



**Pasminco Cockle Creek
Smelter Pty Ltd (In Liquidation)
ACN 000 083 670**

Statutory Report by Liquidator

11 December 2019

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1 Introduction

I refer to my appointment as Deed Administrator to the Company on 4 October 2002 and the previous Deed Administrators' Report dated 10 September 2019.

At the meeting of creditors held on Tuesday, 24 September 2019, creditors resolved that the Company be wound up under Section 445W of the Corporations Act 2001 and I was appointed Liquidator of the Company.

I now take this opportunity to report to you on the following matters relating to the liquidation of the Company:

- An update on the progress of the liquidation;
- The results of my investigations into the Company's affairs; and
- The likelihood of a dividend being paid in the liquidation.

This report should be read in conjunction with the information contained in my previous Deed Administrators' Report dated 10 September 2019.

Please also note that the Lake Macquarie Site Bill 2019 was effectuated on 11 October 2019, resulting in the Government's Compulsory Acquisition of the PCCS land.

2 Current position

Since my appointment as Liquidator, the following matters have been attended to:

- Transitional arrangements with the NSW Government following the Compulsory Acquisition of the PCCS land;
- Tasks associated with the realisation of the assets of the Company, being plant & equipment and debtors;
- Recovery of deposits, insurances rebates, bonds and bank guarantees;
- Termination of employees and finalisation of employee and supplier payments;
- Attendance to statutory requirements; and
- Management of the workers compensation tail.

On 2 December 2019, the Supreme Court of NSW appointed Shaun Fraser and Barry Kogan of McGrathNicol as Special Purpose Liquidators to the Company on behalf of Fiddletown Investments Limited (Avenue Capital). The Special Purpose Liquidators are tasked with investigating all transactions, dealings and proposals between the Company and the relevant Government authorities. They have the power to pursue claims on behalf of the Company and Avenue Capital. A copy of the Orders are attached at **Annexure A**.

3 Investigation into the Company's affairs

Creditors should refer to the previous Deed Administrators' Reports for details on the Administrators' investigations. The following provides an update on our detailed investigations into the affairs of the Company.

3.1.1 Books and records

Section 286 of the Act requires a company to keep written financial records that correctly record and explain the company's transactions, financial position and performance and would enable true and fair financial statements to be prepared.

I am of the opinion that the Company's books and records were maintained in accordance with Section 286 of the Act.

3.1.2 Unfair preferences

Section 588FA of the Act gives the Liquidator the power to recover certain transactions that have had the effect of conferring a priority, preference or advantage to the creditor within six months of the commencement of the winding up (the relation back period).

From the information available to me I have not identified any transactions which would constitute unfair preference payments.

3.1.3 Uncommercial transactions

Section 588FB of the Act requires the Liquidator to investigate transactions which may be deemed to be uncommercial, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction in the period two years prior to the appointment.

In addition, Section 588FDA of the Act refers to “unreasonable director-related transactions” and requires the Liquidator to investigate such transactions, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction.

From the information available to me I have not identified any transactions which would constitute uncommercial transactions or unreasonable director-related transactions.

3.1.4 Unfair loans

Section 588FD of the Act requires investigations of transactions which may be deemed to be unfair loans to the Company. A loan to the Company is considered to be unfair if and only if, interest on the loan is extortionate, or the charges in relation to the loan were extortionate.

From the information available to me I have not identified any transactions which would constitute unfair loans to the Company.

3.1.5 Voidable transactions – related parties

Section 588FE(4) of the Act requires investigations of transactions which may be deemed to be insolvent transactions with a related party entered into within 4 years of the commencement of the winding up.

From the information available to me I have not identified any transactions which would constitute voidable transactions with related parties.

3.2 Insolvent trading

Section 588G of the Act provides that directors are obliged to prevent a company from:

- Incurring a debt whilst insolvent; or
- Becoming insolvent by incurring a debt.

If a contravention of Section 588G can be established, then Section 588M empowers a Liquidator (or a creditor under certain circumstances) to recover compensation from a director for any loss or damage suffered as a consequence of any such contravention.

From the information available to me I have not identified any transactions which would constitute insolvent trading against the Company's former Directors.

4 Return to creditors

My investigations have concluded that there will be insufficient funds in the liquidation to permit the payment of any further dividend to unsecured creditors.

5 Conclusion

The following matters will continue to be progressed:

- Recovering any further available property, bonds and bank guarantees in relation to the PCCS land;
- Responding to requests made by the Special Purpose Liquidators;
- Liaising with Government authorities regarding transitional matters and arrangements;
- Attending to all statutory reporting obligations; and
- Management of the workers compensation tail.

Should you have any questions, please contact Phil Batey of this office on +61 3 8663 8938.

Dated this 11th day of December 2019

John Lindholm
John Lindholm
Liquidator

Glossary

Abbreviation	Description
ACN	Australian Company Number
Act	The Corporations Act 2001
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Company	Pasminco Cockle Creek Smelter (In Liquidation)
Department	Department of Jobs and Small Business
ERV	Estimated Realisable Value
FEG	Fair Entitlements Guarantee
FY	Financial Year
GST	Goods and Services Tax
RBA	Running Balance Account
RATA	Report as to Affairs
Special Purpose Liquidator	Shaun Fraser and Barry Kogan of McGrathNicol

Annexures

A – Appointment of Special purpose Order 2019/00371029



Issued: 2 December 2019 2:10 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations Registrar's List 11am
Registry	Supreme Court Sydney
Case number	2019/00371029

TITLE OF PROCEEDINGS

First Plaintiff	Fiddletown Investments Limited, A Company Incorporated in the British Virgin Islands with BVI Company Number 1963544
First Defendant	Pasminco Cockle Creek Smelter Pty Limited (In Liquidation) ACN 000083670
Second Defendant	John Ross Lindholm in his capacity as liquidator of Pasminco Cockle Creek Smelter Pty Limited (In Liquidation) ACN 000083670

