

FEDERAL COURT OF AUSTRALIA

Mentha, in the matter of Arrium Limited (administrators appointed) [2016] FCA

487

File number: VID 383 of 2016

Judge: DAVIES J

Date of judgment: 10 May 2016

Catchwords: **BANKRUPTCY AND INSOLVENCY** – administration – extension of time for convening second creditors’ meeting – where complex group administration – extension granted – *Corporations Act 2001* (Cth) s 439A(6)

BANKRUPTCY AND INSOLVENCY – administration – debts and liabilities of administrators – where previous administrators had resigned – where transition agreement entered into – modification of operation of s 443A of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

BANKRUPTCY AND INSOLVENCY – administration – requirements to notify and inform creditors – whether notification including by email and publication to websites appropriate – modification of operation of s 439A of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

BANKRUPTCY AND INSOLVENCY – administration – remuneration of administrators – where complex group administration – where one committee of creditors established for all group companies – modification of operation of s 449E of the *Corporations Act 2001* (Cth) – *Corporations Act 2001* (Cth) s 447A

Legislation: *Corporations Act 2001* (Cth) ss 439A, 447A, 449E
Federal Court Rules 2011 (Cth) r 1.34
Federal Court (Corporations) Rules 2000 (Cth) rr 1.3, 2.4(2)

Cases cited: *Australasian Memory Pty Ltd v Brien* (2000) 200 CLR 270; [2000] HCA 30
Australian Workers’ Union v Billingham, in the matter of Arrium Limited (administrators appointed) [2016] FCA 384

Carson, in the matter of Hastie Group Limited [2012] FCA 626

In the matter of Creative Memories Australia Pty Ltd (administrators appointed) [2013] NSWSC 732

Parbery, in the matter of NewSat Limited (administrators appointed) (receivers and managers appointed) [2015] FCA 435

Re Daisytek Australia Pty Ltd (administrators appointed) (2003) 45 ACSR 446; [2003] FCA 575

Re Henry Walker Eltin Group Ltd (administrators appointed) (2000) 54 ACSR 383; [2005] FCA 994

Re Riviera Group Pty Ltd (administrators appointed) (receivers and managers appointed) (2009) 72 ACSR 352; [2009] NSWSC 585

Date of hearing:	3 May 2016
Registry:	Victoria
Division:	General Division
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	36
Solicitor for the Plaintiffs:	L Zwier, Arnold Bloch Leibler

ORDERS

VID 383 of 2016

**IN THE MATTER OF ARRIUM LIMITED (ADMINISTRATORS APPOINTED)
(ACN 004 410 833) AND THE OTHER COMPANIES LISTED IN SCHEDULE ONE**

BETWEEN: **MARK FRANCIS XAVIER METHA, CASSANDRA ELYSIUM
MATHEWS, MARTIN MADDEN AND BRYAN WEBSTER IN
THEIR CAPACITIES AS JOINT AND SEVERAL
ADMINISTRATORS OF ARRIUM LIMITED
(ADMINISTRATORS APPOINTED) (ACN 004 410 833) AND
THE OTHER COMPANIES LISTED IN SCHEDULE ONE**
First Plaintiffs

**ARRIUM LIMITED (ADMINISTRATORS APPOINTED)
(ACN 004 410 833) AND THE OTHER COMPANIES LISTED
IN SCHEDULE ONE**
Second Plaintiffs

JUDGE: **DAVIES J**

DATE OF ORDER: **10 MAY 2016**

THE COURT ORDERS THAT:

1. Pursuant to s 447A(1) of the Act, Pt 5.3A of the *Corporations Act 2001* (Cth) (the Act) is to operate in relation to each of the Second Plaintiffs (the **Arrium Administration Group Companies**) as if:
 - (a) the debts and liabilities within the meaning of Subdiv A of Div 9 of Pt 5.3A of the Act incurred by Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of Grant Thornton (the **First Administrators**) in their capacities as joint and several administrators of the Arrium Administration Group Companies during the period of their administration of the Arrium Administration Group Companies; and
 - (b) the remuneration of the First Administrators determined in accordance with s 449E of the Act; and
 - (c) any costs and expenses incurred by the First Administrators in relation to or in connection with seeking Court approval of their remuneration in accordance with s 449E of the Act;

are debts and liabilities of the First Plaintiffs (the **Administrators**) incurred by the Administrators as voluntary administrators of the Arrium Administration Group Companies within the meaning of s 443A of the Act.

