension of the convening period or in relation to any other matter arising in the administration of the Companies.
8. An order that the first plaintiffs' costs of and incidental to this application be their costs in the administrations of each of the Companies and be paid out of the assets of the Companies.

DATE AUTHENTICATED: 10 March 2023



The Hon. Justice Delany

SCHEDULE OF PARTIES

DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358), MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911), RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138), RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897), RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146), RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628), RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

First Plaintiffs

RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358)

Second Plaintiff

MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911)

Third Plaintiff

RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138)

Fourth Plaintiff

RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897)

Fifth Plaintiff

RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146)

Sixth Plaintiff

RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628)

Seventh Plaintiff

RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

Eighth Plaintiff

ANNEXURE

FORM 2

Rules 2.2 and 15A.3

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST

No. S ECI

IN THE MATTER OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED)
(ACN 104 934 358) AND OTHERS

BETWEEN

DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITY AS JOINT AND
SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS
APPOINTED) (ACN 104 934 358), MODULAR PREFAB SOLUTIONS VIC PTY LTD
(ADMINISTRATORS APPOINTED) (ACN 149 767 911), RSG BUSINESS SERVICES PTY LTD
(ADMINISTRATORS APPOINTED) (ACN 634 410 138), RICHSTONE PLUMBING VIC PTY LTD
PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897), RICHSTONE AUSTRALIA
GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146), RICHSTONE VIC
PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628) AND RICHSTONE
ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

First Plaintiffs

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND
SEVERAL ADMINISTRATORS OF MODULAR PREFAB SOLUTIONS VIC PTY LTD
(ADMINISTRATORS APPOINTED)~~ RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS
APPOINTED)
(ACN 104 934 358) ~~(ACN 149 767 911)~~

Second Plaintiff

AND OTHERS ACCORDING TO THE SCHEDULE

ORIGINATING PROCESS

Date of document: 109 March 2021
Filed on behalf of: The Plaintiffs
Prepared by:
Mills Oakley
Lawyers
Level 6, 530 Collins Street
MELBOURNE VIC 3000

Solicitor's Code: 103868
DX: 558
Tel: +61 3 8568 9554
Fax: +61 3 9605 0933
Ref: AWMM/MDW:6185164
Attention: Mark Wenn / Alex Myers
Email: mwenn@millsoakley.com.au /
amyers@millsoakley.com.au

A. DETAILS OF APPLICATION

This application is made under section 90-15 of the *Insolvency Practice Schedule (Corporations)*
(**IP Schedule**) in Schedule 2 of the *Corporations Act 2001* (Cth) (**Act**) and sections 439A(6) and
447A of the Act by the Plaintiffs, who are the administrators of the following entities (**Companies**)

and the Companies themselves, which together comprise the Richstone Group of Companies (**Group**):

1. Richstone Plumbing Pty Ltd (Administrators Appointed) (ACN 104 934 358);
2. Modular Prefab Solutions VIC Pty Ltd (Administrators Appointed) (ACN 149 767 911);
3. RSG Business Services Pty Ltd (Administrators Appointed) (ACN 634 410 138);
4. Richstone Plumbing VIC Pty Ltd (Administrators Appointed) (ACN 644 094 897);
5. Richstone Australia Group Pty Ltd (Administrators Appointed) (ACN 160 820 146);
6. Richstone VIC Pty Ltd (Administrators Appointed) (ACN 634 950 628); and
7. Richstone Administration Pty Ltd (Administrators Appointed) (ACN 131 701 712).

The application seeks:

- I. directions that the First Plaintiffs would be justified and otherwise acting reasonably in disposing of certain assets of the Companies on particular terms, in circumstances where it is proposed that the sale occur absent creditor consultation, to a related party of the appointment entities without testing the market for the assets sold, and prior to the first meeting of creditors;
- II. orders extending the period for convening the second meeting of the Companies' creditors, and other consequential relief; and
- III. orders modifying the operation of Part 5.3A of the Act such that any liability of the First Plaintiffs is limited.

On the facts stated in the supporting affidavit, the Plaintiffs seek the following orders.

Proposed sale of business

1. A direction pursuant to section 90-15 of the IP Schedule that the First Plaintiffs are justified and otherwise acting reasonably in causing the Companies to enter into and complete the Transaction Documents (as defined in clause 1.1 of the document styled "*Asset Sale Deed*", dated 7-9 March 2023, appearing as exhibit "**DJC-2**" to the affidavit of David John Coyne ~~to be affirmed on 9 or 10~~ March 2023).

Extension of convening period

2. Orders pursuant to subsection 439A(6) of the Act that the convening period defined in section 439A(5)(b) of the Act in respect of the Companies is extended to and including ~~31 May~~14 June 2023.
3. Orders pursuant to section 447A of the Act that Part 5.3A of the Act is to operate such that the second meeting of creditors of the Companies required by section 439A of the Act may be held at any time during, or within five business days after the end of, the convening period as extended by paragraph 2 above, notwithstanding the provisions of section 439A(2) of the Act.
4. That liberty to apply be granted to the First Plaintiffs in relation to any further extension of the convening period or any other matter arising in the administration of the Companies.

