

FEDERAL COURT OF AUSTRALIA

Hams (Administrator), in the matter of Onesteel Manufacturing Pty Ltd (Administrators Appointed) [2025] FCA 219

File number(s): VID 325 of 2025

Judgment of: NESKOVCIN J

Date of judgment: 18 March 2025

Catchwords: **CORPORATIONS** – proposed extension of convening period for second meeting of creditors under s 439A of the Corporations Act 2001(Cth) – complex administration – convening period extended

Legislation: *Corporations Act 2001* (Cth) ss 435A, 439A(6), 447A(1), Part 5.3A
Insolvency Practice Rules (Corporations) 2016 (Cth) r 75-225

Cases cited: *Algeri, in the matter of Colorado Group Ltd (administrators appointed) (receivers and managers appointed)* [2011] VSC 260
Farnsworth v About Life Pty Ltd (Administrator Appointed), in the matter of About Life Pty Limited [2019] FCA 11
In the matter of DaisYTEK Australia Pty Ltd (administrators appointed) (2003) 45 ACSR 446; [2003] FCA 575
In the matter of Lift Capital Partners Pty Ltd (administrators appointed) [2008] NSWSC 446
Mentha, in the matter of Arrium Ltd (administrators appointed) (2016) 113 ACSR 302; [2016] FCA 487
Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited (2018) 265 CLR 480; [2018] HCA 38
Owen, in the matter of RiverCity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) v Madden [2011] FCA 295
Owen, in the matter of RiverCity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) v Madden(No 4) (2012) 92 ACSR 255; [2012] FCA 1491
Rathner, in the matter of Citius Property Pty Ltd (Administrator Appointed) [2023] FCA 26

Re Diamond Press Australia Pty Ltd [2001] NSWSC 313

Re Pan Pharmaceuticals Ltd (admins appointed) (2003) 46 ACSR 77; [2003] FCA 598

Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) (2009) 72 ACSR 352; [2009] NSWSC 585

Silvia, in the matter of Austcorp Group Limited (Administrators Appointed) [2009] FCA 636

Strawbridge, in the matter of Virgin Australia Holdings Pty Ltd (administrators appointed) (No 2) (2020) 144 ACSR 347; [2020] FCA 717

Division: General Division

Registry: Victoria

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 41

Date of hearing: 18 March 2025

Solicitor for the Plaintiffs: L Zwier of Arnold Bloch Leibler

ORDERS

VID 325 of 2025

**IN THE MATTER OF ONESTEEL MANUFACTURING PTY LTD
(ADMINISTRATORS APPOINTED) ACN 004 651 325**

**SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA
WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT
AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY
LTD (ADMINISTRATORS APPOINTED) ACN 004 651 325**

First Plaintiffs

**ONESTEEL MANUFACTURING PTY LTD (ADMINISTRATORS APPOINTED)
ACN 004 651 325**

Second Plaintiff

ORDER MADE BY: NESKOVCIN J

DATE OF ORDER: 18 MARCH 2025

THE COURT ORDERS THAT:

1. Pursuant to s 439A(6) of the *Corporations Act* 2001 (Cth), the period within which the first plaintiffs must convene the **second meeting** of creditors of the second plaintiff under s 439A is extended to 20 March 2026.
2. Pursuant to s 447A(1) of the Act, Part 5.3A is to operate in relation to the second plaintiff such that, notwithstanding s 439A(2), the second meeting required under s 439A may be convened at any time before, or within, five business days after the end of the convening period as extended by order 1 above, provided that the first plaintiffs give notice of the meeting to eligible creditors of the second plaintiff, including the persons claiming to be creditors of the second plaintiff, at least five business days before the meeting.
3. Liberty to apply.
4. Liberty be granted to any person who can demonstrate sufficient interest to discharge or modify these orders on the giving of three business days' written notice to the plaintiffs and the Court.
5. The first plaintiffs' costs of the application be costs in the administration of the second plaintiff.

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

REASONS FOR JUDGMENT

NESKOVCIN J:

1 The first plaintiffs were appointed voluntary **administrators** of the second plaintiff, **OneSteel**
Manufacturing Pty Ltd (Administrators Appointed), on 19 February 2025.