2. Pursuant to s 439A(6) of the Act, the convening period defined in s 439A(5)(b) of the Act in respect of each of the Arrium Administration Group Companies be extended to midnight on 28 February 2017.
3. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that the meetings of the creditors of each of the Arrium Administration Group Companies required by s 439A of the Act may be held at any time during the period up to, or within five business days after, the end of the convening period as extended by Order 2 above, notwithstanding the provisions of s 439A(2) of the Act.
4. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies such that notice of the second meetings of creditors of the Arrium Administration Group Companies (the **Second Meetings**) required to be given pursuant to s 439A(3) of the Act (the **Notice**) will be validly given to creditors of the Arrium Administration Group Companies by:
 - (a) sending the Notice by email (**Email**) to the email address of each creditor at such email address as is recorded in the books and records of the Arrium Administration Group Companies;
 - (b) where an email address is not recorded in the books and records of the Arrium Administration Group Companies, sending by post the Notice (**Letter**) to the postal address of each creditor at such postal address as is recorded in the books and records of Arrium Administration Group Companies;
 - (c) causing the Notice to be published in The Australian newspaper at least five days before the date of the Second Meetings;
 - (d) publishing the Notice on the websites maintained by:
 - (i) the Administrators at www.kordamentha.com; and
 - (ii) the Administrators' lawyers at www.abl.com.au;(collectively, the **Websites**) at least five business days before the Second Meetings;

- (e) providing in the Email, Letter and the notices to be published in The Australian newspaper and on the Websites:
 - (i) notice of the date, time and location of the Second Meetings;
 - (ii) notice that the reports required to be given to creditors of the Arrium Administration Group Companies pursuant to s 439A(4) of the Act (the **439A Reports**) is available for download on the Websites; and
 - (iii) details of a telephone hotline number by which any creditor may contact the Administrators to request a paper or electronic copy of the 439A Reports.
- 5. Pursuant to s 447A(1) of the Act, Pt 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies as though s 439A(4) of the Act provided that the 439A Reports to accompany the Notice may be validly given to creditors of the Arrium Administration Group Companies by:
 - (a) making the 439A Reports available for download by creditors of the Arrium Administration Group Companies from the Websites in accordance with paragraph 4(e)(ii) of Order 4; and
 - (b) providing the 439A Reports to creditors upon request in accordance with paragraph 4(e)(iii) of Order 4.
- 6. Pursuant to s 447A(1) of the Act, and subject to further order, Pt 5.3A of the Act is to operate in relation to the Arrium Administration Group Companies such that all future notices, reports and communications that the Administrators must or may give or send to creditors of the Arrium Administration Group Companies may be given and/or sent in accordance with the procedures described in Orders 4 and 5.
- 7. A notice sent to a creditor pursuant to Orders 4 and 5 is taken to be given on the business day after it is sent.
- 8. Pursuant to s 447A of the Act, Pt 5.3A of the Act is to operate in relation to each of the Arrium Administration Group Companies:
 - (a) as if s 449E(1) of the Act is modified to read, in respect of each of the Arrium Administration Group Companies, as follows:

“(1) [Where company under administration] The First Administrators and the Second Administrators of the Arrium Administration Group Companies are entitled to receive such remuneration as is determined:

- (aa) *by agreement between the Second Administrators of the Arrium Administration Group Companies and the Arrium Committee of Creditors in relation to any and / or each of the Arrium Administration Group Companies; or*
 - (a) *by agreement between the administrator and the committee of creditors (if any);*
 - (b) *by resolution of the company's creditors; or*
 - (c) *if there is no such agreement or resolution – by the Court.”*
- (b) as if the following definitions are inserted in s 449E(1) of the Act, in respect of each of the Arrium Administration Group Companies:

“Arrium Administration Group Companies means each of the Second Plaintiffs to Federal Court of Australia Proceeding No. VID 383 of 2016; and Arrium Committee of Creditors means the committee of creditors appointed to Arrium Limited (Administrators Appointed) by resolution of creditors passed on 19 April 2016.

First Administrators means Paul Billingham, Said Jahani, Michael McCann and Matthew Byrnes of Grant Thornton.

Second Administrators means Mark Francis Xavier Mentha, Bryan Webster, Martin Madden and Cassandra Elysium Mathews of KordaMentha.”

9. The Plaintiffs and any creditor of the Arrium Administration Group Companies affected by any order made pursuant to these Orders shall have liberty to apply upon two business days' written notice to the parties.
10. Pursuant to r 1.34 of the *Federal Court Rules 2011* (Cth) (the **Rules**) and r 1.3 of the *Federal Court (Corporations) Rules 2000* (Cth) (**Corporations Rules**), compliance with the requirements of r 2.4(2) of the Corporations Rules be dispensed with and in lieu thereof the Plaintiffs upload each of the records of a search of the records maintained by ASIC in relation to each of the Arrium Administration Group Companies on the website maintained by the Administrators' solicitors at <http://www.abl.com.au/Arrium/CompanyInformation.htm>.
11. Pursuant to r 1.39 of the Rules and r 1.3(2) of the Corporations Rules, service of the Plaintiffs' Originating Process dated 2 May 2016 on the persons referred to in Section

E of the Originating Process in accordance with r 2.7(1) of the Corporations Rules be abridged as required.

12. The Plaintiffs' costs of this application be costs in the administration of the Arrium Administration Group Companies.

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