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Liquidators' interim report Ripetime Limited (In Liquidation) (Company or Ripetime)

Company number: 3681221

22 December 2020

1. Introduction

Conor McElhinney and Kare Johnstone of McGrathNicol were appointed jointly and severally as Administrators of the Company on 21 July 2020 by a resolution of the Company's directors, pursuant to Part 15A of the Companies Act 1993 (the **Act**).

At the watershed meeting held on 25 August 2020, the creditors resolved that the Company be placed into liquidation. Conor McElhinney and Kare Johnstone (**Liquidators**) were appointed joint and several liquidators in accordance with section 241(2)(d) of the Act.

Please note that this is an interim report provided to creditors and shareholders to update parties on the progress of the liquidation. The next statutory report is due to be filed 25 March 2021.

As set out in our first liquidators' report to creditors dated 1 September 2020, irreconcilable differences between the founding directors (Jonathan Lowy and Grant Sargent; the **Founders**) and funding directors (Ross Shannon and Jonathan Shannon; the **Funders**), and failed attempts to settle those differences, resulted in Ripetime being unable to secure ongoing funding needed to complete the development and commercialisation of its technology. Ripetime became gridlocked and could no longer operate. A high-level timeline of events leading to the appointment of administrators to Ripetime is set out at Appendix 1.

The purpose of this report is to update creditors and shareholders on the progress of the liquidation and seek expressions of interest from creditors and shareholders to fund actions.

2. Source and application of funds

2.1. Since inception

The Liquidators analysed Ripetime's bank statements and financial records to determine the source and application of funds since Ripetime's substantive investment (1 April 2015), to consider whether any funds had been misapplied. As shown in the chart on the following page, \$8.8m was raised from shareholders (71% in equity and loans), IRD R&D grants (15%) and Callaghan Innovation (**Callaghan**) grants (14%).

Approximately 90% of the funds raised were spent developing the sensor technology, primarily with the Founders via their entities Innovators Limited and Salvo Limited (\$5.4m or 61%), on employees (\$1.2m or 13%) and on trading costs (\$1.3m or 15%) such as with universities and consulting firms for experiments, IT costs, travel to attend trade expos etc.

