

IN THE SUPREME COURT OF WESTERN AUSTRALIA
HELD AT PERTH

COR 166 of 2024

IN THE MATTER OF CALIDUS RESOURCES LIMITED (SUBJECT TO DEED
OF COMPANY ARRANGEMENT) (ACN 006 640 553)

B E T W E E N

**HAYDEN LEIGH WHITE AND DANIEL HILLSTON WOODHOUSE IN
THEIR CAPACITY AS JOINT AND SEVERAL DEED ADMINISTRATORS
OF CALIDUS RESOURCES LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 006 640 553)**

Plaintiff

AND

WEST COAST GOLD PTY LTD
(ACN 680 364 354)

First Interested Party

OUTLINE OF SUBMISSIONS

Date of Document: 9 December 2024

Filed on behalf of: the Plaintiffs

Date of Filing: 9 December 2024

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A. OVERVIEW

1. The orders sought by the Plaintiffs are set out in the Originating Process dated 25 October 2024 (accepted for filing on 29 October 2024) (**Application**). The Application seeks the Court's leave to transfer all the shares issued in Calidus Resources Limited (subject to Deed of Company Arrangement) (ACN 006 640 553) (**Calidus Resources**) to the proponent of the Deed of Company Arrangement for Calidus Resources.

2. Based on the expert opinion evidence, the shares in Calidus Resources have nil residual value and accordingly the shareholders will suffer no prejudice if leave is granted.

FILED
2.
9 DEC 2024
Via eLodgment
**CENTRAL OFFICE
SUPREME COURT**

3. The Plaintiffs rely on:

- (a) the affidavit of Hayden Leigh White affirmed on 25 October 2024 and filed on 30 October 2024 (**First White Affidavit**);
- (b) Mr White's:
 - (i) second (**Second White Affidavit**) and third affidavits (**Third White Affidavit**) affirmed 2 December 2024; and
 - (ii) fourth affidavit affirmed 3 December 2024 (**Fourth White Affidavit**);
- (c) the affidavit of Christopher James Pattinson affirmed 2 December 2024 (**Pattinson Affidavit**);
- (d) the affidavit of Clara Elisabeth Hagan affirmed 2 December 2024 (**Hagan Affidavit**);
- (e) the affidavit of Robert Henry Masters affirmed 5 December 2024;
- (f) the affidavit of Lachlan Chapman to be affirmed on 10 December 2024; and
- (g) further affidavits that will be affirmed and filed ahead of the hearing providing an update on any further correspondence with shareholders and ASIC.

B. BACKGROUND

CALIDUS RESOURCES

4. Calidus Resources is:

- (a) an ASX listed gold exploration and development company with the code "CAI";¹
- (b) has 814,593,092 ordinary shares on issue;²
- (c) until recently held 100% of the issued shares in Keras Gold Australia Pty Ltd ACN 152 080 110 (**Keras Gold**), Millennium Minerals Pty

¹ First White Affidavit [11].

² First White Affidavit [76].

Ltd ACN 003 257 556 (**Millenium Minerals**) and Calidus Otways Pty Ltd ACN 640- 807 183 (**Calidus Otways**); ³ and

- (d) continues to hold 100% of the issued shares in Keras (Pilbara) Gold Pty Ltd (subject to Deed of Company Arrangement) ACN 169 795 037 (**Keras Pilbara**) and Calidus Blue Spec Pty Ltd (subject to Deed of Company Arrangement) ACN 643 467 501 (**Calidus Blue**) and 40% of the issued shares in Pirra Lithium Pty Ltd (**Pirra Lithium**).⁴

APPOINTMENT OF ADMINISTRATORS AND COMPETITIVE SALES PROCESS

5. On 28 June 2024, Hayden White and Daniel Woodhouse, pursuant to s 436A of the *Corporations Act 2001* (Cth) (**Corporations Act**), were appointed as joint and several administrators (**Administrators**) of Calidus Resources and its wholly owned subsidiaries Keras Pilbara, Calidus Blue, Keras Gold, Millenium Minerals and Calidus Otways (together the **Companies** and/or the **Calidus Group**).⁵
6. On the same date, Richard Tucker and John Bumbak of KordaMentha were jointly and severally appointed by Macquarie Bank Limited as Receivers and Managers (**Receivers**) of Calidus Resources, Keras Pilbara, and Calidus Blue.⁶
7. At the first meeting of creditors of each of the Companies on 10 July 2024, the chairperson informed those present of the Administrators' and Receivers' intention to conduct a sale process.⁷
8. On 26 July 2024, orders were made extending the convening period for the second meeting of creditors of each of the Companies until 28 January 2025 to allow additional time for the Receivers and Administrators to conduct an open and competitive sales process.⁸
9. The sales process commenced in early August 2024, with advertisements published in national media, and emails seeking EOIs sent to 78 selected parties on 5 August 2024. 25 parties subsequently executed confidentiality agreements and undertook due diligence. Ultimately, 5 parties submitted non-binding indicative offers to acquire or recapitalise the group of companies by

³ First White Affidavit [12].

