

12 December 2023

CIRCULAR TO CREDITORS

Dear Sir or Madam,

**GREATCELL SOLAR LIMITED (IN LIQUIDATION)
FORMERLY KNOWN AS “DYESOL LTD”
ACN 111 723 883 (“GSL”)**

**GREATCELL SOLAR AUSTRALIA PTY LTD (IN LIQUIDATION)
FORMERLY KNOWN AS “DYESOL AUSTRALIA PTY LTD”
ACN 131 374 064 (“GSA”)**

We refer to previous correspondence regarding GSL and GSA (together, “the Companies”) and provide herein an update.

As previously advised, we have identified a potential insolvent trading claim against the Directors of the Companies.

On 16, 17, 23 and 24 August 2022, we conducted public examinations of three of the Companies' Directors (Gordon Thompson, Richard Caldwell and Ian Neal) and the Chief Financial Officer of the Companies (Kian Niu) to obtain further evidence in respect of the insolvent trading claim and the defence asserted by the Directors pursuant to the Safe Harbour provisions of the Corporations Act. Those public examinations were funded by the Commonwealth of Australia acting through the Attorney-General's department (“the Commonwealth”).

Based on the documents produced, and answers given, in the course of the public examination process:

- we have formed the view that the insolvent trading claim has good prospects of success; and
- the Commonwealth (now acting through the Department of Employment and Workplace Relations) has offered to providing funding for us to prosecute the insolvent trading claim (i.e. to meet our anticipated remuneration and legal fees).

However, because the amount that the Commonwealth is owed is higher in respect of GSA, but the estimated quantum of the insolvent trading claim in respect of GSA is significantly lower, the Commonwealth requires us to take steps to protect the Commonwealth's interests before it will provide the funding.

Novabrif Pty Ltd Trading as BRI Ferrier ABN 61 643 013 610
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To that end, on 6 December 2023, we filed an originating application in the Federal Court of Australia seeking orders to the following effect:

- ▶ GSL and GSA be a pooled group for the purposes of section 579E of the *Corporations Act 2001*;
- ▶ we have retrospective approval to enter into a funding agreement between the Liquidators and the Commonwealth in respect of bringing the insolvent trading litigation;
- ▶ approval for us to enter into a revised funding agreement with the Commonwealth in the event that the Companies are pooled;
- ▶ we have retrospective approval to enter into a costs agreement with our lawyers, Colin Biggers & Paisley, for the work involved in bringing this application and the insolvent trading litigation.

The basis for the orders sought by us as Liquidators is set out in my affidavit sworn 6 December 2023. A copy of the originating application is annexed, and the affidavit material can be downloaded from our website: <https://briferrier.com.au/about-us/current-matters>

The first case management hearing is listed at **9:30am (AEDT) on Thursday, 21 December 2023**.

If any creditor wishes to object to the relief sought by the liquidators, please provide written notice to Katherine La of our office (kla@brifnsw.com.au) by no later than **4:00pm (AEDT) on 20 December 2023**.

Yours faithfully

GREATCELL SOLAR LIMITED (IN LIQUIDATION)

GREATCELL SOLAR AUSTRALIA PTY LTD (IN LIQUIDATION)



PETER KREJCI

Joint and Several Liquidator

Encl.

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 6/12/2023 3:39:32 PM AEDT
Date Accepted for Filing: 7/12/2023 10:06:24 AM AEDT
File Number: NSD1481/2023
File Title: IN THE MATTER OF IN THE MATTER OF GREATCELL SOLAR LIMITED (IN LIQUIDATION) ACN 111 723 883 AND GREATCELL SOLAR AUSTRALIA PTY LTD (IN LIQUIDATION) ACN 131 374 064
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: First Case Management Hearing
Time and date for hearing: 21/12/2023, 9:30 AM
Place: Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Originating process

(rules 2.2 and 15A.3)



No. NSD

Federal Court of Australia
 District Registry: New South Wales
 Division: Corporations

