

11 June 2020

Dear Creditor

The enclosed documents relate to the liquidation of Decmil Construction NZ Limited (In Liquidation) (the Company).

The enclosed provides an update to creditors on the affairs of the Company to date.

I have addressed in the circular:

- The financial status of the Company.
- Investigations and steps that have been taken in the liquidation to date.
- The status of funds in the Company and retentions, steps being taken by the liquidator and recovery prospects for creditors.
- The dispute with the Department of Corrections.
- The upcoming meeting and resolution to remove the liquidator.

As liquidator, my job is to investigate the affairs of the Company and protect and realise assets for the benefit of all creditors, where possible. That has been my focus to date.

To discharge my obligations, since appointment, I have been conducting an investigation into the affairs of the Company, including the very significant claim that the Company raised with the Department of Corrections, prior to liquidation. This is a significant claim in terms of dollar value and as such, is the best prospect of a return to creditors, if it is successful. I am assessing this carefully.

I am independent and have not been indemnified by any party. I am wholly committed to holding those who have caused the Company loss (whether it is a creditor such as the Department of Corrections or a director or shareholder) to account, where there is cause.

For the Company



Dermott McVeigh
Liquidator

11 June 2020

Circular to creditors

Dear Sir/Madam

DECMIL CONSTRUCTION NZ LIMITED (in Liquidation)

I refer to my appointment as Liquidator of Decmil Construction NZ Limited (“**Decmil NZ**” or “**the Company**”) on 15 April 2020 and my previous circulars to creditors dated 22 April 2020, 11 May 2020 and 19 May 2020.

1 Introduction

My investigations have progressed to the point that it is time to provide an update. This circular sets out the status of the liquidation and findings to date in relation to the key matters affecting the likelihood of a return to Decmil NZ’s creditors.

2 Creditors meeting

As creditors are aware, I initially gave notice that the first meeting of creditors was dispensed with. At the time, New Zealand was still affected by the COVID 19 pandemic and under restrictions set by the government at Level 4 alert. It was early in the liquidation and my view at the time, having regard to the Company’s affairs (including its recorded creditors, assets and liabilities), the COVID 19 pandemic, and the investigations that were required, was that it was too early to have the first creditors’ meeting.

Two parties who asserted claims in the liquidation, subsequently gave notice that they wished to have the meeting. I corresponded with these parties regarding their status to claim as creditors in the liquidation.

Ultimately, even with the position not necessarily settled, I resolved to call a meeting. On 21 May 2020, I applied to the High Court for directions with respect to the first creditors’ meeting. At that time, the New Zealand government had restrictions in place on public assemblies which prevented gatherings of more than 10 people. This meant it was not possible to accommodate a meeting of the Company’s creditors in person and directions were required to determine how the meeting should be conducted.

I proposed as part of my application, a meeting by Zoom with certain protocols. The Court was uncertain of its jurisdiction to make orders which would allow the protocols to be put into effect and invited me to consider other options for a meeting, including the option of holding a meeting by postal ballot as an alternative.

As invited by the Court, I (through my lawyers) filed further papers to address the Court’s concerns about jurisdiction. This took the Court some time to consider. I progressed the meeting as proposed by the Court, and directions were issued by the Court on 3 June 2020. A copy of the minute of the Court is **attached**.

As per the Court's directions, I am holding a meeting of creditors of the Company **by way of postal ballot** with an informal information session being held prior to the postal ballot meeting. Refer to key dates and times below:

| | |
|---|----------------------------------|
| Deadline for submission of alternative liquidator nomination forms and consents to act | 6:00pm, Tuesday, 16 June 2020 |
| Registration deadline to attend information session | 4:00 pm, Thursday, 18 June 2020 |
| Information session | 2:00 pm, Monday, 22 June 2020 |
| Deadline for submission of proxies and postal ballots | 4:00 pm, Wednesday, 24 June 2020 |

The information session will be similar to a webinar event. Creditors will be given the opportunity to ask questions, however, no resolutions will be tabled and voted upon. Voting can only occur in accordance with the instructions that are set out in the voting papers.

In the interests of transparency, I record that two parties who have filed creditor claims in the liquidation are proposing that I be replaced. For context, there are 250 recorded creditors in the Company's records.

We have prepared voting papers which give creditors the opportunity to vote on the resolutions set out in the voting form. In the event people wish to replace me, creditors have been invited to put forward their preferred nominee together with a consent to act form.

Creditors wishing to nominate an alternative liquidator must complete the attached liquidator nomination form and submit it along with the nominated liquidator's consent to act by 6:00pm, Tuesday 16 June 2020. Creditors must also have submitted their creditor claim form by that time. Liquidator nomination forms will be reviewed and an Addendum, accompanied by a proxy form and a postal ballot form, will be sent to creditors on Wednesday, 17 June 2020.

My position on being replaced is set out in Section 9.

I enclose the following documents:

| Document | Description |
|--|--|
| Formal notice of meeting | This form contains the details of the meeting of creditors and the meeting's agenda. |
| Information session instructions and registration form | Registration for the information session involves the completion of an online form. This must be done by 4:00 pm, Thursday, 18 June 2020. Please read the instructions carefully as there are several requirements to be satisfied prior to the information session date. |
| Creditor claim form | To participate in the meeting and have your vote counted, you must be a creditor of the Company. You evidence your position as a creditor by submitting a Creditor Claim Form. If you have not already submitted this form, and you wish to nominate an alternate liquidator, you must do so and provide full particulars of your claim by 6:00 pm, Tuesday, 16 June 2020. Otherwise, Creditor Claim Forms must be submitted by 4:00 pm, Wednesday, 24 June 2020. |
| Alternative liquidator nomination form | This form is to be completed only if you wish to nominate a different liquidator of the Company. Submit this form, together with a signed consent to act from your nominated person(s) by 6:00 pm, Tuesday, 16 June 2020. |

2.1 Resolutions

The meeting will be conducted as outlined in the Instructions document.