⁴ First White Affidavit [13].

⁵ First White Affidavit [8], HLW-2.

⁶ First White Affidavit [9], HLW-2 to HLW-4.

⁷ First White Affidavit [32]-[33], HLW-19.

⁸ First White Affidavit [34]; *White (Administrator), Re Calidus Resources Ltd (Recs and Mgrs Apptd) (Admins Apptd)* [2024] FCA 827.

the initial deadline of 30 August 2024 and one party subsequently submitted a non-binding indicative offer for select assets of the group.⁹

10. One of the offers was submitted by entities related to West Coast Lending being West Coast Metals Pty Ltd, West Coast Lithium Pty Ltd and West Coast Gold Pty Ltd (ACN 680 364 354) (**Proponent** or **West Coast**)¹⁰ and included DOCA proposals for each Company (**West Coast DOCA Proposals**).
11. The Administrators recommended that creditors vote to approve entry into DOCAs reflecting the terms of the West Coast DOCA proposals¹¹ and noted (among other things) that:
 - (a) the West Coast DOCA Proposals constituted the only binding proposals that were sufficiently progressed, de-risked and capable of completion at the date of the Administrators' report to creditors¹² and at the date of the second meeting of the creditors of each of the Companies;¹³
 - (b) the return to unsecured creditors under the DOCAs would be greater than in a liquidation;
 - (c) the consequences of adjourning the second meeting of creditors would likely be catastrophic for the Group and result in the Receivers being instructed to "immediately" proceed with implementing a full care and maintenance of the Warrawoona Gold Project¹⁴; and
 - (d) based on the Administrators' investigations:¹⁵
 - (i) there did not appear to be any voidable transactions that would likely result in property being recovered for the benefit of creditors of the Companies; and

⁹ First White Affidavit [40]-[47], HLW-35 (Report to creditors dated 18 Sept 2024) (p 768).

¹⁰ First White Affidavit [40]-[47], HLW-25 to HLW-33.

¹¹ First White Affidavit [49], HLW-35 (Report to creditors dated 18 Sept 2024), s9 (p 819).

¹² First White Affidavit [49], HLW-35 (Report to creditors dated 18 Sept 2024), s5 (p 792-793).

¹³ First White Affidavit [54], HLW-37 (Minutes of second creditors' meeting held 27 September 2024) (p 920).

¹⁴ First White Affidavit [50], HLW-36 (Circular to creditors dated 25 September 2024).

¹⁵ First White Affidavit [49], HLW-35 (Report to creditors dated 18 Sept 2024), s6 (p 797-805).

- (ii) it was unlikely that there would be a claim for insolvent trading, or the quantum of any insolvent trading claim is likely to be negligible.
- 12. On 27 September 2024 the second meeting of the creditors of Calidus Resources was held pursuant to s 439A of the Act concurrently with the second meetings of the creditors of the each of the other entities in the Calidus Group.¹⁶
- 13. At the second meeting, resolutions in favour of executing the West Coast DOCAs and appointing the Administrators as the Deed Administrators passed unanimously for all Companies, except for Millenium Minerals in respect of which there was only one vote against the West Coast DOCA and the resolution still passed by a majority in number and value.¹⁷

EXECUTION AND TERMS OF DOCAS

- 14. The West Coast DOCAs were executed on 9 October 2024 and, upon execution of the DOCAs, the Administrators were appointed as the joint and several deed administrators of Calidus Resources and each of its wholly owned subsidiaries.¹⁸
- 15. On the same date:¹⁹
 - (a) the 'Initial Conditions Precedent' under each of the DOCAs were satisfied;
 - (b) the shares in Millenium Minerals, Calidus Otways and Keras Gold were transferred to the Proponent in exchange for the payment of a cash contribution and a reduction of the debt owed to the Senior Lender as follows:
 - (i) \$20,000 pursuant to a debt reduction deed executed by Calidus Otways and others;
 - (ii) \$1,000,000 pursuant to a debt reduction deed executed by Keras Gold and others; and

¹⁶ First White Affidavit [51].