2 By originating process filed on 17 March 2025, the administrators applied to extend the
convening period for the second meeting of creditors of OneSteel for 12 months, until 20 March
2026, pursuant to s 439A(6) and 447A of the *Corporations Act 2001* (Cth). The administrators
also sought an order under s 447A(1) that Part 5.3A operate in relation to OneSteel such that
the second meeting of creditors of OneSteel required under s 439A may be convened at any
time before, or within, five business days after the end of the convening period as extended by
the Court. This type of order is known as a “*Daisytek* order” named after the decision in *In the
matter of Daisytek Australia Pty Ltd (administrators appointed)* (2003) 45 ACSR 446; [2003]
FCA 575. The convening period for the second meeting of creditors of OneSteel will, unless
extended, end on 20 March 2025.

3 The administrators relied on an affidavit of Ms Lara Wiggins, one of the administrators, dated
17 March 2025 and an affidavit of Mr Raphael Leibler dated 18 March 2025.

4 The application was listed before me as the Commercial and Corporations Duty Judge on
18 March 2025. It was self-evidently urgent by reason of the imminent end of the convening
period unless extended by the Court. The application was heard *ex parte*.

5 For the reasons that follow, I am satisfied that the convening period should be extended until
20 March 2026 and I will make orders substantially in the terms sought by the administrators.

BACKGROUND

Business operations of OneSteel

6 OneSteel manufactures steel products at Whyalla, South Australia. OneSteel also mines iron
ore from locations in the Middleback Ranges, South Australia. The operations at the Whyalla
Steelworks are fully integrated, involving mining the raw materials, processing the raw
materials and distributing finished steel products. OneSteel produces over 75% of Australian
structural steel used in rail projects and major infrastructure projects. It is the only domestic
producer of steel long products.

7 OneSteel employs approximately 1,487 employees directly. OneSteel also has entered into a number of contracts with independent contractors that result in a further 1,500 people working on site regularly. The OneSteel operations also indirectly support jobs in the broader community of Whyalla.

8 OneSteel is part of a group of companies described as the Mining & Primary Steel Group (**MPS Group**). The MPS Group is part of the Gupta Family Group Alliance or **GFG Alliance**, being an international group of mining, industry and trading businesses associated with Mr Sanjeev Gupta. OneSteel is the only company in the GFG Alliance placed into external administration in Australia.

Funding and support package

9 On 19 February 2025, on the same day the administrators were appointed, the Treasurer of South Australia, for and on behalf of the Crown in right of the **State** of South Australia, and the administrators entered into a **Funding and Indemnity Deed**. Under the Funding and Indemnity Deed, the State agreed to provide funding for the costs of the administrators and the costs of funding the general working capital of the OneSteel business.

10 On 20 February 2025, the State Government and the Commonwealth Government announced a multi-billion dollar package to support OneSteel described as the “Sovereign Steel Package”. The joint State and Commonwealth package includes:

- (a) \$100 million in creditor assistance payments, infrastructure upgrades, jobs matching and a skills hub;
- (b) a co-investment of \$384 million to fund the Whyalla Steelworks operations during the administration – this component, I was told, is to be funded by the State under the Funding and Indemnity Deed; and
- (c) \$1.9 billion to work with a new owner to invest in upgrades and new infrastructure.

Financial position of OneSteel

11 OneSteel’s indicative Statement of Financial Position as at 31 January 2025 (based on unaudited management accounts) records:

- (a) total assets of \$1.676 billion; and
- (b) total liabilities of \$1.271 billion.

- 12 OneSteel's indicative Statement of Profit or Loss for the seven-month period ending 31 January 2025 (based on unaudited management accounts) records:
- (a) sales revenue of \$669 million;
 - (b) cost of sales of \$847.3 million; and
 - (c) a loss (before income tax) of \$319.1 million for that period.
- 13 Based on unaudited management accounts for the seven months to 31 January 2025, prior to the administrators' appointment OneSteel generated a loss before tax equivalent to approximately \$1.5 million per day.
- 14 There are 648 unsecured and 68 secured creditors of OneSteel who claim to be owed more than \$1.3 billion, comprising:
- (a) trade creditors and suppliers (secured and unsecured) owed \$437 million;
 - (b) associated entities with claims estimated to be approximately \$570 million;
 - (c) employees of OneSteel who are owed entitlements of approximately \$189 million;
 - (d) prepaid sales to third parties estimated to be in excess of \$110 million; and
 - (e) the State which is owed \$40 million in respect of water and royalties.