Limitation of Plaintiffs' liability

5. Orders pursuant to section 447A of the Act that Part 5.3A of the Act is to operate such that:
 - a. the liabilities of the First Plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the terms of the Transaction Documents, will be limited in the manner provided for by the Transaction Documents;
 - b. the operation of section 443A(2) of the Act is modified, so far as it applies to the liability of the First Plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the Transaction Documents, so as to permit the liability of the First Plaintiffs to be limited in the manner provided for by the Transaction Documents; and
 - c. the operation of section 443A(1) of the Act is modified, so far as it applies to the liability of the First Plaintiffs in their capacities as joint and several administrators of the Companies pursuant to the Transaction Documents, that if the indemnity of the First Plaintiffs under section 443D of the Act from the Companies is insufficient to meet any amount for which the First Plaintiffs may be liable arising out of or in connection with the Transaction Documents, then the Plaintiffs will not be personally liable to repay any such amount to the extent of that insufficiency.

Costs

6. An order that the First Plaintiffs' costs of and incidental to the application be their costs in the administrations of each of the Companies and be paid out of the assets of those companies.

Date: 10~~9~~ March 2023

Mills Oakley
Solicitors for the Plaintiffs

This application will be heard by the Honourable Delany via Zoom at **2pm on Friday 10 March 2023**.

B. NOTICE TO DEFENDANT

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing: 10~~9~~ March 2023

Signed by an officer acting with the authority
of the District Registrar

This originating process is filed by Mills Oakley, solicitors for the Plaintiffs.

E. SERVICE

The Plaintiffs' address for service is Mills Oakley, Level 6, 530 Collins Street, Melbourne VIC 3000, DX 558 Melbourne, and mwenn@millsoakley.com.au / amyers@millsoakley.com.au

It is intended to serve a copy of this originating process on the Australian Securities and Investments Commission.

SCHEDULE OF PARTIES

DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358), MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911), RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138), RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897), RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146), RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628) AND RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

First Plaintiffs

RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358)

Second Plaintiff

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911)~~

~~Second Third Plaintiffs~~

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138)~~

~~Third Fourth Plaintiffs~~

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897)~~

~~Fourth Fifth Plaintiffs~~

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146)~~

~~Fifth Sixth Plaintiffs~~

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628)~~

~~Sixth Seventh Plaintiffs~~

~~DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)~~

~~Seventh Eighth Plaintiffs~~

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST

Not Restricted

S ECI 2023 00921

IN THE MATTER OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS
APOINTED) (ACN 104 934 358) & ORS

BETWEEN

DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT
AND SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING PTY LTD
(ADMINISTRATORS APPOINTED) (ACN 104 934 358), MODULAR PREFAB SOLUTIONS
VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911), RSG BUSINESS
SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138), RICHSTONE
PLUMBING VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897),
RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN
160 820 146), RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634
950 628), RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED)
(ACN 131 701 712) & ORS (according to the Schedule)

Plaintiffs

<u>JUDGE:</u>	DELANY J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	10 March 2023
<u>DATE OF JUDGMENT:</u>	10 March 2023 (ex tempore)
<u>CASE MAY BE CITED AS:</u>	Re Richstone Plumbing Pty Ltd
<u>MEDIUM NEUTRAL CITATION:</u>	[2023] VSC 112

CORPORATIONS – Application by the administrators of a group of companies for an order, pursuant to s 90-15 of the *Insolvency Practice Schedule (Corporations)*, that they would be justified and are otherwise acting reasonably in disposing of assets of the companies over which they are appointed in accordance with sale transaction documentation – Sale to entity connected to the companies in administration – Only alternative to the sale is to immediately cease trading and terminate the employment of 150 employees – Appropriate to make order sought – Sale price supported by independent valuation of business as a going concern and by valuation of assets of the business – *Deppeler, Re Moulamein Grain Co-Operative Limited (admins apptd)* [2022] FCA 1154, applied.

CORPORATIONS – Application for limitation of personal liability of administrators with

respect to liabilities incurred if conditions subsequent in transaction documents not satisfied – Modification of operation of s 443A under s 447A of the *Corporations Act 2001* (Cth) – Where sale transaction in best interests of the creditors – Where administrators potentially exposed to personal liability in circumstances where debts may be incurred but over which they have no control – *Algeri, Re Murray & Roberts Pty Ltd (admins apptd)* [2022] FCA 1506, applied.

CORPORATIONS – Creditors meeting – Extension of convening period for second meeting of creditors pursuant to s 439A(6) and 447A of the *Corporations Act 2001* (Cth) and s 90-15 of the *Insolvency Practice Schedule (Corporations)* – Appropriate case for extension of convening period – *Strawbridge, Re Virgin Australia Holdings Ltd (admins apptd) (No 2)* (2020) 144 ACSR 347, applied.

