

Form 3 Interlocutory process

(rule 2.2, 15A.4, 15A.8 and 15A.9)

IN THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION: CORPORATIONS LIST
REGISTRY: SYDNEY

No. 2019/00155343

**IN THE MATTER OF DSHE HOLDINGS LTD (RECEIVERS & MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 166 237 841 & OTHERS**

Jason Preston in his capacity as liquidator of DSHE Holdings Ltd (receivers & managers appointed) (in liquidation) ACN 166 237 841 (and others named in the schedule)

First Plaintiff

Kathy Sozou in her capacity as deed administrator of Black Range Metals (Resources) Pty Ltd (subject to deed of company arrangement) ACN 076 987 329

Fourth Plaintiff / First Applicant

A. DETAILS OF APPLICATION

This application is made under sections 445D of the *Corporations Act 2001* (Cth) (**Corporations Act**), sections 60-10(1)(c), 70-35 and 90-15 of the *Insolvency Practice Schedule (Corporations) (IPS)* comprising Schedule 2 to the Corporations Act and rule 9.2 of the *Supreme Court (Corporations) Rules 1999* (NSW).

Defined terms in this interlocutory process have the same meaning as in the affidavit of Katherine Sozou sworn 28 October 2020 (**Sozou Affidavit**).

On the facts stated in the Sozou Affidavit and any further affidavit filed by the Fourth Plaintiff, the Fourth Plaintiff applies for the following relief:

- 1 An order pursuant to section 90-15 of the IPS that the Fourth Plaintiff would be justified in making the ASIC Payment in respect of the Missing Creditors.

Filed on behalf of: Fourth Plaintiff
Norton Rose Fulbright Australia
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- 2 An order pursuant to section 90-15 of the IPS that section 509 of the Corporations Act is to operate such that it applies if an end of administration return for Resources is lodged by the Fourth Plaintiff with ASIC in respect of the deed administration period of Resources.
- 3 In the alternative to paragraph 2, an order pursuant to section 90-15 of the IPS that section 601AA(1) of the Corporations Act is to operate such that an application to deregister Resources may be lodged with ASIC by the Fourth Plaintiff in her capacity as deed administrator of Resources.
- 4 In the alternative to paragraphs 2 and 3, an order pursuant to section 445D(1)(g) of the Corporations Act that the Resources Deed be terminated, with effect from 45 days of this order being made.
- 5 In the alternative to paragraphs 2 and 3 and subject to paragraph 4, an order pursuant to section 90-15 of the IPS that the Fourth Defendant would be justified in dispensing with the requirements under sections 70-30 and 70-40 of the *Insolvency Practice Rules (Corporations)* 2016 and sections 497 and 533 of the Corporations Act **(Reporting Requirements)**.
- 6 In the alternative to paragraph 5, an order pursuant to section 90-15 of the IPS that each of the Reporting Requirements be dispensed with.
- 7 An order pursuant to sections 60-10(1)(c) and/or 90-15 of the IPS that the Former Administrators and Fourth Plaintiff's remuneration for the period 13 May 2010 to 18 September 2020 inclusive be determined in the amount of \$333,892 (excl. GST) for their performance of the role of deed administrators of Resources.
- 8 An order pursuant to sections 60-10(1)(c) and/or 90-15 of the IPS that the Fourth Plaintiff's future remuneration as deed administrator of Resources for the period 19 September 2020 to the termination/finalisation of the Resources Deed inclusive be determined in the amount of \$20,000 (excl. GST) for their future performance of the role of deed administrator of Resources.
- 9 An order pursuant to sections 60-10(1)(c) and/or 90-15 of the IPS that the Fourth Plaintiff's future remuneration as liquidator of Resources for the period from the termination of Resources Deed to the finalisation of the liquidation of Resources inclusive be determined in the amount of \$18,000 (excl. GST) for their future performance of the role of liquidator of Resources.

- 10 An order that the Fourth Plaintiff's remuneration, costs and expenses of making this application be paid out of the assets of Resources.
- 11 Such further or other declarations and order as the Court considers appropriate.

Date:

Jonathon Turner
Solicitor for the Applicant

This application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square, 184 Phillip Street, Sydney, NSW at _____ am/pm on _____.

B. NOTICE TO RESPONDENT(S) (IF ANY)

TO: Not applicable

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Note.

Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This interlocutory process is filed by Norton Rose Fulbright Australia for the Applicant.

D. SERVICE

The applicant's address for service is c/- Norton Rose Fulbright Australia, 60 Martin Place, Sydney NSW 2000.

It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below:

Australian Securities and Investments Commission

DRAFT

Schedule

IN THE SUPREME COURT OF NEW SOUTH WALES
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REGISTRY: SYDNEY

No. 2019/00155343

**IN THE MATTER OF DSHE HOLDINGS LTD (RECEIVERS & MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 166 237 841 & OTHERS**

First Plaintiff:	Jason Preston in his capacity as liquidator of DSHE Holdings Ltd (receivers & managers appointed) (in liquidation) & other companies identified in Schedule A
Second Plaintiff:	Anthony McGrath in his capacity as liquidator of Allco Finance Group Ltd (in liquidation) & other companies identified in Schedule B
Third Plaintiff	Barry Frederick Kogan in his capacity as deed administrator of Parkview Estate Pty Ltd (subject to a deed of company administration)
Fourth Plaintiff / Applicant	Kathy Sozou in her capacity as deed administrator of Black Range Metals (Resources) Pty Ltd (subject to deed of company arrangement) ACN 076 987 329
Second Applicant	Black Range Metals (Resources) Pty Ltd (subject to deed of company arrangement) ACN 076 987 329

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**IN THE MATTER OF DSHE HOLDINGS LTD (RECEIVERS & MANAGERS APPOINTED)
 (IN LIQUIDATION) ACN 166 237 841 & OTHERS**

Schedule A

No	Company	Abbreviation
1.	DSHE Holdings Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 166 237 841	DSHE Holdings
2.	DSSH Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 160 162 925	DSSH
3.	DSHG Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 001 456 720	DSHG
4.	DSG Wholesale Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 000 445 956	DSG Wholesale
5.	DSG Electronics Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 000 908 716	DSG Electronics
6.	INTT Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 002 511 944	INTT
7.	DSG Franchising Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 054 295 733	DSG Franchising
8.	DMSG Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ACN 001 585 735	DMSG
9.	Dick Smith Electronics Staff Superannuation Fund Pty Ltd (In Liquidation) ACN 059 802 470	DS Super Fund
10.	ACN 136 849 584 Pty Ltd (In Liquidation) (formerly known as Mac 1 Pty Ltd) ACN 136 849 584	Mac 1

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Schedule B

No	Company	Abbreviation
1.	ACME Funds Management Pty Limited (In Liquidation) ACN 095 162 879	ACME
2.	Allco Finance (Australia) Pty Limited (In Liquidation) ACN 003 315 446	Allco Finance
3.	Allco Finance Group Limited (In Liquidation) ACN 077 721 129	Allco Finance Group