Complexities associated with the administration

- 15 The OneSteel cashflow forecasts for the period 19 February 2025 to 17 May 2025 indicate that OneSteel faces significant cashflow issues as it has insufficient funds to meet forecast outflows, including operating expenses and capital expenditure. Notwithstanding the funding support from the State and Commonwealth Governments, the administrators have indicated that they do not have sufficient funding to continue OneSteel's operations for the period of the proposed extension of the administration and I was told that the funding will run out in approximately six months.
- 16 Since taking control of OneSteel, the administrators have identified that OneSteel has sustained a long period of underinvestment, inadequate or no maintenance, poor health and safety practices, has insufficient spare parts and inefficiencies operationally and financially.
- 17 The administrators are not currently satisfied that OneSteel is compliant with all occupational, health and safety requirements, which they are taking steps to rectify. Health and safety are currently a major areas of focus for the administrators.

18 The affairs of OneSteel and other GFG Alliance entities are financially and operationally intermingled. This has made it difficult for the administrators to obtain a complete set of the books and records of OneSteel, which they require to conduct investigations and prepare a report to creditors in accordance with their obligations under s 439A of the Act and r 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth).

Creditor notification

19 On 3 March 2025, the first meeting of creditors of OneSteel was held. During the meeting, Ms Wiggins, as chairperson of the meeting, stated that:

Given the complex nature of the business and the time we consider it will take to stabilise the business, investigate the affairs and conduct a sale or recapitalisation process, we believe it to be in the best interests of creditors of the company to apply to the Court to extend the 25 business day convening period of the second meeting of creditors. We will also simultaneously seek orders that permit us to convene the second meeting sooner should we form the view that it is in the best interests of the creditors and other stakeholders of the company to do so. We plan to progress these applications to court following the first meeting of creditors.

20 In addition, on 13 March 2025, the solicitors for the administrators sent an email to the **Committee of Inspection** notifying them of the administrators' intention to make this application and requested that the Committee of Inspection confirm their support for the application. The email stated:

We propose to extend the convening period for a period of 9 to 12 months (including a separate order to allow the administrators to hold the meeting earlier should they be in a position to do so).

21 At the hearing, Mr Zwier, who appeared for the administrators, explained that the words in parenthesis were a reference to the *Daiseytek* orders. Further, the "9 to 12" month period was revised to 12 months on advice from a corporate advisory firm. I was told that a 9 month period would extend the convening period to the end of 2024 and run into the Christmas shutdown and holiday period. As a result, the administrators were advised and considered it appropriate to seek a 12 month extension of the convening period.

22 Of the nine members of the Committee of Inspection, five members responded and indicated that they support the application and extension of the convening period of up to 12 months, including the members appointed on behalf of the State and the Commonwealth Department of Industry, Science and Resources.

23 One member of the Committee of Inspection, representing the Department of Employment and Workplace Relations, requested that the administrators' solicitors bring the following matters

to the Court's attention in this application, so that the Court can make an informed decision about whether to extend the convening period:

- (a) whether any employees are likely to be stood down under the *Fair Work Act 2009* (Cth) without pay during the extended administration;
- (b) if any employees are likely to have their employment terminated during the extended administration, the delay in access to the Fair Entitlements Guarantee scheme for those employees;
- (c) the impact on employees, and other creditors, of increased costs arising from an extended administration; and
- (d) the impact on priority employee creditors of the use of secured circulating assets during an extended administration, which would otherwise be available to pay employee entitlements in liquidation.

APPLICABLE PRINCIPLES

24 Applications to extend the convening period for the second meeting of creditors have become commonplace and the circumstances in which the Court will extend the convening period are well established.