APPEARANCES:

Counsel

Solicitors

For the Plaintiffs

V Bell

Mills Oakley

For the Commonwealth
Bank of Australia

C Van Proctor

Maddocks

For Richstone Victoria Pty
Ltd

N Frenkel

Hall & Wilcox

HIS HONOUR:

1 These reasons concern an urgent application initiated by originating process dated 9 March 2023 by the administrators of the Richstone group of companies. In short, the administrators and the companies in administration seek orders and directions pursuant to s 90-15 of the *Insolvency Practice Schedule (Corporations)* (the 'IPS'), being Schedule 2 of the *Corporations Act 2001* (Cth) (the 'Act'), and ss 439A(6) and 447A of the Act as follows:

- (a) a judicial direction that the administrators and Richstone group are justified and are otherwise acting reasonably in disposing of certain assets of the Companies (as that term is defined in paragraph 2 below) the subject of and in accordance with sale transaction documents dated 10 March 2023 in circumstances –
 - (i) where there has not been creditor consultation so far as unsecured creditors are concerned; and
 - (ii) where the sale is to a related party of the appointment entities; and
 - (iii) where the market for the assets to be sold has not been tested; and
 - (iv) prior to the first meeting of creditors;
- (b) orders extending the period for convening the second meeting of the Companies' creditors; and
- (c) orders modifying the operation of Part 5.3A of the Act such that any liability of the administrators is limited.

The parties and the evidence

2 This application is made by David Coyne and Peter Krejci in their capacity as joint and several administrators ('Administrators') of:

- (a) Richstone Plumbing Pty Ltd (admin apptd) ('Richstone Plumbing');
- (b) Modular Prefab Solutions VIC Pty Ltd (admin apptd) ('Modular Prefab');

- (c) RSG Business Services Pty Ltd (admin apptd) ('RSG');
 - (d) Richstone Plumbing VIC Pty Ltd (admin apptd) ('Richstone Plumbing Vic');
 - (e) Richstone Australia Group Pty Ltd (admin apptd);
 - (f) Richstone VIC Pty Ltd (admin apptd); and
 - (g) Richstone Administration Pty Ltd (admin apptd),
- (together, the 'Companies' or the 'Group').

3 The Administrators rely on:

- (a) the affidavits of David Coyne made 9 and 10 March 2023; and
- (c) the affidavit of Alex Walter Maxwell Myers made 10 March 2023.

4 In addition, the Administrators rely on their written submissions.

5 On the hearing of the application, one of the secured creditors, the Commonwealth Bank of Australia (the 'CBA'), was represented by counsel, as was Richstone Victoria Pty Ltd ('Richstone Victoria'), an interested party and the purchaser of the business and assets of the Group pursuant to the Transaction Documents (as that term is defined in paragraph 18 below).

6 Short notice of the application was given to the Australian Securities and Investment Commission ('ASIC') at 8:50pm on 9 March 2023 and, an hour or so earlier, to the secured creditors, through their solicitors. ASIC did not appear on the hearing of the application.

7 The largest unsecured creditor by value, the Commissioner of Taxation, a creditor across the Group for more than \$18m, was not given notice of the application.

The administration and the sale transaction

8 The Administrators were appointed joint and several voluntary administrators of the Group on 3 March 2023 pursuant to s 436A of the Act. Annexure A to the first report

to creditors dated 7 March 2023 addresses the question of the independence of the Administrators. It provides details of meetings prior to their appointment, beginning with a virtual meeting held on 9 February 2023. It is clear from the declaration of relationships that there are no relevant relationships which would cause the Administrators or either of them to have a conflict of interest or duty.

- 9 Prior to the appointment of the Administrators, the Companies operated a business providing plumbing contractor construction services, predominantly to large and well-known building companies in the construction industry. Each of the Companies performed a certain role within the Group as described in the first affidavit of Mr Coyne dated 9 March 2023.
- 10 One of the Companies in the Group, Richstone Plumbing, employed the majority of the Group's employees, RSG operated the administrative functions of the Group, and Modular Prefab, which also had some employees, manufactured prefabricated plumbing parts. Richstone Plumbing Vic is or was the trustee of the Richstone Equipment Hire Trust in which capacity it owned the plant and equipment of the Group, which was then hired to Companies in the Group as required for their operations.
- 11 Prior to 10 March 2023, the Companies had approximately 150 employees, most of whom were employed by Richstone Plumbing. The Group operated its business from leased premises in Epping, the lease being from an unrelated party. The Companies also leased or purchased, with the assistance of finance, various motor vehicles, plant, machinery and equipment utilised in the conduct of the business of the Group.
- 12 Shortly prior to the appointment of the Administrators and on 28 February 2023, Dominion Group provided a valuation of the Group's plant and equipment which it valued at a market value of \$755,950. On 2 March 2023, Laurence Fitzgerald of William Buck provided a valuation of the business which ascribed a value of \$3,817,930 to the business on a going concern basis.
- 13 As at 2 March 2023, secured creditors comprised the CBA, owed a little over \$2m,

together with an additional \$3.6m approximately in respect of investment loans provided to the Group's directors, and Timelio Pty Ltd ('Timelio'), who was owed approximately \$775,000.