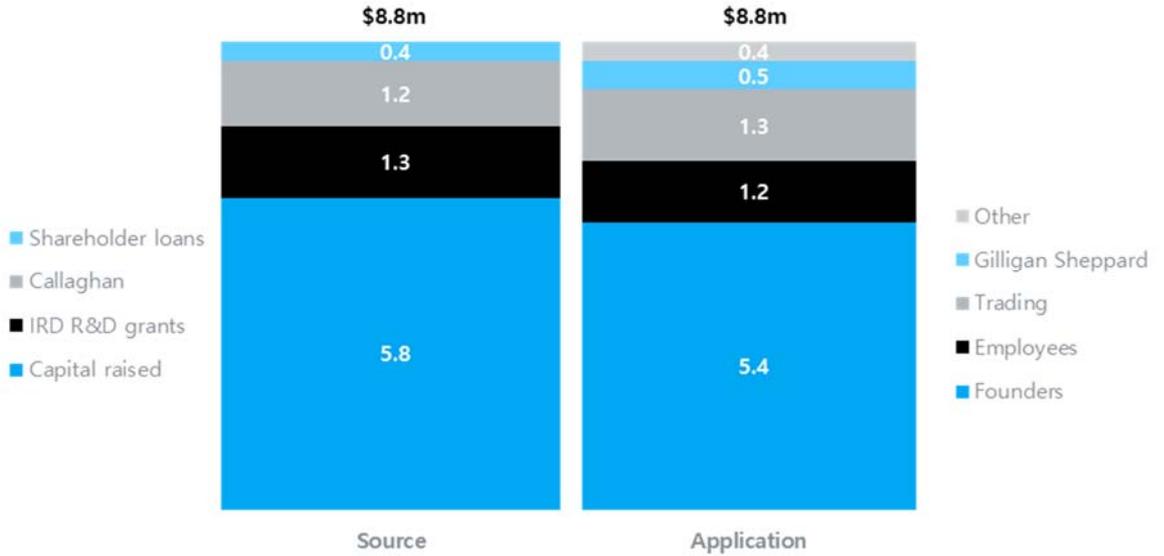
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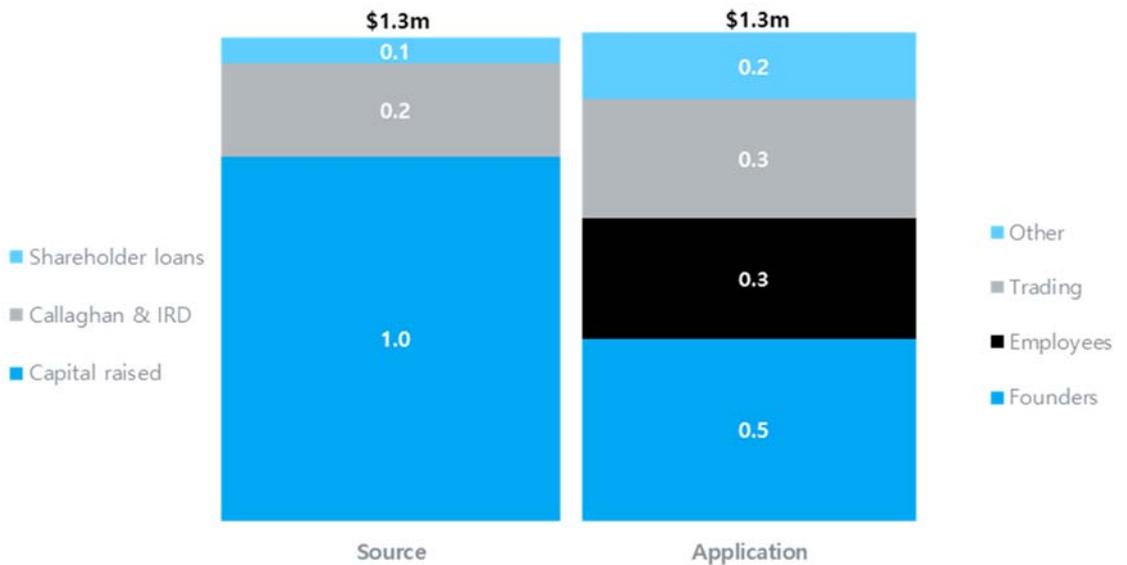
The balance was spent with Gilligan Sheppard (\$0.5m or 6%) and on other items (\$0.4m or 4%) such as legal costs, interest, accounting fees, bank fees etc.



During our high-level analysis, we did not identify any material unexplained payments. However, this high-level analysis does not (and cannot) consider whether the relevant parties provided value for monies received.

2.2. Since the final capital raise

The Liquidators analysed in more detail the source and application of funds that arose from the last c\$1.0m of capital raised in November/December 2018 and April/May 2019 (\$1.3m including grants) to the date of administration, including seeking evidence of costs incurred (such as third-party invoices) to substantiate payments. The analysis below includes November 2018, as some investors provided their capital early.



As shown in the chart above, \$1.0m (75%) was raised from shareholders, \$245,000 (19%) came from Callaghan grants and IRD R&D tax credits and \$67,000 (5%) was advanced to Ripetime by further shareholders' loans.



Of the funds raised, \$0.5m (37%) went to the Founders via their two entities and \$318,000 (25%) on New Zealand employees for the continued development of the sensor technology and management of Ripetime. Trading costs of \$311,000 (24%) included \$252,000 reimbursed to the Funders for costs incurred in operating Ripetime, as set out in the table below. This included travel, accommodation and conference costs in attending conferences in the first half of 2019, third-party costs incurred in designing a new Ripetime website and a CRM system and employee costs for the five Australian staff (including Jonathan Shannon) brought onboard in April 2019 to focus on sales and marketing.

Funders trading costs breakdown	
Spend	\$
Travel, accomodation & conferences	(61,505)
Website design	(44,368)
Employees	(146,380)
Total	(252,254)

The remaining trading costs of \$59,000 included expenses such as travel, IT and horticultural research costs. Other costs of \$174,000 (14%) included interest on shareholders' loans (\$88,000 paid to the original lenders, not the Funders), Gilligan Shepard (\$50,000) and legal costs (\$32,000).