¹⁷ First White Affidavit [52]-[53], HLW-37.

¹⁸ First White Affidavit [55], HLW-38 to HLW-43.

¹⁹ First White Affidavit [58].

- (iii) \$3,000,000 pursuant to a debt reduction deed executed by Millenium Minerals and others; and
 - (c) the DOCAs executed by Millenium Minerals, Calidus Otways and Keras Gold effectuated.
- 16. The remaining assets now held by Calidus Resources comprise its 100% shareholding in Keras Pilbara and Calidus Blue, its 40% shareholding in Pirra Lithium and minor residual assets.

FINAL CONDITIONS PRECEDENT

- 17. Effectuation of the DOCAs executed by Calidus Resources (**Calidus DOCA**), Keras Pilbara (**Keras Pilbara DOCA**) and Calidus Blue (**Calidus Blue DOCA**) remains subject to the satisfaction or waiver of the ‘Final Conditions Precedent’ set out in schedule 3 of those DOCAs²⁰ and the ‘toggle’ between either:²¹
 - (a) the ‘**Section 444GA Option**’ which involves:
 - (i) the transfer of all of the shares in Calidus Resources to the proponent of the Calidus DOCA (or its nominee/s) for nil consideration after obtaining court relief pursuant to section 444GA of the Act and ASIC relief from complying with the takeover provisions (**s 444GA Conditions**); and
 - (ii) execution and release of a forbearance agreement between Calidus Resources and West Coast Lending under which West Coast Lending agrees not to enforce the balance of the existing indebtedness owed by the Calidus Group to the West Coast Lending until the expiry of at least 6 months following effectuation of the Calidus DOCA.
 - (b) the ‘**Share Sale Option**’ which involves:
 - (i) the proponent of the Calidus DOCA:
 - (A) dating and completing share transfer forms previously executed by the Deed Administrators providing for the transfer of all of the shares in Keras Pilbara and Calidus

²⁰ First White Affidavit [61]; HLW-38 (Calidus DOCA), Schedule 3 (p 991); HLW-39 (Keras Pilbara DOCA) schedule 3 (p 1093); HLW-40 (Calidus Blue DOCA), schedule 3 (p 1199).

²¹ First White Affidavit [61]; HLW-38 (Calidus DOCA), cl 11 (p 959); HLW-39 (Keras Pilbara DOCA) cl 12 (p 1060); HLW-40 (Calidus Blue DOCA), cl 12 (p 1166).

Blue to the proponent or its nominee/s and returning those forms to the Deed Administrators; and

- (B) procuring the execution by all remaining parties, and release of, a debt reduction deed executed by Keras Pilbara and Calidus Blue which provides for the debt owed to West Coast Lending to be reduced by \$90,000,000; and

- (ii) the transfer of all of the shares in Keras Pilbara and Calidus Blue to the proponent of the Calidus DOCA or its nominee/s.

18. The Final Conditions Precedent in Schedule 3 include the completion of the transfer of Calidus Resources' 40% shareholding in Pirra Lithium to the Proponent or its nominee and execution of a debt reduction deed under which the Secured Lender agrees to release its security over the Pirra Lithium Project and reduce the debt owed by the Calidus Group by \$6 million.²²
19. The balance of the Final Conditions Precedent have been satisfied or waived,²³ with some exceptions in respect of steps that will only be taken once the Proponent completes, or waives the requirement to complete, the Pirra Lithium Transaction and either the 444GA Option or the Share Sale Option.
20. The relevant steps (and associated Final Conditions Precedent) that still need to be taken are:
 - (a) the Deed Administrators:
 - (i) releasing the executed Creditors Trust Deeds from escrow and thereby creating the Creditors Trusts (Schedule 3, item 2);
 - (ii) transferring the balance of the "Available Property" (as defined in the Calidus DOCA) into the relevant Trust Funds thereby capitalising the Creditors' Trusts (Schedule 3, item 9); and
 - (iii) transferring all of the Calidus Resources' employees to West Coast Gold Pty Ltd or its nominee, which term the Deed Administrators expect may be waived if the 444GA Option completes (Schedule 3, item 17); and
 - (b) the Proponent settling any final Adjustments payable by the Proponent (Schedule 3, item 15), noting that Adjustments were required to be paid

²² First White Affidavit [63(a)].