14 At the appointment date, 3 March 2023, total cash balances held by the Companies were negligible. The Group's directors arranged for retention payments totalling approximately \$180,000 to be paid to the Administrators.

15 The valuation report by William Buck, an extract from which is reproduced in Mr Coyne's affidavit, describes the financial position of the Group as follows:

- (a) as at 31 December 2022, Richstone Plumbing's current assets totalled \$26,265,102, comprising:
 - (i) cash of \$16,656;
 - (ii) trade receivables of \$12,240,646;
 - (iii) retention debtors of \$3,890,220;
 - (iv) stock on hand of \$1,445,271; and
 - (v) work in progress of \$8,672,309;
- (b) as at 31 January 2023, Richstone Plumbing's current assets totalled \$18,615,841, comprising: (i) cash of \$16,656; (ii) trade receivables of \$466,111; (iii) retention debtors of \$3,212,243; (iv) stock on hand of \$1,445,271; and (v) work in progress of \$13,475,560;
- (c) after work in progress adjustments to account for the write off of unrecoverable costs and time were undertaken as at 31 January 2023, Richstone Plumbing's current assets were \$6,554,010;
- (d) the revenue of Richstone Plumbing (the main trading entity within the Group) has steadily declined from approximately \$57 million in the 2020 financial year, to roughly \$40 million in the 2022 financial year;
- (e) the total debt owed to the Commissioner of Taxation (Commissioner) across the Group exceeds \$18 million;
- (f) the Group has encountered financial issues, including:
 - (i) inadequate financial support (said to be shown through a continuous reduction in available funding from CBA in reducing its facilities at the rate of \$350,000 per quarter);

- (ii) the Commissioner being used as a form of financing, which has led to a continued and unsustainable increase in exposure of debt;
 - (iii) the Commissioner debt build up being reflective of creditor/financier pressure and that earnings (WIP build up) were not recoverable;
 - (iv) the progressive withdrawal of and reduction in debtor insurance available to support the Group's suppliers, which has in turn led to a significant reduction in availability of credit;
 - (v) general pressure in the industry of supply chain restrictions and consequent delays leading to increased unrecoverable costs;
 - (vi) the announcement of the withdrawal from the market of Timelio, which to date had been providing factoring services but is exiting the market immediately; and
 - (vii) that obtaining new work was not feasible given current operational pressures and directors' advice that builders will not award new contracts until the business can be proven to be financially viable again;
- (g) the total entitlements owing to the Employees across the Group are in the order of approximately \$1.7 million.

16 Mr Coyne gives evidence that, based on his investigations, in order to trade the business, employee costs including wage and salary expenses of approximately \$500,000 per week gross is required. Given the amount of cash available as at the appointment date, the Administrators have not sought to trade the business and do not intend to do so. I accept their decision in that regard is both realistic and reasonable.

17 Shortly after the Administrators' appointment, lawyers acting for Richstone Victoria, a company incorporated on 28 February 2023, and the directors of the Companies contacted the Administrators regarding a proposed sale of the business of the Group.

18 Earlier today, 10 March 2023, the sale transaction documentation was executed ('Transaction Documents'). Part of the Transaction Documents are exhibited to the second affidavit of Mr Coyne sworn earlier today.

19 Each of the asset sale deeds comprising the Transaction Documents, including the deed exhibited by Mr Coyne, are subject to the following conditions subsequent:

- (a) that the Court grant the judicial directions;
- (b) payment of the purchase price;
- (c) procurement of partial releases of certain security interests granted to the CBA;
and
- (d) execution of two novation deeds by Timelio and Assetinsure.

20 Each of the asset sale deeds provides that, if the conditions subsequent are not satisfied, then the parties agree that:

[T]he parties will transfer back from the Purchaser to the Vendor all of the Assumed Liabilities and the Included Assets and the parties will do everything in their power to put each party in such position as if the Assumed Liabilities had not been assumed by and the Included Assets had not been transferred to the Purchaser on the Completion Date, which includes the repayment by the Vendor of all funds received from the Purchaser, including any funds paid to third parties, save for such amounts as are sufficient to pay the Administrators' reasonable costs, expenses and remuneration incurred in relation to the Administration.

21 In substance, the sale transaction involves the purchase of the trade debtors, work in progress, material contracts, plant and equipment, motor vehicles, stock, intellectual property, goodwill and business records of the Group, as well as the transfer of the lease for a price that has been agreed based on the total combined value of the Companies' assets (derived from the William Buck and Dominion valuations adjusted to reflect updated retentions included in the valuations and trading over the past week) less liabilities assumed.