3. Allegations of misappropriation of funds by directors

The Founders and Funders both allege that the other party misappropriated funds received from the final capital raise through unapproved expenditure in Ripetime.

3.1. Allegations against Funders

The Founders allege that the Funders withdrew funds from Ripetime and/or used funds for unapproved expenditure in two amounts: c\$97,000 on 21 May 2019 to repay expenses incurred including Australian staff wages, and c\$152,000 withdrawn on 22 May 2019 (ostensibly according to the Funders to protect the funds from misappropriation by the Founders), that was subsequently returned to Ripetime on 22 August 2019. The total of c\$249,000 (plus a further \$3,000) was spent by Ripetime as outlined at section 2.2 above.

The Liquidators have reviewed the expenses and supporting third party evidence provided by the Funders in relation to these expenses. The costs incurred appear to be genuine and for the benefit of Ripetime. The costs above were all incurred primarily up to July 2019, with some employee costs to October 2019.

However, c\$136,000 of the costs was not reimbursed to the Funders until January and February 2020. Whether the reimbursement may therefore be a voidable preference is considered at section 7.1 below.

The Founders also allege that payments should not have been made under the shareholders' agreement, which required various approvals for unbudgeted or related party transactions (the same is true in relation to funds withdrawn by the Founders at section 3.2 below). This does not change the fact that the costs were incurred (potentially, as with the costs of the Founders). Whether this is relevant depends on the composition of the Board, which is the subject to litigation between the parties. Should any creditor or shareholder wish to fund the Liquidators to investigate this issue further, please contact the Liquidators.

3.2. Allegations against Founders

The Funders allege that the Founders withdrew funds from Ripetime and/or used funds for unapproved expenditure in a series of payments totalling c\$50,000 in May/June 2019, following the Founders' appointment to the Board. The Founders note that, as Directors of Ripetime, they had the authority to authorise the works to which the payments related.



These payments may be valid if the Founders' appointment to the Board was valid, and/or if the works were undertaken appropriately and benefited Ripetime. As these broader matters are the subject of legal proceedings between the parties, the Liquidators have not considered the validity of these withdrawals by the Founders further. Should any creditor or shareholder wish to fund the Liquidators to investigate these transactions further, please contact the Liquidators.

4. Establishment of competitor: Post Harvest

As a result of the irreconcilable dispute and inability to access Ripetime's assets and intellectual property held by the Founders, the largest shareholders (primarily the Funders) established a competing business in Australia, Post Harvest Learning Pty Limited (**Post Harvest**; formerly Ripetime Pty Limited), to develop a new environmental sensor to address fresh produce supply chain wastage. Our review of the source and application of Ripetime's funds has not identified Ripetime funds being used in the development of Post Harvest.

The Liquidators engaged specialist patent and intellectual property lawyers from AJ Park to review Post Harvest's activities and advise whether they have infringed upon, or misappropriated, Ripetime's intellectual property.

4.1. Australian provisional patent application AU2020900352A0

Post Harvest applied for a patent (AU2020900352A0) on 10 February 2020 for "*a gas monitor and method of detecting gas, including a ripening monitor*" (the **AU Patent**). Post Harvest advised that the patent application relates to a technology that is different from, and does not infringe upon, the US patents held by Ripetime.

The Liquidators engaged AJ Park, intellectual property and patent specialists, to undertake an independent review of the AU Patent, its inventorship, the circumstances regarding the creation of the technology, and whether the AU Patent infringes on Ripetime's US patents (irrespective of the geographic boundaries of each patent), or made use of Ripetime confidential information.

AJ Park concluded that the AU Patent and Post Harvest's technology is different from, and does not infringe upon, Ripetime's US patents and intellectual property, and that it does not appear to have been created using Ripetime confidential information. AJ Park also advises that the accidental registering of the AU Patent application in the name of Ripetime Limited, rather than Ripetime Pty Limited (i.e. Post Harvest) by Post Harvest's lawyers is not determinative of ownership. Consequently, AJ Park concludes that Ripetime is not entitled to the AU Patent.