²³ First White Affidavit [64].

along with the Cash Contributions as Initial CPs such that these are likely to be minimal.

21. Under the Calidus DOCA, Keras Pilbara DOCA and Calidus Blue DOCA:
 - (a) the Final Conditions Precedent must be satisfied (or waived) by 20 December 2024 (which date may be further extended by the Deed Administrators upon written request from the Proponent);²⁴ and
 - (b) if the Final Conditions Precedent are not satisfied by that time, the relevant DOCA/s will immediately terminate and liquidators will be appointed to the relevant Company and the Company will be wound up.²⁵

C. POTENTIAL TERMINATION OF CALIDUS DOCA

22. If the s 444GA Conditions are not met, the Proponent has indicated that it will:²⁶
 - (a) complete the transfer of the Pirra Lithium Shares held by Calidus in exchange for the reduction in Senior Secured Debt;
 - (b) terminate the Calidus DOCA as the Final Conditions Precedent will not have been met; and
 - (c) proceed to effectuate the Keras Pilbara and Calidus Blue DOCAs by issuing notices waiving any relevant Final Conditions Precedent while also completing the Share Sale Option.
23. In such circumstances, Calidus would proceed into liquidation and would not hold any of the shares in Pirra Lithium, Keras Pilbara or Calidus Blue. Further, pursuant to cl 26.4 of the Calidus DOCA, if the DOCA is terminated, the Deed Administrators are to return any remaining portion of the cash contribution paid by the Proponent (after the payment of the costs and expenses of the Deed Administrators and liquidators).
24. If this occurs, Calidus Resources will have minimal assets available to distribute to creditors (let alone shareholders). Given the returns to creditors under the Calidus DOCA are to be satisfied by the capitalisation of the

²⁴ First White Affidavit [65]; HLW-54.

²⁵ First White Affidavit [66]; HLW-38 (Calidus DOCA), cl 26.1.5 (p 967); HLW-39 (Keras Pilbara DOCA) cl 27.1.5 (p 1069); HLW-40 (Calidus Blue DOCA), cl 27.1.5 (p 1175); HLW-54.

²⁶ First White Affidavit, HLW-54 (p 1667-1668).

creditors trust, if that does not occur then it is likely that unsecured creditors will receive nothing.

25. Such a course is open to the Proponent. While the Calidus DOCA, Keras Pilbara DOCA and the Calidus Blue DOCA all contain a “toggle” between the s 444GA Conditions and the Share Sale Option, the three DOCAs are separate and standalone. The effectuation of one the DOCAs is not dependent on the effectuation of the others. Accordingly, it would be open to the Proponent to pursue the Share Sale Option in relation to the Keras Pilbara and Calidus Blue DOCAs while terminating the Calidus DOCA for failure to satisfy the s 444GA Conditions.

D. CALIDUS RESOURCES SHARES HAVE NO RESIDUAL VALUE

26. The analysis of the residual value of the shares in Calidus Resources must have regard to the specific circumstances that will apply to Calidus Resources if the s 444GA orders are not made. The valuation must consider the effect of completion of the backup Share Sale Option and the Pirra Lithium Transaction and the likelihood that Calidus Resources will be liquidated (as has been indicated as being the outcome by the Proponent if s 444GA orders are not made). This approach has been adopted in several recent decisions - *In the Matter of Globaltech Corporation Pty Ltd (Subject to Deed of Company Arrangement) [No 3]* [2024] WASC 390 (see in particular [74]); *Re Smith (as joint and several administrators of Catalano Seafood Ltd) (subject to a deed of company arrangement) (administrators appointed)* [2024] WASC 99; *Anderson, in the matter of NT Port and Marine Pty Ltd (Subject to Deed of Company Arrangement) (No 3)* [2024] FCA 905.
27. Thus, the residual value of Calidus Resources’ equity should be assessed in a liquidation scenario assuming the completion of the Share Sale Option and Pirra Lithium Transaction.
28. The Deed Administrators have formed the view that “in those circumstances, the shares in Calidus Resources will not have any residual value.”²⁷
29. The Deed Administrators engaged Jeremy Bogue and Andrea de Cian (of Grant Thornton) to prepare an independent expert report in respect of the residual value of the equity in Calidus Resources. Mr Bogue and Ms de Cian have assessed the residual value of Calidus Resources’ equity on a liquidation basis assuming that the business operations and main assets of Calidus (being Keras Pilbara, Calidus Blue and Pirra Lithium) will have been divested to West

²⁷ First White Affidavit [75].