22 The overall purchase price payable pursuant to the Transaction Documents is described in the plaintiffs' submissions as follows:

- (a) total combined enterprise value of \$5,079,430.00;
- (b) employee entitlements of \$1,909,741.18; and
- (c) amount owed to CBA in the sum of \$2,091,888.00,

with the effect that the total cash component of the purchase price increased from

earlier amounts discussed and negotiated to \$715,166.35.

Are the Administrators justified and acting reasonably in causing the Companies to execute the Transaction Documents for the sale of the business?

- 23 It is a condition subsequent to the sale of the business of the Companies that a judicial direction that the Administrators are justified and acting reasonably in causing the Companies to execute the Transaction Documents in the circumstances outlined above is obtained, and for the reasons otherwise set out I consider it is appropriate to make such a direction.
- 24 Mr Coyne's evidence is that he is of the view that the terms of the sale proposal as documented in the Transaction Documents:
- (a) are fair and reasonable;
 - (b) are in the interests of the Companies' creditors; and
 - (c) provide the Companies, or as much as possible of their business, to continue in existence.
- 25 The sale price has been calculated using the recent valuation of the business prepared by William Buck, as well as the recent valuation of plant and equipment prepared by Dominion. Pursuant to the Transaction Documents, the key secured creditors, CBA and Timelio, will be paid out, employee entitlements will be assumed by Richstone Victoria as well as leasehold liabilities for plant and equipment and the premises from which the business of the Group is operating.¹
- 26 I accept Mr Coyne's evidence that the only alternative available to the Administrators to the sale, in circumstances where they are without sufficient funds to continue to trade the business, is to immediately cease trading and terminate the employment of the Companies' 150 employees.
- 27 In *Deppeler, Re Moulamein Grain Co-Operative Limited (admins apptd)* ('Moulamein'),²

¹ See paragraphs 10 and 11 above.

² [2022] FCA 1154.

O'Callaghan J made an order pursuant to s 90-15 of the IPS that the administrators in that case were justified and acting reasonably in causing the company to complete a sale of its assets in circumstances where:

- (a) there had been no public advertisement of the assets for sale;
- (b) the period in which the assets were offered for sale was limited;
- (c) the purchaser was an associate of the company;
- (d) the proposed sale had not been put to creditors for a vote; and
- (e) it was not proposed as part of a deed of company arrangement.

28 In *Moulamein*, O'Callaghan J gave a direction in similar terms to that sought in the present case. His Honour's reasons included the following:³

- 11 Order 2(c) refers to the fact that the purchaser of the assets is a company whose associates include a board member of the Co-Operative. As I understand the submission, the Administrators' case is that the best course available to them happens to involve a purchaser whose associates include such a board member, but that in all the circumstances, including the sale price and the urgency of the matter given the proximity of the upcoming harvest, the Administrators decided that it was preferable to proceed nonetheless. In that regard, the Administrators relied on the decision of Yates J in *Goyal, in the matter of Cape Technologies Pty Ltd (administrators appointed)* [2021] FCA 1654, in particular at [25] where his Honour reasoned as follows:

Although the administrators would have preferred to negotiate with arms-length purchasers, this was also not possible. In the unusual circumstances that confronted them, the administrators decided that the best—in fact, the only reasonable—course available to them was to try to sell the business to the company's directors and shareholders because those parties were best placed to appreciate and understand the value of the business, and they were necessary stakeholders for the business' continued operation.

- 12 Similar considerations apply here, in my view.

...

- 14 Having regard to the explanation provided by Mr Deppeler in his affidavits, I am satisfied that the decision taken by the Administrators

³ Ibid [11]-[12], [14].

to sell the relevant assets at the present time, and the steps taken by them in relation to the sale process, given the particular circumstances confronting them, was reasonable and justified, and that it is appropriate to make the order they seek under s 90-15 of Schedule 2 Insolvency Practice Schedule (Corporations) to the *Corporations Act 2001* (Cth).

- 29 In that case, the sale process was expedited so that the grain storage site, being the major asset, could be used by growers in connection with an upcoming harvest.⁴
- 30 The haste with which the events the subject of the present application have taken place and the timing of the application itself means that even though secured creditors, including the CBA, are on notice of the application, it is fair to say that they, including the CBA, have not had adequate time or sufficient information about the sale transaction to form a considered view. Other creditors, including the Commissioner of Taxation and other unsecured creditors, have not had an opportunity to be heard.
- 31 Notwithstanding the lack of notice to persons who are or will be affected, and notwithstanding that the transaction involves a sale to essentially related parties and that there has not been any public advertising of the business for sale, I accept that it is appropriate to grant the relief sought in the amended originating process, including to give the judicial direction sought and to make orders modifying the operation of Part 5.3A of the Act concerning the liability of the Administrators.
- 32 It is appropriate to give the judicial direction sought because, without it, the first of the conditions subsequent in the Transaction Documents will not be satisfied and the transaction will not proceed.
- 33 The urgency of the application arises because wages and entitlements for the 150 employees were due to be paid on 8 March 2023. Upon settlement of the sale on 10 March 2023, the purchaser entity accepted responsibility for meeting those obligations. The first meeting of creditors is not scheduled to take place until 15 March 2023 with additional obligations to the employees continuing in the meantime. The obtaining of a judicial direction is a condition subsequent to the sale. If such a

⁴ Ibid [10].

direction is not forthcoming then the Transaction Documents provide that the sale must be reversed.

