

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2022-404-1993

UNDER Part 7 of the High Court Rules 2016 and Part 15A of
the Companies Act 1993

IN THE MATTER OF **RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

AND of an application by **JOHN HOWARD ROSS FISK**
and **RICHARD JOHN NACEY**, as Administrators of
**RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

Applicants

**INTERLOCUTORY APPLICATION WITHOUT NOTICE FOR ORDERS
RELATING TO VOLUNTARY ADMINISTRATION**

Dated: 21 November 2022

BUDDLE FINDLAY

Barristers and Solicitors
Auckland

Solicitor Acting: **D T Broadmore / L C Sizer**
Email: david.broadmore@buddlefindlay.com / luke.sizer@buddlefindlay.com
Tel 64 9 358 7010 Fax 64 9 358 2055 PO Box 1433 DX CP24024 Auckland 1010

To: The Registrar of the High Court at Auckland

This document notifies you that —

1. The applicants, **JOHN HOWARD ROSS FISK** and **RICHARD JOHN NACEY** of Auckland, licensed Insolvency Practitioners of PricewaterhouseCoopers (**PwC**), as administrators of Ruapehu Alpine Lifts Ltd (in administration) (**Company**), will apply to the Court for orders that:
 - (a) under s 239ADO of the Companies Act 1993 (**Act**), Part 15A of the Act operates in relation to the applicants as if s 239ADH of the Act provides that:
 - (i) any liability incurred by the applicants arising out of or in connection with the Term Loan Facility Deed dated 17 November 2022 (**Facility**) given by ANZ Bank New Zealand Limited and Crown Regional Holdings Limited is in the nature of debts incurred by the applicants in the performance and exercise of their functions as joint and several administrators of the Company;
 - (ii) notwithstanding the liabilities in paragraph 1(a)(i) above are debts incurred by the applicants in the performance and exercise of their functions as joint and several administrators of the Company, the applicants' personal liability for such debts (whether in contract, tort (including negligence) or otherwise) is limited to the available assets of the Company and any available statutory and equitable indemnities of the applicants in relation to those assets, except to the extent agreed under the Facility;
 - (b) leave is reserved for the applicants and any other person who can demonstrate a sufficient interest in the administration of the Company to apply for variation or discharge of these orders upon appropriate notice being given to the applicants;
 - (c) within seven days of the Court's orders, the applicants must:
 - (i) advertise the Court's orders in *The New Zealand Herald* and *The Dominion Post*; and
 - (ii) post of copy of the Court's orders on PwC's website; and

- (iii) email a copy of the Court's orders to each creditor's email address by which the Company normally communicates with that creditor (to the extent such an address is available)
 - (d) the reasonable costs of this application be paid out of the assets of the Company.
- 2. The grounds upon which the orders are sought are as follows:

Section 239ADO order

- (a) the proposed arrangements are in the interests of the Company's creditors and consistent with the objectives of Part 15A of the Act;
- (b) the proposed arrangements will enable the Company's business to continue to trade to the benefit of the Company's creditors;
- (c) the creditors of the Company are not prejudiced or disadvantaged by the orders sought and stand to benefit from the applicants entering into the proposed arrangement;
- (d) notice has been given to the Company's general body of creditors contemporaneously with the filing, with leave reserved to them to apply on notice, while the proposed lenders under the Facility are filing a consent memorandum for the orders sought;

Without notice

- (e) it is in the interests of justice, and of the speedy and inexpensive determination of this proceeding, that this application be determined on a without notice basis because:
 - (i) personal service of the application on the Company's approximately 16,000 creditors would incur an expense for the Company and would cause delay;
 - (ii) an opposed hearing cannot practically be determined within the necessary timeframes;
 - (iii) creditors will have leave to review the orders sought by making an application in this Court.
- 3. This application is made in reliance on the first affidavit of Richard John Nacey affirmed on 16 October 2022 and the affidavit of John Howard Ross

Fisk affirmed on 18 November 2022, and Part 15A of the Act, and rr 7.23, 7.46, 24.61(2), and Part 7 of the High Court Rules, and *Re Jackson* [2018] NZHC 368, *Re Ovato Ltd (Admins Appointed)* [2022] FCA 903, *Re Unlocked Ltd* [2018] VSC 345.

4. The application is made without notice to any other party on the following grounds:
 - (a) that requiring the applicants to proceed on notice would cause undue delay or prejudice to the applicants and the Company;
 - (b) that the interests of justice require the application to be determined without serving notice of the application.

5. I certify that—
 - (a) The grounds set out in paragraph 4 on which the application relies are made out; and
 - (b) All reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

DATED 21 November 2022



D T Broadmore / L C Sizer
Solicitors for the applicants