DATE OF JUDGMENT/ORDER

Date made or given	2 December 2019
Date entered	2 December 2019

TERMS OF JUDGMENT/ORDER

Her Honour makes the following orders and directions in accordance with the Short Minutes of Order as initialled by her Honour and dated today:

1. Order that, pursuant to sections 7 and 8(1)(a) of the Courts Suppression and Non-Publication Orders Act 2010 (NSW), on the basis that it is necessary to prevent prejudice to the proper administration of justice, that disclosure of the draft funding agreement between the Plaintiff, the Applicants and others, annexed to the affidavit of Shaun Robert Fraser affirmed 29 November 2019 and marked Confidential Exhibit A (Funding Agreement), be prohibited until further order of the Court.
2. Order under section 90-15(1) in Schedule 2 to the Corporations Act 2001 (Cth) (Corporations Act and Insolvency Practice Schedule) that Shaun Robert Fraser and Barry Frederic Kogan be appointed as additional liquidators (Special Purpose Liquidators) to the first defendant with the appointment to be limited, in terms of the work to be undertaken by the Special Purpose Liquidators, to the matters set out in the document entitled "Scope of Work" annexed to these orders and marked "A" (Scope of Work).
3. Order that, in relation to the Scope of Work, the Special Purpose Liquidators may exercise all of the powers conferred on a liquidator by the Corporations Act and the Corporations Regulations 2001 (Cth) including, without limitation, the powers conferred on a liquidator by sections 477 and 506(1)(b) of the Corporations Act, other than section 477(1)(a) and (b) and 477(2)(ca), (f) and (g).
4. Order that the second defendant:
 - (a) refrain from exercising any of the powers given to the Special Purpose Liquidators in Orders 2 and 3 above in relation to the Scope of Work, except with the prior written consent of the Special Purpose Liquidators (such consent not to be unreasonably withheld) or by leave of the Court; and
 - (b) use reasonable endeavours to assist the Special Purpose Liquidators to exercise the powers given to them in Orders 2 and 3 above in relation to the Scope of Work, including by providing any

documents or information previously prepared or obtained by or for the first defendant or the second defendant in investigating or pursuing any claim in relation to any of the matters set out in Order 2 above.

5. Leave be granted to the plaintiff and the Special Purpose Liquidators to apply in these proceedings to extend the purposes for which the Special Purpose Liquidators are appointed or the powers that the Special Purpose Liquidators are entitled to exercise, and otherwise generally.

6. Order pursuant to section 477(2B) of the Corporations Act, that the Special Purpose Liquidators be granted approval to enter into an agreement in substantially the form of the Funding Agreement.

7. Order pursuant to section 60-10(1)(c) of the Insolvency Practice Schedule that, subject to further order, the Special Purpose Liquidators' remuneration be:

(a) determined on a time-cost basis in accordance with the schedule of rates set out in the Special Purpose Liquidators' consents to act; and

(b) approved up to the "Initial Funding Amount" as defined in the Funding Agreement.

8. Order that in respect of Order 7 above, compliance with rule 9.2 of the Supreme Court (Corporations) Rules 1999 be dispensed with.

9. Any persons demonstrating sufficient interest in any of the above Orders have liberty to apply on 3 days' notice.

10. These orders be entered forthwith.

"A"

Scope of Work

1. The Special Purpose Liquidators may do any of the following:

(a) investigate all dealings or transactions between the New South Wales State Government and any of:

(i) the Liquidator;

(ii) the past deed administrators appointed to the first defendant (Deed Administrators);

(iii) the past voluntary administrators appointed to the first defendant (Voluntary Administrators); and

(iv) any other parties acting on behalf of, or as the agent of or adviser to, the Liquidator, the Deed Administrators or the Voluntary Administrators.

(b) investigate all dealings, transactions or proposals relating to the land owned by PCCS in the Lake Macquarie local government area for the period between 1 January 2018 to present;

(c) investigate whether any claims may be available to the first defendant or the Special Purpose Liquidators in relation to any of the matters the subject of (a) and (b) above;

(d) commence and pursue any claim, including by commencing legal proceedings, that may be available to the first defendant or the Special Purpose Liquidators in relation to any of the matters referred to in paragraphs (a), (b) and (c) above, including obtaining and considering legal advice in respect of such claim;

(e) take any steps, including by commencing legal proceedings, to preserve or protect the assets of the first defendant, or the assets to which the first defendant or the Special Purpose Liquidators claim to be entitled, and whether or not those assets are in the possession of the first defendant or the second defendant; and

(f) all other things that are necessary or convenient in relation to any of the matters referred to in paragraphs (a) to (e) above,

(collectively, the Special Purpose Liquidator Tasks).

SEAL AND SIGNATURE



Signature
Capacity

Chris D'Aeth
Principal Registrar

Date 2 December 2019

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

Name Fiddletown Investments Limited, A Company Incorporated in the British Virgin Islands with BVI Company Number 1963544
Address C/- Clayton Utz Level 15
1 Bligh Street
SYDNEY NSW 2000
Telephone
Fax
E-mail
Client reference

FURTHER DETAILS ABOUT Defendant(s)

First Defendant

Name Pasminco Cockle Creek Smelter Pty Limited (In Liquidation)
ACN 000083670
Address C/- KPMG Tower Two
727 Collins Street
MELBOURNE VIC 3000

Second Defendant

Name John Ross Lindholm in his capacity as liquidator of Pasminco
Cockle Creek Smelter Pty Limited (In Liquidation) ACN 000083670
Address C/- KPMG Tower Two
727 Collins Street
MELBOURNE VIC 3000