- 34 If the sale fails due to the failure of one of the conditions subsequent to be satisfied, including the failure to obtain a judicial direction, then the 150 employees of the Group will lose their jobs. This is an important consideration in support of providing the direction sought. Under the Transaction Documents, approximately \$1.4m in outstanding employee entitlements, primarily entitlements to leave, will be assumed by the purchaser. Whilst I was informed there are approximately \$140,000 in unpaid superannuation contributions which are not dealt with, the preservation of the employee entitlements and indeed the preservation of their employment which will be achieved on the assumption that the conditions subsequent are met, are important considerations both in favour of the sale and in favour of the relief sought by the plaintiffs.
- 35 While the Commissioner of Taxation, the largest unsecured creditor, is not on notice of the application, the reality as explained by counsel for the plaintiffs is that it is unlikely the Commissioner of Taxation will be adversely affected by the sale or by the Court determining to make the directions sought. That is because if the conditions subsequent in the form of the judicial direction is not made, the Companies will stop trading. It will not be possible to sell the business of the Group as a going concern. Operating contracts would come to an end, and there would be no real prospect of the employee entitlements or employment being resuscitated.
- 36 I am satisfied that the sale price reflects both the available valuation information and the best available price. In those circumstances, to act to ensure that the conditions subsequent are satisfied is consistent with the interests of the creditors as a whole and with the objectives in s 435A of the Act.
- 37 For reasons similar to those given by O'Callaghan J in *Moulamein*, it is appropriate to make the first of the orders sought.

Should the Court modify the application of s 443A so as to limit the personal liability of the Administrators?

- 38 Mr Coyne's evidence is that in circumstances where the purchaser intends to commence trading the business following completion, and indeed I assume has already commenced doing so, such that various liabilities will be incurred, he is 'concerned that, in a scenario where the Conditions Subsequent are not satisfied, the Administrators may be deemed to have incurred the relevant liabilities' such that they are personally liable under s 443A of the Act.
- 39 Section 443A(1) provides in effect that the administrator of a company under administration is liable for debts they incur in the performance of their functions for services rendered, goods bought, property hired or leased, the repayment of money borrowed and interest and borrowing costs.
- 40 Section 443A(2) provides that subsection (1) has effect despite any agreement to the contrary, but without prejudice to the administrator's rights against the company or anyone else.
- 41 Section 443D provides administrators with a statutory indemnity out of the property of the company (other than certain retention of title property) for, among other things, debts for which the administrator is liable under Subdivision A, which includes s 443A.
- 42 It is well established that the Court has power under s 447A to make orders that modify the application of s 443A so as to limit an administrator's personal liability.
- 43 In *Algeri, Re Murray & Roberts Pty Ltd (admins apptd)*,⁵ Banks-Smith J discussed the statutory context and the applicable principles in terms including the following:⁶

Limiting personal liability of the Administrators

Statutory context

...

- 43 Section 447A of the *Corporations Act* provides that the court may make

⁵ [2022] FCA 1506.

⁶ Ibid [43]-[49], [51].

such orders as it thinks appropriate about how Part 5.3A is to operate in relation to a particular company.

- 44 Section 90-15 of the *Insolvency Practice Schedule* (IPS), being Schedule 2 to the *Corporations Act*, relevantly provides that the court may make such orders as it thinks fit in relation to the external administration of a company, including an order determining any question arising in the external administration of the company.
- 45 While it is now settled that the court has wide powers under s 447A of the *Corporations Act* and s 90-15 of the IPS, such orders must be made in pursuit of the objects of Part 5.3A as set out in s 435A as follows:

Object of Part

The object of this Part, and Schedule 2 to the extent that it relates to this Part, is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- (b) if it is not possible for the company or its business to continue in existence - results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

Note: Schedule 2 contains additional rules about companies under external administration.

- 46 Where there is recourse to the IPS, regard should also be had to its objects set out in s 1-1 of the IPS which relevantly provide as follows:

Object of this Schedule

...

- (2) The object of this Schedule is also:
 - (a) to regulate the external administration of companies consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of external administration differently; and
 - (b) to regulate the external administration of companies to give greater control to creditors.