Coast Gold Pty Ltd or its nominee by way of the completion of the Pirra Lithium Transaction and Share Sale Option.²⁸

30. On that basis, the experts have assessed that there would be a deficiency of assets available to meet the claims against Calidus Resources of between A\$42.87 million (low) and A\$42.853 million (high), resulting in shareholders' residual equity of nil.²⁹

E. NOTICE GIVEN TO ASIC, SHAREHOLDERS AND CREDITORS

ASIC

31. On 31 October 2024, the Deed Administrators' made an application to ASIC for relief from the provisions of Section 606 of the Act (**ASIC Relief Application**).³⁰ On 1 November 2024, ASIC confirmed receipt of the ASIC Relief Application.³¹ ASIC has been provided with all the court documents relating to the Application.³²
32. The Deed Administrators and their lawyers, Hamilton Locke, have engaged in further communication with ASIC in relation to the ASIC Relief Application and ASIC has been served with the documents filed in these proceedings to date.³³ On 14 November 2024, the Explanatory Statement and Expert Report were provided to ASIC.³⁴
33. ASIC have indicated that in the event ASIC is minded give relief under s 606 of the Act:³⁵
- (a) ASIC will only provide an in-principle decision in advance of the final hearing; and
 - (b) relief will only be formalised once there is certainty that the relief is actually required.

²⁸ Third White Affidavit, HLW-100 (Independent Expert Report) (p 95-96).

²⁹ Third White Affidavit, HLW-100 (Independent Expert Report) (p 96).

³⁰ Pattinson Affidavit [3], CJP-1.

³¹ Hagan Affidavit, CEH-1 (p 9).

³² Hagan Affidavit.

³³ Hagan Affidavit [3]-[4], CEH-1, CEH-2.

³⁴ Pattinson affidavit [6].

³⁵ Hagan Affidavit, CEH-1 (p 4)

34. The Plaintiffs will inform the Court of any further correspondence or updates from ASIC.

SHAREHOLDERS AND CREDITORS

35. In accordance with the orders made by Hill J on 20 October 2024, the Deed Administrators took steps to give notice of the Application to shareholders.
36. On 31 October 2024, the Deed Administrators advertised proceeding COR 166 of 2024 by posting a notice on the website maintained by the Deed Administrators and by way of company announcement to the ASX.³⁶
37. On 1 November 2024, the Deed Administrators:
- (a) advertised this Proceeding by causing an advertisement to appear in:³⁷
 - (i) The Australian;
 - (ii) The Australian Financial Review; and
 - (iii) The West Australian; and
 - (b) caused notices of the Application to be sent to all shareholders and known creditors of Calidus Resources by either post or email (depending on whether they had elected to receive communications by email or not).³⁸
38. On 28 November 2024, being more than 14 days prior to 16 December 2024, the Deed Administrators:
- (a) advertised this proceeding by causing a notice to be posted on the Deed Administrators' firm's website and by announcement to the Australian Securities Exchange;³⁹ and
 - (b) sent a letter to all shareholders and known creditors of Calidus Resources by either post or email (depending on whether they had elected to receive communications by email or not).⁴⁰

³⁶ Second White Affidavit [8], HLW-60, HLW-61.

³⁷ Second White Affidavit [9], HLW-62 to HLW-64.

³⁸ Second White Affidavit [11], HLW-65 to HLW-67.

³⁹ Third White Affidavit [10], HLW-90, HLW-91.

⁴⁰ Third White Affidavit [13], HLW-95 to HLW-98.