25 The considerations affecting the exercise of the discretion whether to extend the convening period were summarised in *Silvia, in the matter of Austcorp Group Limited (Administrators Appointed)* [2009] FCA 636 at [18] (Lindgren J). The Court must balance the expectation that an administration will be undertaken in a relatively speedy and summary manner with the need to ensure that the administration is not concluded without consideration of sensible and constructive options that may provide better returns for creditors and any return to shareholders, or to enable the company to return to trading in the interests of creditors and shareholders: *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10] (Barrett J); *Farnsworth v About Life Pty Ltd (Administrator Appointed), in the matter of About Life Pty Limited* [2019] FCA 11 at [4] (Thawley J).

26 The categories of cases in which an extension has been granted were summarised by Thawley J in *About Life* at [6], where his Honour endorsed the comments of Austin J in *Re Riviera Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed)* (2009) 72 ACSR 352; [2009] NSWSC 585 at [13]. The categories (omitting the citations) include cases that involved:

- (a) businesses of a significant size and scope;
- (b) substantial offshore activities;
- (c) large numbers of employees with complex entitlements;
- (d) complex corporate group structures and intercompany loans;
- (e) complex transactions entered into by the company;
- (f) complex prospects of recovery proceedings;
- (g) lack of access to corporate records;
- (h) the time needed to execute an orderly process of disposal of assets;
- (i) the time needed for thorough assessment of a proposal for a deed of company arrangement;
- (j) where the extension will allow sale of the business as a going concern; and
- (k) more generally, that additional time is likely to enhance the return for unsecured creditors.

27 In *Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited* (2018) 265 CLR 480; [2018] HCA 38 at [73], Nettle and Gordon JJ (in dissent, but not relevant in this respect) considered a number of authorities, including *Re Riviera* and *Diamond Press*, and concluded:

... Generally speaking, courts have been disposed to grant substantial extensions in cases where the administration has been complicated by, for example, the size and scope of the business, substantial offshore activities, large numbers of employees with complex entitlements, complex corporate structures and intercompany loans, and complex recovery proceedings, and, more generally, where the additional time is likely to enhance the return to unsecured creditors. Provided the evidentiary case for extension has been properly prepared, there has been no evidence of material prejudice to those affected by the moratorium imposed by the administration, and the administrator's estimate of time has had a reasonable basis, the courts have tended to grant extensions for the periods sought by administrators ...

28 The opinion of the administrators as to the need for an extension will be given weight in an application of this kind: *Strawbridge, in the matter of Virgin Australia Holdings Pty Ltd (administrators appointed) (No 2)* (2020) 144 ACSR 347; [2020] FCA 717 at [68] (Middleton J).

29 Similarly, the views of a committee of creditors is relevant to the question of an extension, but they are not a determinate consideration in matters of this nature: *In the matter of Lift Capital Partners Pty Ltd (administrators appointed)* [2008] NSWSC 446 at [34] (Austin J) citing *Re*

Pan Pharmaceuticals Ltd (admins appointed) (2003) 46 ACSR 77; [2003] FCA 598 at [43] (Lindgren J). It will also be relevant to consider the impact of the extension sought on creditors and interested parties, including employees.

30 As O’Bryan J observed in *Rathner, in the matter of Citius Property Pty Ltd (Administrator Appointed)* [2023] FCA 26 at [38], lengthy extensions to the convening period have been granted in a number of cases. For example, in *Citius*, O’Bryan J granted a 12 month extension. In *Mentha, in the matter of Arrium Ltd (administrators appointed)* (2016) 113 ACSR 302; [2016] FCA 487, Davies J granted a nine-month extension. In *Algeri, in the matter of Colorado Group Ltd (administrators appointed) (receivers and managers appointed)* [2011] VSC 260, Judd J extended the convening period by nine months. In the administration of Rivercity Motorway Pty Ltd, Logan J granted an initial extension for 21 months to allow the receivers to engage in a process that would facilitate the sale of a tunnel business operated by the company: *Owen, in the matter of Rivercity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) v Madden* [2011] FCA 295. His Honour subsequently granted a further extension of 12 months: *Owen, in the matter of RiverCity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) v Madden(No 4)* (2012) 92 ACSR 255; [2012] FCA 1491.