IN THE MATTER OF In the matter of Greatcell Solar Limited (In Liquidation) ACN 111 723 883 and
 Greatcell Solar Australia Pty Ltd (In Liquidation) ACN 131 374 064

**Peter Krejci and Andrew Cummins in their capacity as joint and several liquidators of
 Greatcell Solar Limited (In Liquidation) (ACN 111 723 883) and Greatcell Solar Australia Pty
 Ltd (In Liquidation) (ACN 131 374 064)**

Plaintiffs

A. DETAILS OF APPLICATION

This application is made under sections 579E and 477(2B) of the *Corporations Act 2001 (Act)* by the liquidators of Greatcell Solar Limited (In Liquidation) and Greatcell Solar Australia Pty Ltd (In Liquidation) (together, **the Companies**). The liquidators are seeking orders that the Companies be pooled and approval for the liquidators to enter into agreements with a term of longer than 3 months.

On the facts stated in the supporting affidavit(s), the plaintiff claims:

Pooling

1. An order pursuant to section 579E of the Act that the Companies are a pooled group for the purposes of section 579E of the Act.

Entry into agreements

2. An order pursuant to section 477(2B) of the Act that approval be granted *nunc pro tunc* for the plaintiffs, in their capacity as liquidators of Greatcell Solar Limited (In Liquidation) and Greatcell Solar Australia Pty Ltd (In Liquidation) (together, **the Companies**) to enter into the two amendment deeds between the Commonwealth of Australia (acting through the Department of Employment and Workplace Relations ABN 96 584 957 427)

Filed on behalf of (name & role of party) Peter Krejci and Andrew Cummins in their capacity as joint and several liquidators of Greatcell Solar Limited (In Liquidation) (ACN 111 723 883) and Greatcell Solar Australia Pty Ltd (In Liquidation) (ACN 131 374 064), plaintiffs

Prepared by (name of person/lawyer) Stuart McKenzie

Law firm (if applicable) Colin Biggers & Paisley Pty Ltd

Tel (02) 8281 4501

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Address for service

(include state and postcode) Colin Biggers & Paisley Lawyers, Level 42, 2 Park Street, Sydney NSW 2000



(Commonwealth), the plaintiffs and the Companies as produced at pages 356 to 369 of confidential exhibit PPK-2 to the affidavit of Peter Paul Krejci dated 6 December 2023

3. An order pursuant to section 477(2B) of the Act that approval be granted for the plaintiffs, in their capacity as liquidators of the Companies to enter into a pooled funding agreement between the Commonwealth, the plaintiffs and the Companies in the same terms as that contained at pages 383 to 424 of confidential exhibit PPK-2 to the affidavit of Peter Paul Krejci dated 6 December 2023.
4. An order pursuant to s 477(2B) of the Act that approval be granted *nunc pro tunc* for the plaintiffs, in their capacity as liquidators of the Companies, to enter into the costs agreement with Colin Biggers & Paisley Lawyers starting 3 February 2023 as produced at pages 370 to 380 of confidential exhibit PPK-2 to the affidavit of Peter Paul Krejci dated 6 December 2023.

Confidentiality

5. An order pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) that the exhibit marked "Confidential Exhibit PPK-2" to the affidavit of Peter Paul Krejci dated 6 December 2023 be treated as confidential and that access to it be granted only:
 - (a) with the consent of the plaintiffs; or
 - (b) by order of the Court.

Costs and other orders

6. An order that the costs of this application be costs in the liquidation of GSL and GSA.
7. Such further or other order that the Court considers appropriate.

Date: 6 December 2023

A handwritten signature in black ink, appearing to read 'Stuart McKenzie'.

Signature of Stuart McKenzie
Lawyer for the Plaintiffs

This application will be heard by the Federal Court of Australia at Law Courts Building, Queens Square, Sydney at

**B. FILING**

Date of filing:

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

This originating process is filed by Colin Biggers & Paisley Lawyers for the plaintiff.

C. SERVICE

The plaintiff's address for service is c/- Colin Biggers & Paisley Lawyers, Level 42, 2 Park Street,
Sydney NSW 2000