4.2. Ripetime University

Ripetime had identified that, even if it could develop a functioning sensor that worked in client environments, there is currently no practice of using this technology to manage storage/load-out decisions in fresh produce supply chains. Ripetime therefore came up with the concept of a supply-chain education tool, Ripetime University, to raise awareness and generate leads. It was envisaged that this could generate \$100,000 of income annually. However, no work was done to develop this concept further. The extent of Ripetime's investment in Ripetime University appears to be limited to a holding page on the Ripetime website and a plan of what could be done.

This concept was developed by Post Harvest into a series of online courses that are available on the Post Harvest website. These courses are free and presumably may assist a purchaser of the Ripetime assets by beginning to raise awareness about what this potential technology may deliver.

AJ Park has concluded that Post Harvest's development of the education concept is not a breach of Ripetime's intellectual property.

4.3. Marketing materials

Post Harvest launched its website predominantly in August 2020. This website contained information taken directly from the Ripetime website, likely breaching Ripetime's copyright, and included blogs



that referenced Ripetime rather than Post Harvest. Post Harvest also applied for a Good Design award and incorrectly referenced Ripetime and used the Ripetime logo.

The Liquidators' solicitors wrote to Post Harvest requesting that duplicated material and references to Ripetime be removed from the Post Harvest website. This was actioned by Post Harvest.

AJ Park has advised that this copying of Ripetime marketing materials is likely a breach of Ripetime's copyright, but notes that the breach was remedied by removing the relevant content. AJ Park advises that this is the normal remedy for such a breach, which existed for approximately two months. Should any creditor or shareholder therefore wish to consider funding further investigations, quantification of loss, and legal costs in an attempt to quantify and then recover damages (if any) from Post Harvest, please contact the Liquidators.

4.4. Directors' duties

A further factor to consider is the breach of the Funders' duties as directors of Ripetime under section 131 and section 145 of the Act in establishing Post Harvest in competition with Ripetime.

The Funders argue that they had no choice but to establish a new entity, as Ripetime could not trade due to the irreconcilable dispute between the Founders and Funders. However, at the point that the Funders "gave up" on Ripetime and decided to operate as Post Harvest, they should have declared their conflict of interest and resigned from the Board of Ripetime.

The impact on Ripetime itself, or any loss incurred, however is not easily quantifiable, as neither entity (Ripetime nor Post Harvest) has sales or a commercially proven product. Post Harvest ostensibly only began competing with Ripetime publicly around July/August 2020 upon the launch of its website and application of the Good Design award.

Which party (the Funders or Founders) is to blame for the failure of Ripetime (or whether both parties bear responsibility), and what loss was suffered by Ripetime creditors (based on valid claims and the cause of those claims) and Ripetime shareholders (based on a theoretical value of Ripetime), would likely need to be determined by the Court. Should any creditor or shareholder wish to fund quantification of loss and legal costs in an attempt to quantify any potential loss and then recover damages (if any), please contact the Liquidators.

5. Actions of Salvo

5.1. Assets withheld by Salvo

As set out in our first statutory report, certain Ripetime assets were withheld from Ripetime by the Founders via their entity Salvo Limited (**Salvo**), a New Zealand company 100% owned by Jonathan Lowy. Salvo claimed a lien over these assets in relation to unpaid debts.

The Founders' entities, initially Innovators Limited and then Salvo, were contracted to undertake the bulk of R&D in developing the Ripetime sensor. Ripetime employees also contributed to developing the technology and supporting infrastructure, working under guidance from the Founders and from Salvo's premises, on occasion using Salvo's computers. Ripetime did not have its own premises.

As noted in section 2.1, over three quarters of the funds raised over the life of Ripetime were spent with the Founders and Ripetime employees. The Founders therefore had control over the bulk of Ripetime's assets, including the designs/schematics for the sensors, supply chain knowledge (including who holds tooling for the sensors), research findings/results, an "algorithm" developed by a Ripetime employee but held on a Salvo computer, plant and equipment, and all but six of the sensors themselves.

The Ripetime Board was aware of the conflict of interest that arose between the Founders' entities and Ripetime. However, the various Boards of Ripetime failed over time to manage this conflict adequately, leading to the situation where Salvo could ransom Ripetime for access to its own assets when the dispute between the Founders and Funders arose.



