



FORM 2

Rules 2.2 and 15A.3

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

Case: S ECI 2021 04688

Filed on: 10/12/2021 04:56 PM

No. S ECI of 2021

IN THE MATTER OF MERCHANT OVERSEAS LOGISTICS PTY LTD (IN LIQUIDATION) ACN 108 934 685

ANDREW SCHWARZ AND JON HOWARTH (in their capacities as joint and several liquidators of MERCHANT OVERSEAS LOGISTICS PTY LTD (IN LIQUIDATION) ACN 108 934 685

Plaintiffs

ORIGINATING PROCESS

Date of document: 10 December 2021
Filed on behalf of: The Plaintiffs
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A. DETAILS OF APPLICATION

This is an application pursuant to sections 436B and 447A of the *Corporations Act 2001* (Cth) (**the Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, Schedule 2 of the Act (**IPS**).

On the facts stated in the supporting affidavit of Andrew Peter Schwarz affirmed on 8 December 2021, the Plaintiffs seek the following orders:

1. An order that pursuant to sections 436B(2)(g) and 448C(1) of the Act, leave be granted for the Plaintiffs to be appointed as:
 - (a) joint and several administrators of Merchant Overseas Logistics Pty Ltd (in liquidation) (ACN 108 934 685) (**the Company**); and
 - (b) deed administrators of any deed of company arrangement entered into by the Company in the course of its administration by the Plaintiffs as administrators.

2. An order pursuant to section 447A of the Act and section 90-15 of the IPS that Part 5.3A of the Act is to operate in relation to the administration of the Company (and any administration of a deed of company arrangement made in relation to the Company) on the following terms to prevail to the extent of any inconsistency with the provisions of Part 5.3A of the Act:
- (a) there be no requirement that a first meeting of creditors in the administration of the Company be convened or held;
 - (b) section 438B(2) of the Act does not apply to the Plaintiffs' administration of the Company;
 - (c) the Plaintiffs (as administrators) may convene and hold the meetings required under section 439A of the Act at any time during the convening period (as defined in the Act);
 - (d) any notices required to be given pursuant any provision in any of Part 5.3A of the Act, Part 5.3A of the Corporations Regulations 2001 (Cth), the IPS or the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**) is validly given to creditors of the Company by taking the following steps:
 - (i) where the Plaintiffs have an email address for a creditor, by sending the notice by email to each such creditor, irrespective of whether the creditor has nominated to receive electronic notifications of documents in accordance with section 600G of the Act;
 - (ii) where the Plaintiffs do not have an email address for a creditor, but have a postal address for the creditor (or have received notification of non-delivery of a notice sent by email in accordance with subparagraph (d)(i) above), by sending the notice by posting a copy of it to the postal address for each such creditor;
 - (iii) by publishing the notice on the Australian Securities and Investments Commission (**ASIC**) published notices website appearing at <https://insolvencynotices.asic.gov.au/>; and

- (iv) by publishing the notice on the website maintained by the Plaintiffs at www.advisory.com.au.
 - (e) that, to the extent not permitted specifically by sections 75-30, 75-35 and 75-75 of the IPR, the Plaintiffs be permitted to hold meetings of creditors during the administration of the Company by telephone or audio-visual conference only at the place of the Plaintiffs' offices (without creditors of the Company being able to attend physically at that place), with such details of the arrangements for using the telephone or audio-visual conference facilities to be specified in each of the notices issued to creditors.
 - (f) in and for the purposes of the Plaintiffs' administration (pursuant to Part 5.3A of the Act) of the Company, the Plaintiffs accept as proofs of debt in the administration of the Company any proofs of debt submitted by creditors in the course of the liquidation of the Company conducted by the Plaintiffs as liquidators, without adjustment for interest in respect of the claims the subject of such proofs of debt.
3. Pursuant to section 90-15 of the IPS, a direction that the Plaintiffs as administrators of the Company are justified in:
 - (a) not requiring or receiving a "Report as to Affairs" or "Report on Company Activities and Property" from any of the directors (or past directors) of the Company; and
 - (b) not conducting investigations into, and reporting to creditors about, possible recovery actions that may be available in the event that the Company was to proceed to liquidation under the Act pursuant to Division 12 of Part 5.3A of the Act.
 4. An order pursuant to section 482 of the Act that the winding up of the Company be stayed from the time that the Plaintiffs appoint themselves as administrators of the Company until the date upon which the order sought in paragraph 5 below takes effect.
 5. An order pursuant to section 482 of the Act that, upon the expiry of two business days after the Plaintiffs (in their capacities as deed administrators of any deed of company arrangement referred to in paragraph 1(b) above) give written notice to ASIC of the full effectuation of that deed of company arrangement, the winding up of the Company be terminated.
 6. The Plaintiffs' costs of and incidental to this application be costs in the liquidation of the Company, and are to be paid out of the assets of the Company.

7. Such further or other orders as the Court deems appropriate.

Date: 10 December 2021



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Johnson Winter & Slattery

Solicitors for the Plaintiffs

This application will be heard at the Supreme Court of Victoria, 210 William St, Melbourne VIC, 3000 on a date to be fixed.

B. NOTICE TO DEFENDANTS

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing:

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Registrar

This originating process is filed by Johnson Winter & Slattery, solicitors for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Johnson Winter & Slattery
Level 34, 55 Collins Street
MELBOURNE VIC 3000

Attn: Pravin Aathreya / Noah Bennett

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