39. The notice to shareholders and creditors sent on 28 November 2024 included a link to a website containing the expert report and explanatory statement.⁴¹ The explanatory statement assists the shareholders and creditors to understand the application being made and the basis on which it is asserted that the shares have no value. It provides a fair and appropriate explanation of the valuation and transaction so as to ensure interested persons can understand the basis on which the application is being made.
40. Pursuant to clause 14.4 of the Calidus constitution, the letters sent to shareholders were deemed to be delivered on 29 November 2024, which is more than 14 days prior to the final hearing date.⁴²
41. On 29 November 2024, the Deed Administrators also caused advertisements to be published in the Australian, the Australian Financial Review and the West Australian.⁴³

SHAREHOLDER RESPONSES

42. Any person or shareholder entitled to oppose the application who wished to be heard in this Proceeding was required to file an appearance by 2:00pm on 2 December 2024.
43. An appearance was filed by Mr Sheldon Coates on 2 December 2024. To date, no other appearances have been filed in opposition to the Application by any shareholders, creditors or other relevant persons within the meaning of s 444GA(2). On 4 December 2024, Mr Coates was served with hard copies of all the materials filed by the Deed Administrators in this proceeding.⁴⁴
44. The Deed Administrators have received a number of queries from shareholders.⁴⁵ Shareholders have expressed objection to their shares being transferred for nil value, as well as raising concerns that the value of their shares should be tested on the open market and also raising complaints or concerns regarding the conduct of Calidus Resources and its management in the lead up to the appointment of voluntary administrators.

⁴¹ Third White Affidavit, HLW-95 (notice to shareholders/creditors), HLW-100 (Independent Expert Report), HLW-101 (explanatory statement).

⁴² Second White Affidavit [14], HLW-89.

⁴³ Third White Affidavit [11], HLW-92 to HLW-94.

⁴⁴ Affidavit of Robert Masters affirmed 5 December 2024 and affidavit of Lachlan Chapman affirmed 9 December 2024.

⁴⁵ Second White Affidavit [12]-[32], HLW-68 to HLW-88; Fourth White Affidavit [9]-[14], HLW-104 to HLW-109.

45. The market has already tested the value of the assets of Calidus Resources. The Deed Administrators and Receivers ran a sales process. The DOCA's proposed by the Proponent were the best offer capable of implementation.⁴⁶ There is no basis to speculate that there would be a better offer available if the shares were marketed again. Further, the expert evidence is that there is no residual value.
46. The effect of the "toggle" and the Proponent's expressed intention to terminate the Calidus DOCA if s 444GA orders are not made and instead acquire all of Calidus Resources' interests in Keras Pilbara, Calidus Blue and Pirra Lithium means that in any liquidation of Calidus Resources there will be no assets of any meaningful value to satisfy creditors let alone ensure a surplus for shareholders.
47. Further, complaints regarding the conduct of Calidus Resources and its management are only relevant to the extent to which such complaints may give rise to recoveries that may increase the funds available to pay creditors and provide a surplus to shareholders. Here, the Deed Administrators have expressed the view that there is unlikely to be any recoveries arising from the conduct of Calidus Resources' management. Further, even if there were possible claims and likely recoveries, given the shortfall in assets to meet creditors (a shortfall of approximately \$42m), it is unlikely that creditors let alone shareholders would be better off.

F. RELEVANT PRINCIPLES TO BE APPLIED

48. A deed administrator may transfer the shares in a company either with the consent of the shareholders or with the leave of the Court: Act, s 444GA. The principles that apply to applications under s 444GA are well known and were recently restated by Strk J in *In the Matter of Globaltech Corporation Pty Ltd (Subject to Deed of Company Arrangement) [No 3]* [2024] WASC 390 [69]-[74], as follows:
 - (a) The court may only grant leave if it is satisfied that the sale will not unfairly prejudice the interests of shareholders, and the court therefore will consider the impact of a compulsory sale of shares where there may be some residual value in the company.
 - (b) The question of unfairness only arises if prejudice is established.

⁴⁶ First White Affidavit [49(f)].

- (c) Whether a transfer is unfairly prejudicial is to be determined having regard to all the circumstances of the case and the policy of the legislation.
- (d) The fact that a transfer of shares is to occur without compensation to members is not sufficient, in itself, to establish unfair prejudice.
- (e) Where the equity in the company has no residual value the members are unlikely to suffer prejudice, and certainly not unfair prejudice, by reason only of the absence of consideration.
- (f) Orders may be made under s 447A of the Corporations Act to put into effect the proposed transfer of shares.

49. In addition, in a number of recent decisions,⁴⁷ the Court has:

- (a) addressed a situation where pursuant to the terms of the relevant DOCA a back-up asset sale agreement will or may come into effect if orders are not made under section 444GA; and
- (b) determined that there was no unfair prejudice to shareholders in making orders under section 444GA as there would be no residual value in the shares following completion of the backup asset sale agreement.