The Liquidators also incurred considerable time and cost engaging with Salvo to recover these assets, which have since been released to the Liquidators and are included in the sale process.

Whether the Founders' actions in withholding assets from Ripetime constitute a breach of section 131 of the Act, who was impacted, and what loss was suffered, would need to be further investigated. Should any creditor or shareholder wish to consider funding further investigations, quantification of loss, and legal costs in an attempt to quantify and then recover damages (if any) from the Founders, please contact the Liquidators

5.2. Salvo engagement with prospective Ripetime customer

Salvo also undertook work on its own account in relation to a prospective client of Ripetime, which may be a breach of sections 131 and 145 of the Act.

The Founders contend that the work undertaken by Salvo was different to what Ripetime did, as initial experiments conducted using Ripetime sensors (and paid for by Ripetime) concluded that Ripetime's sensor would not meet this client's needs.

The Founders also advise that they believe they acted in the best interests of Ripetime to preserve the customer relationship that Ripetime could not maintain, as Ripetime did not have the funds to complete the work. As with the establishment of Post Harvest by the Funders, the Founders argue they had no choice but to undertake the work for this customer via their entity Salvo, given Ripetime's lack of funds.

Whether this action may constitute a breach of the Act, and who is responsible for the inability of Ripetime to continue trading (the Founders, Funders or both parties), would likely need to be determined by the Court. Should any creditor or shareholder wish to fund further investigations, quantification of loss, and legal costs in an attempt to quantify and then recover damages (if any) in relation to the matters set out above, please contact the Liquidators.

6. Other potential breaches of directors' duties

The Liquidators have also submitted a report to the Registrar in accordance with section 258A of the Act (repealed 1 September 2020) and the replacement section 60 of the Insolvency Practitioners Regulation Act 2019, setting out other potential breaches of the Act that do not necessarily give rise to compensatory or liquidator actions.

7. Date of insolvency

As previously noted, the cause of Ripetime's insolvency was the inability to raise funds to continue development of this start-up business, due to the dispute between the Founders and Funders.

Both parties argue that the other did not engage in good faith negotiations to resolve the disputes, and that neither had an intention to settle the matters. This appears at odds with the cost and time expended on mediation and litigation and the offers made by both parties. The Funders advise that, had the dispute been resolved, funds would have been able to be raised in Ripetime and development continued.

The Founders argue that Ripetime was cash flow insolvent in July 2019 or earlier, on the basis it had not paid invoices owing to creditors (specifically Salvo) as they fell due. The Founders considered it may be appropriate for Ripetime to be placed into voluntary administration at this time, also to investigate the withdrawal of funds by the Funders. However, a number of the invoices purportedly owing by Ripetime were disputed prior to our appointment. Accordingly, the Funders opposed the voluntary administration, and both parties entered into negotiations to attempt to resolve the disputes.

Having considered section 4 of the Act and the cash flow and balance sheet solvency tests, the creditors outstanding and taking into account the Company's contingent liabilities (such as Callaghan's claim), the Liquidators' initial assessment of the date of insolvency is the date at which it



became apparent that a resolution between the parties was not possible. Based on the Court proceedings and communications provided to us, this occurred around the end of 2019/early 2020. This may also be evidenced by the date that the Funders “gave up” on Ripetime and proceeded with Post Harvest. This date also appears to be around the end of 2019/early 2020, noting that the AU Patent was applied for on 10 February 2020.

7.1. Voidable transactions

As noted in section 2.2, the Liquidators reviewed all payments made by Ripetime since the last capital raise. The only payment identified that may be voidable relates to the c\$136,000 reimbursement to the Funders in January/February 2020 for costs incurred during 2019 (section 3.1).

However, these payments were made outside of the six-month specified period and consequently would only be voidable if made at a time when Ripetime was insolvent. On the preponderance of information provided, we consider that Ripetime was likely insolvent at the time the payment was made and that therefore the payments are voidable.

The Funders argue that it was their intention to operate via Ripetime, had the dispute with the Founders been resolved, and that these negotiations continued until the end of March 2020. Nevertheless, the Funders agreed to settle this claim with the Liquidators.

