**MIGHTY RIVER INTERNATIONAL LIMITED v HUGHES & ORS (P7/2018)**
**MIGHTY RIVER INTERNATIONAL LIMITED v MINERAL RESOURCES LIMITED & ORS (P8/2018)**

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| Court appealed from: | Court of Appeal of the Supreme Court of Western Australia<br>[2017] WASCA 152 |
| Date of judgment: | 11 August 2017 |
| Special leave granted: | 16 February 2018 |

The main issue in these appeals is whether a deed of company arrangement ("the DOCA") entered into by Mesa Minerals Ltd ("Mesa") is a valid deed of company arrangement. It raises questions of the construction of Pt 5.3A of the *Corporations Act* 2001 (Cth) ('the Act").

Part 5.3A sets out the scheme for voluntary administration under the Act. Section 444A, which appears in Pt 5.3A, specifies the mandatory requirements for deeds of company arrangement. Relevantly it provides that a deed must specify "*the property of the company (whether or not already owned by the company when it executes the deed) that is to be available to pay creditors' claims*." (emphasis added). Here the DOCA provides that unless it is varied, there will be no property of Mesa available for distribution to creditors under the DOCA. The section further requires the deed to specify a mandatory distribution process and to specify that the priority of employees be respected in that process.

There is no relevant dispute about the facts. Mesa operated as a mining company. Its key assets comprised a 50% interest in 2 manganese projects (with the other joint venture partner being a subsidiary of Mineral Resources Limited ("MRL")), certain mining tenements and a mining lease called the Boodarie lease and an interest in a facility agreement with the Pilbara Port Authority. There were common directors and officeholders of Mesa and MRL.

On 13 July 2016, the directors of Mesa placed Mesa into voluntary administration, and the first respondents in P7/2018, ("the Administrators") were appointed its voluntary administrators.

From the time of appointment, the Administrators favoured Mesa entering into a 'holding deed' of company arrangement. The deed was a 'holding deed' because it did not specify any property that would be available to satisfy creditors' claims, nor did it otherwise provide for a return to creditors. Rather, it contemplated further investigations by the Administrators for up to 6 months, following which they might present a proposal to a creditors' meeting.

In early August 2016 the appellant ("Mighty River"), a creditor as to $69,000 and 13.5% shareholder of Mesa, queried why a 'holding deed' would be

preferable to a liquidation. Later in August 2016 Mighty River complained, in effect, that the administrators had not investigated possible claims against Mesa's directors. That being the case, Mighty River said that there was 'no sensible rationale' for continuing a proposed sale process until those potential claims had been investigated. On 20 October 2016 the Administrators recommended entering into the DOCA. The majority of Mesa's creditors voted in favour of entry into the DOCA and it was subsequently executed.

In the first appeal P7/2017, Mighty River seeks a declaration that the DOCA is of no force or effect. In essence it contends that the DOCA does not comply with the requirements of Pt 5.3 A of the Act, and is consequently invalid. It also claimed at first instance that the Administrators were not independent and impartial and that their conduct gave rise to a reasonable apprehension of bias. It seeks that Mesa be wound up and that the Administrators be appointed liquidators.

In the related second appeal P8/2018, MRL another creditor as to approximately $8 million and 60% shareholder of Mesa, claims that if there were any defects in the DOCA, the defects should be cured under s 445G (which appears in Part 5.3 A of the Act), or the deed should be varied to the extent to the extent necessary under that section.

The two appeals were heard together at first instance by the Master of the Supreme Court.

The Master dismissed the claims of Mighty River in the first appeal and made a declaration under s 445G in the second appeal that the DOCA was not void, in favour of MRL. Mighty River appealed to the Court of Appeal with respect to the Master's dismissal of its claims under Pt 5.3A of the Act (but not against the dismissal of its claims about impartiality/bias against the Administrators) and also against the making of the order declaring the DOCA was not void in the second appeal.

The Court of Appeal held that the DOCA complied with the requirements of Pt 5.3 A of the Act, properly construed. Each member of the Court of Appeal held that "the property" referred to in s 444A captured "no property". It dismissed Mighty River's appeals in both matters.

Mighty River has been granted special leave to appeal against both decisions of the Court of Appeal.

The grounds of appeal in P7/2018 are:

- That the Court of Appeal erred in holding that the deed of arrangement entered into by the first respondents and the second respondent is a valid deed of company arrangement under of Pt 5.3 A of the *Corporations Act* 2001 (Cth);

- That the Court of Appeal ought to have held that the deed of company arrangement was void pursuant to s 445G(2) of the *Corporations Act* 2001 (Cth).

The grounds of appeal in P8/2018 are:

- That the Court of Appeal ought to have held that the deed of arrangement entered into by the first respondents and the second respondent was void or invalid pursuant to s 445G(2) of the *Corporations Act* 2001 (Cth).