Principles - s 447A

- 47 It is well established that the court has power under s 447A of the *Corporations Act* to make orders that modify the application of s 443A so as to limit an administrator's personal liability. The courts have been satisfied on a number of occasions that it is not to be expected that the administrators should expose themselves to substantial personal liabilities. In many of the cases, the relevant liability has been or is to be

incurred by way of a loan agreement entered into post administration in order to assist the company to continue to trade. However the principles are not limited to loans and apply more broadly to an arrangement under which the company, post administration, incurs debts in order to continue to operate.

- 48 The considerations and case law relevant to such an application under s 447A were summarised by Sloss J in *Re Unlocked Limited (Administrators Appointed)* [2018] VSC 345:

[60] In the leading case of *Secatore, in the matter of Fletcher Jones and Staff Pty Ltd (admins apptd)* [2011] FCA 1493 (*Secatore*), Gordon J stated (at [23]):

Section 447A(1) of the Act empowers the Court, in an appropriate case, to modify the operation of s 443A to exclude personal liability on the part of a voluntary administrator, and to provide that a loan taken by the company via the voluntary administrator is repayable on a limited recourse basis. Orders in similar terms have frequently been made in circumstances where the Court is satisfied that an administrator has entered into a loan agreement or other arrangement to enable the company's business to continue to trade for the benefit of the company's creditors: see, for example, *Re Ansett Australia Ltd (No 1)* at [49]; *Re Spyglass Management Group Pty Ltd (admin apptd)* (2004) 51 ACSR 432 at [6]; *Sims*; *Re Huon Corporation Pty Ltd (admins apptd)* (2006) 58 ACSR 620 at [12]; *Re Malanos* [2007] NSWSC 865 at [13].

[61] In such circumstances, courts have held that it is not to be expected that the voluntary administrators should expose themselves to substantial personal liabilities: see e.g. *Re Renex Holdings (Dandenong) 1 Pty Ltd* [2015] NSWSC 2003, [13] (Black J); *Preston, in the matter of Hughes Drilling Limited* [2016] FCA 1175 (*Hughes Drilling*), [18] (Yates J). See also *Korda, in the matter of Ten Network Holdings Ltd* [2017] FCA 1144, [43]-[44] (Markovic J).

[62] In *Secatore*, Gordon J also observed (at [29]) that if orders are made relieving administrators from personal liability in respect of borrowings, it will permit them to make commercial decisions about the ongoing operations by focussing on what is in the best interests of the creditors 'uninfluenced by concerns of personal liability'.

[63] In *Re Great Southern Infrastructure Pty Ltd* [2009] WASC 161 (*Great Southern*) at [13], Sanderson M observed that:

The material consideration on such an application is whether the proposed arrangements are in the interests of the company's creditors and consistent with the objectives of Pt 5.3A of the Act. To put that proposition

positively - the question is whether the court is satisfied the proposed arrangements are for the benefit of the company's creditors. To put it negatively - the question is whether the court is satisfied the company's creditors are not disadvantaged or prejudiced by the proposed arrangement. These principles have been confirmed in a large number of cases.

[64] In *Re Mentha (in their capacities as joint and several administrators of the Griffin Coal Mining Company Pty Ltd (admins apptd))* (2010) 82 ACSR 142; [2010] FCA 1469, Gilmour J summarized the principles governing the granting of an application for orders under s 447A to vary the liability of administrators under s 443A as follows (at [30]):

- (a) the proposed arrangements are in the interests of the company's creditors and consistent with the objectives of Part 5.3A of the *Corporations Act: Re Great Southern* at [13].
- (b) typically the arrangements proposed are to enable the company's business to continue to trade for the benefit of the company's creditors: *Re Malanos* at [9] and *Re View* at [17].
- (c) the creditors of the company are not prejudiced or disadvantaged by the types of orders sought and stand to benefit from the administrators entering into the arrangement: *Re View* at [18], and also *Re Application of Fincorp Group Holdings Pty Ltd* [2007] NSWSC 628 at [17].
- (d) notice has been given to those who may be affected by the order: *Re Great Southern* at [12].

49 More recently in *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed) (No 2)* [2020] FCA 717 Middleton J said:

[90] Orders are commonly sought limiting an administrator's personal liability where a company borrows funds from an external financier to fund the ongoing trading of the business during the administration: *Korda, in the matter of Ten Network Holdings Ltd (Administrators Appointed) (Receivers and Managers Appointed)* [2017] FCA 1144 at [42] ('*Ten Network*') (Markovic J).

[91] There can be no doubt that in the appropriate circumstances, personal liability can be excluded with respect to any arrangement where that enables the company's business to continue to trade for the benefit of the company's creditors. Further, s 447A can also be used to avoid liability before it is imposed: *Silvia v FEA Carbon Pty Ltd* (2010) 185 FCR 301 at [14] (Finkelstein J).

...

- 51 The orders typically sought and made in such cases have the effect of limiting the recourse of the counterparty to an agreement against the administrator personally to the extent to which they are able to be indemnified from specified assets of the company...