8. Creditor claims

The Liquidators have reviewed all creditor claims submitted. A number of claims are unsupported or disputed, either in whole or in part. In the event that funds become available to pay a dividend to unsecured creditors, the Liquidators will issue notices to disputed creditors under section 304 of the Act. It is not practicable to incur further costs in relation to creditor claims by issuing notices now, without the certainty of a dividend being payable.

9. Sale of Ripetime’s assets

The Liquidators are conducting a sale process of Ripetime’s assets. This process was delayed as the Liquidators sought legal advice regarding whether the AU Patent belonged to Ripetime and should be included in the sale process, and also sought recovery of Ripetime’s assets held by Salvo under a purported lien.

The Liquidators contacted all shareholders of Ripetime, targeted third parties that we considered may be interested (including international parties) and advertised the assets for sale in the NZ Herald and on TradeMe, generating a number of interested parties.

Those parties who enter into confidentiality agreements will be provided with information regarding Ripetime’s assets and indicative bids will be sought on the basis of this information.

10. Prospect of a dividend

Whether there will be any distribution to creditors in the future will depend on the outcome of the sale process and the success of any potential legal actions funded by creditors/shareholders (if any).

11. Action requested from creditors and/or shareholders

Should any creditor or shareholder wish to fund further investigations, quantification of loss, and legal costs in relation to bringing any actions against the directors identified in this report, please contact the Liquidators by writing to Helen Gair of McGrathNicol at hgair@mcgrathnicol.co.nz, or the address listed on page 1, by 31 January 2021.

12. Disclaimer

This report has been prepared based on the information known to the Liquidators as at the date of this report. We reserve the right (but will be under no obligation) to review this report and, if we consider it necessary, to revise the report in the light of any information existing at the date of this



report that becomes known to us after that date. We have not independently verified the accuracy of information provided to us, nor have we conducted an audit in respect of the Company. We express no opinion on the reliability, accuracy, or completeness of information provided to us and upon which we have relied.

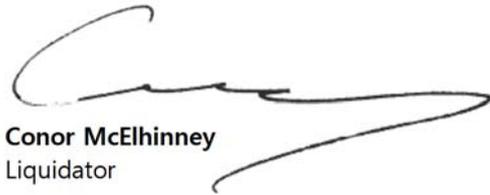
The Liquidators do not accept responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction, or use of this report.

13. Contact details

The Liquidators can be contacted at McGrathNicol, Level 17, AIG Building, 41 Shortland Street, Auckland (PO Box 106-733, Auckland 1143). Telephone and email enquiries should be directed to Helen Gair, direct dial +64 9 926 5111 and email hgair@mcgrathnicol.co.nz.

Our next statutory report will be sent to creditors and shareholders by 25 March 2021.

Dated: 22 December 2020



Conor McElhinney
Liquidator



Appendix 1

Timeline of key events leading to administration of Ripetime

Date	Event
1-Dec-18	Final capital raise commences to fund final attempt at calibrating sensors
Feb-19	Innovators ceases trading and R&D activities taken over by Salvo
Apr-19	Final \$0.5m capital raise funds received by Ripetime Australian team engaged to advance sales and marketing function
21-May-19	Founders appoint themselves to the Board
22-May-19	Funders withdraw \$152,000 from Ripetime, ostensibly to protect the funds from misappropriation by the Founders
Jul-19	Parties attempt to settle disputes, with assistance from Ripetime's company lawyer; primary cause of inability to settle appears to be disagreement on value
12-Jul-19	High Court interlocutory injunction against Founders issued
22-Aug-19	Funders return \$152,000 to Ripetime
Aug-19	Formal mediation between Founders and Funders; primary cause of inability to settle appears to be disagreement on restraint of trade terms
Nov-19	High Court proceedings with extensive affidavits from all parties
10-Feb-20	Provisional application for AU Patent
Mar-20	Further engagement between Founders and Funders to reach settlement unsuccessful
21-Jul-20	Ripetime placed into voluntary administration by a Board resolution
25-Aug-20	Ripetime placed into liquidation by a creditors' resolution at the watershed meeting
Aug-20	Post Harvest website launched, including content taken from Ripetime website
Sep-20	Liquidators' solicitors write to Post Harvest requesting removal of Ripetime copyright material from Post Harvest website