CONSIDERATION

31 The purpose of the power to grant an extension of the convening period is to enable the Court to allow further time to advance the purposes of the administration where it is appropriate to do so. While extensions should generally be brief, substantial extensions may be appropriate in complex cases. This application is unique, by reason of the length of and purpose for which the extension is sought. The extension is sought to allow the administrators to continue to trade to stabilise the operations of OneSteel for the purpose of considering a sale of OneSteel’s business as a going concern or a recapitalisation through execution of a deed of company arrangement. For the reasons that follow, I am satisfied that granting the extension sought by the administrators is an appropriate exercise of the power afforded under s 439A(6) and that it is consistent with the object of Part 5.3A, as expressed in s 435A of the Act.

32 OneSteel is a significant entity with complex operations whose stakeholders include employees, contractors, local and international creditors and customers, in addition to the State and Commonwealth Governments. Its importance to the community of and surrounding Whyalla cannot be overstated.

33 OneSteel's corporate affairs are intermingled with entities associated with the GFG Alliance. It will take the administrators some time to investigate the extent to which the affairs of the entities are interrelated and whether there are any related party transactions that may be liable to be set aside.

34 The administrators' investigations and the conduct of the administration have been hampered by a lack of access to corporate records.

35 Since taking control of OneSteel, the administrators have identified that OneSteel has sustained a long period of underinvestment, inadequate or no maintenance, poor health and safety practices, has insufficient spare parts and inefficiencies operationally and financially. Furthermore, the administrators are not currently satisfied that OneSteel is compliant with all occupational, health and safety requirements, which they are taking steps to rectify.

36 The administrators consider that it is necessary to stabilise the business, improve workplace health and safety and for OneSteel continue to trade to increase the potential for the sale of the business as a going concern or a recapitalisation through execution of a deed of company arrangement. The administrators estimate that it may take up to six months to stabilise the business before a sale can proceed. The administrators say they will need this time to obtain or prepare capital expenditure plans, feasibility studies and financial modelling to inform their assessment as to the opportunities for the OneSteel business and the Whyalla steelworks, including the investment required, its commercial viability and the funding options.

37 Furthermore, the administrators consider that a sale or recapitalisation process will take a further four months to six months, taking into account the holiday period in December–January. As a result, the administrators estimate that a period of 12 months may be required to stabilise the business in order to restructure, recapitalise or sell OneSteel.

38 No creditor has expressed opposition to the application and ASIC did not seek to intervene: contrast *Arrium* at [2] and [31]. I have taken into account the views of the Committee of Inspection, most of whom supported the application. In relation to the matters raised by the Department of Employment and Workplace Relations, Mr Zwier explained that the administrators are currently continuing with the operations of OneSteel. As a corollary of that, a decision as to whether any employees may be stood down during the extended administration has not been made. The ongoing operations of OneSteel will inevitably increase the costs of

the administration, however, I was told there is very little by way of circulating assets, on which the employees are priority creditors.

39 An extension of the administration may preserve existing relationships with employees, creditors and other stakeholders, which would be less likely in a liquidation. If the extension is not allowed, the winding up of OneSteel would seem inevitable. The administrators believe, based on their preliminary analysis, that the realisable value of the assets will not be anywhere near the most current book value of the assets. Overall, the administrators consider the extension of the convening period, to enable OneSteel to continue to trade and to stabilise the operations of the company for the purpose of considering a sale of the business as a going concern or a recapitalisation through a deed of company arrangement, to be in the interests of creditors as a whole.

40 The period of extension is lengthy, but is not without precedent (see paragraph 30 above). To counterbalance any concerns regarding the lengthy extension, the administrators say they would convene the second meeting as soon as possible. The administrators say, and I accept, that they are incentivised to convene the second meeting as soon as possible due to the limited funding available and because the OneSteel operations are currently running at a loss.

41 Having regard to all of the circumstances, I consider that it is appropriate and consistent with the object of Part 5.3A to make the order sought by the administrators extending the convening period for the second meeting of creditors until 20 March 2026. I will also make the *Daiseytek* order and I will grant liberty to any person who can demonstrate sufficient interest to discharge or modify the orders on the giving of three business days' written notice to the administrators and the Court.

I certify that the preceding forty-one (41) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Neskovicin.

Associate: 

Dated: 18 March 2025