44 What is different about the present case from a number of the earlier cases where a limit on the administrator's exposure to liabilities has been provided for, is that the orders that are sought in this case pursuant to s 447A are not for the purpose of enabling the Companies' business to trade for the benefit of the creditors whilst under the control of the Administrators.

45 In the present case, the Administrators are not exposed personally as long as the sale proceeds and the obligations in the Transaction Documents are performed. That includes that the conditions subsequent are satisfied. If they are not satisfied, then there is a very real issue of exposure to personal liability on the part of the Administrators.

46 Even today, following settlement of the sale transaction, the business of the Companies is being traded by the purchaser. The Administrators have no control over that trading activity. While the asset sale deed purports to limit their liability, the reality is that parties cannot contract out of the liabilities for which s 443A provides.

47 In circumstances where the sale transaction is clearly in the best interests of the creditors and consistent with the objectives of the Act, and where, as a result of the sale, the Administrators are potentially exposed to personal liability in circumstances where debts may be incurred but over which they have absolutely no control, this is an appropriate case to make orders under s 447A that modify the application of s 443A.

48 It is not a condition subsequent to the Transaction Documents that the Court should make an order pursuant to s 447A. That is because the benefit of that order is a benefit personal to the Administrators. However, the present circumstances mean that it is entirely appropriate that the order that is sought be made.

Extending the date for the convening period

49 Orders were also sought relying on s 439A(6) and 447A of the Act and s 90-15 of the IPS to extend the convening period for the second meeting of creditors. The first meeting is scheduled to occur on 15 March 2023.

50 The principles and authorities relevant to extensions of the convening period were set out in detail by Middleton J in *Strawbridge, Re Virgin Australia Holdings Ltd (admins apptd) (No 2)*.⁷ It is unnecessary to reproduce that discussion here.

51 If the convening period for the second meeting is not extended, it is Mr Coyne's evidence that:

[T]he Administrators would likely seek to adjourn the second meeting of the Companies' creditors. In that scenario, the Administrators would be required to report to creditors twice ... and would also have to convene and hold two meetings.

52 Mr Coyne's first affidavit details why an extension to the convening period is needed. The reasons include:

- (a) the likelihood of a proposal for a DOCA and the need for the Administrators to undertake a detailed analysis of any such proposal; and
- (b) the need for time for the Administrators to investigate the business, property and affairs of the Group and to discharge their statutory obligations under the Act.

53 In all the circumstances, it is appropriate to extend the convening period.

54 The Administrators also seek '*Daisytek orders*'⁸ under s 447A, being orders to the effect that the second creditors' meetings may be held at any time within the extended convening period or the period of five business days thereafter, notwithstanding the effect of s 439A(2) of the Act.⁹

⁷ [2020] FCA 717; (2020) 144 ACSR 347, 370-371 [64]-[68].

⁸ *Re Daisytek Australia Pty Ltd (admins apptd)* [2003] FCA 575; (2003) 45 ACSR 446.

⁹ That subsection provides that the meeting 'must be held within 5 business days before, or within 5 business days after, the end of the convening period', thus preventing an earlier convening of the meeting.

55 I accept the plaintiffs' submission that orders of this nature are 'now ... almost routine and provide administrators with the flexibility to enable them to convene second creditors' meetings earlier if the circumstances indicate it is appropriate'.¹⁰

Disposition

56 For the reasons set out above, I will make orders in the terms sought by the plaintiffs.

CERTIFICATE

I certify that this and the 16 preceding pages are a true copy of the reasons for judgment of the Honourable Justice Delany of the Supreme Court of Victoria delivered on 10 March 2023.

DATED this fourteenth day of March 2023.



¹⁰ Citing *Re Grocon Pty Ltd (admins apptd) (No 2)* [2020] VSC 859, [22] (Gardiner AsJ).

SCHEDULE OF PARTIES

DAVID JOHN COYNE AND PETER PAUL KREJCI IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358), MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911), RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138), RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897), RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146), RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628), RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

First Plaintiffs

RICHSTONE PLUMBING PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 934 358)

Second Plaintiff

MODULAR PREFAB SOLUTIONS VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 149 767 911)

Third Plaintiff

RSG BUSINESS SERVICES PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 410 138)

Fourth Plaintiff

RICHSTONE PLUMBING VIC PTY LTD PTY LTD (ADMINISTRATORS APPOINTED) (ACN 644 094 897)

Fifth Plaintiff

RICHSTONE AUSTRALIA GROUP PTY LTD (ADMINISTRATORS APPOINTED) (ACN 160 820 146)

Sixth Plaintiff

RICHSTONE VIC PTY LTD (ADMINISTRATORS APPOINTED) (ACN 634 950 628)

Seventh Plaintiff

RICHSTONE ADMINISTRATION PTY LTD (ADMINISTRATORS APPOINTED) (ACN 131 701 712)

Eighth Plaintiff