G. NO UNFAIR PREJUDICE ARISES TO SHAREHOLDERS

50. Even taking the best case scenarios for the value of Calidus Resources, there will be a shortfall in assets having regard to its approximately \$42million of indebtedness in a liquidation scenario.

51. In assessing the residual value of equity for shareholders in a liquidation scenario, the experts adopted the following valuations:

- (a) total assets to the value of \$109,000 in the low case and \$126,000 in the high case (being made up of intercompany loans and plant and equipment).⁴⁸ These assets are those which remain in Calidus

⁴⁷ *In the Matter of Globaltech Corporation Pty Ltd (Subject to Deed of Company Arrangement) [No 3]* [2024] WASC 390 (see in particular [74]); *Re Smith (as joint and several administrators of Catalano Seafood Ltd) (subject to a deed of company arrangement) (administrators appointed)* [2024] WASC 99; *Anderson, in the matter of NT Port and Marine Pty Ltd (Subject to Deed of Company Arrangement) (No 3)* [2024] FCA 905; *Ford (Administrator), Re The Pas Group Ltd (Subject to Deed of Company Arrangement)* [2020] FCA 1873.

⁴⁸ Third White Affidavit, HLW-100 (Independent Expert Report) (p 96).

Resources following completion of the transfer of the shares in Keras Pilbara and Calidus Blue; and

- (b) total liabilities of \$42,848,000 in the low case and in the high case.⁴⁹ These liabilities are those liabilities which remain with Calidus Resources following completion of the transfer of the shares in Keras Pilbara and Calidus Blue.

- 52. These values are fair and reasonable on the basis that they are the only assets to value following completion of the Share Sale Option and the transfer of the Pirra Lithium shares. Issues relating to the valuation of the mining assets / interests do not arise, as in a liquidation those assets will no longer be held by Calidus Resources.
- 53. Given the operation of the “toggle”, it is appropriate that the experts have approached the valuation as they have done. If the Share Sale Option is pursued and Calidus Resources is ultimately liquidated, there will be no meaningful assets available to see any residual value for shareholders.
- 54. There is no reasonable scenario where there is any residual value in the shares in Calidus Resources and no unfair prejudice to members will be occasioned by the transfer of the shares in Calidus Resources. Further, given the volume of debt and there being no ongoing business operations remaining with Calidus Resources, there is no reasonable prospect of the shares in Calidus Resources obtaining some value within a reasonable time.⁵⁰
- 55. No other interests of the shareholders would or could be unfairly prejudiced by such a transfer.
- 56. Notably, the Administrators did not identify any claims that may be able to be pursued by a liquidator for the benefit of creditors if Calidus Resources is liquidated.⁵¹
- 57. Mr Coates has raised concerns regarding the conduct of the directors of Calidus Resources in not entering a trading halt ahead of a meeting of directors where it was resolved to enter into voluntary administration. While Mr Coates may feel aggrieved by the circumstances of his purchase of shares in Calidus Resources some hours before the directors voted in favour of entering

⁴⁹ Third White Affidavit, HLW-100 (Independent Expert Report) (p 96).

⁵⁰ Third White Affidavit, HLW-100 (Independent Expert Report) (p 96).

⁵¹ First White Affidavit, HLW-35 (Report to creditors) (p 797-805).

voluntary administration, his complaints do not appear to challenge the conclusion of the experts that there is no residual value for shareholders.

H. ANCILLARY ORDERS

58. The DOCA contemplates that the shares of Calidus Resources will be transferred to the Proponent on the Completion Date as defined in the DOCA.
59. Section 447A of the Act grants the Court a wide power regarding the operation of Part 5.3A with respect to the administration of Calidus Resources. In this instance, the Court is empowered to make an order pursuant to s 447A as to the manner in which a transfer of shares in Calidus Resources approved in accordance with s 444GA, is to take place, and so as to facilitate such transfer.
60. In the context of the present Application, orders in the nature of those sought by the Plaintiffs have been made pursuant to ss 447A(1) on many occasions, including most recently in *In the matter of Globaltech Corporation Pty Ltd (Subject to Deed of Company Arrangement) [No 3]* [2024] WASC 390.
61. Accordingly, these ancillary orders can and should be made.

I. CONCLUSION

62. In circumstances where there is no residual value for shareholders (and the liabilities of Calidus Resources in a liquidation would exceed assets by over \$42 million), there can be no unfair prejudice to shareholders in orders being made pursuant to s 444GA of the Corporations Act.

Paul Edgar

Stefan Tomasich