There will be two resolutions to be decided by the creditors, which are:

- whether to confirm my appointment as the liquidator and if not, who should be appointed in my place; and
- whether to appoint a liquidation committee, and if so, decide on its members.

Both resolutions are specified in the postal ballot form. I note that the final text of the resolution in respect of the vote for an alternative liquidator will be provided once I have the names of all nominees.

3 Company background and financial performance

Decmil NZ is a wholly owned subsidiary of Decmil Group Limited (**DGL**). DGL is a large project management services company listed on the Australian Stock Exchange.

DGL established Decmil NZ in 2014 to provide civil engineering contracting and consulting services. The Company had success in completing a number of large construction contracts for customers including the Ministry of Education and the New Zealand Defence Force. It appears that the Company's financial problems arose from a large \$198m contract involving prison accommodation for the Department of Corrections (**Corrections**). A dispute arose

over the contract, which led to the contract being terminated in February 2020. It appears that the termination of the contract and the non-payment of progress claims by Corrections resulted in the Company's insolvency.

Presented in Table 1 below is the Company's historical and most recent financial position (Balance Sheet):

Table 1 –Financial position

| Balance Sheet | Ref | As at 15/04/2020 \$'000 | FY19 \$'000 | FY18 \$'000 |
|--------------------------------------|-----|----------------------------|----------------|----------------|
| Assets | | | | |
| Current Assets | | | | |
| Cash and cash equivalents | 1 | 3,320 | 16,788 | 4,618 |
| Trade and other receivables | 2 | 964 | 9,881 | 11,295 |
| Work in progress | | - | 5,308 | 61 |
| Other current assets | 3 | 1,854 | 988 | 237 |
| Receivable from related company | | - | - | 5,879 |
| Total Current Assets | | 6,139 | 32,965 | 22,090 |
| Non-Current Assets | | | | |
| Deferred tax assets | | 174 | 199 | 197 |
| Plant and equipment | 4 | 596 | 247 | 58 |
| Total Non-Current Assets | | 770 | 446 | 255 |
| Total Assets | | 6,908 | 33,411 | 22,345 |
| Liabilities | | | | |
| Current Liabilities | | | | |
| Trade and other payables | 5 | 12,236 | 12,774 | 14,009 |
| Revenue received in advance | | - | 6,347 | 3,310 |
| Current tax liabilities | | - | 1,597 | 1,498 |
| Employee benefits | | 61 | 264 | 230 |
| Payable to parent company | 6 | 25,279 | 4,747 | - |
| Total Current Liabilities | | 37,575 | 25,729 | 19,047 |
| Non-Current Liabilities | | | | |
| Deferred tax liabilities | | 9 | 9 | - |
| Total Non-Current Liabilities | | 9 | 9 | - |
| Total Liabilities | | 37,584 | 25,738 | 19,047 |
| Net Assets / (Liabilities) | | (30,676) | 7,672 | 3,298 |

Source: Company's books and records

Presented in Table 2 below are the Company's historical and most recent trading results (Profit and Loss):

Table 2 – Trading results

| | Period ended 15/04/2020 | FY19 | FY18 |
|--|----------------------------|----------------|----------------|
| Profit and Loss | \$'000 | \$'000 | \$'000 |
| Revenue | 29,206 | 118,845 | 52,446 |
| Cost of sales | (71,744) | (106,435) | (43,713) |
| Gross Profit | (42,538) | 12,410 | 8,733 |
| Less Expenses | | | |
| Administrative Expenses | (4,128) | (6,508) | (2,854) |
| Finance costs | (245) | (21) | (73) |
| Depreciation and amortisation expenses | (156) | (117) | (9) |
| Income tax expense | - | (1,681) | (1,633) |
| Total Expenses | (4,530) | (8,327) | (4,569) |
| Other revenue | 56 | 292 | 5 |
| Net Profit/(Loss) for the Year | (47,011) | 4,375 | 4,170 |

Source: Company's books and records

I make the following comments:

- Ref 1 Please refer to section 4.2.
- Ref 2 Trade receivables include retentions held by the Company's clients, which may be subject to offsets for costs to complete the recently terminated projects.
- Ref 3 Other current assets include GST, income tax, prepayments and office bonds. Please refer to section 4.4 of this report for further details regarding taxation.
- Ref 4 Plant and equipment includes accounting for lease under the relevant reporting standard. Excluding the lease, the net book value of plant and equipment is \$190k. See further discussion at section 5.3.
- Ref 5 Trade and other payables include creditors and retention monies that are required to be held on trust pursuant to Constructions Contracts Act 2002. Claims received to date exceed the payables recorded by the Company as at the date of my appointment.
- Ref 6 Payable to Decmil Australia Pty Ltd.

3.1 Secured creditors

National Australia Bank Limited (**NAB**) has advanced borrowings to DGL. As a result of those borrowings, NAB has senior ranking security over DGL and its member entities, including Decmil NZ.

4 Key assets to be recovered

I comment below on the key assets that may result in a return to the Company's creditors.

4.1 Department of Corrections

4.1.1 Overview

Decmil NZ representatives believe there is a breach of contract claim against Corrections. The value of this claim may exceed \$60 million. I note, however, that the legal arguments the claim turns on are complex and, whilst apparently favourable toward the Company, I can give no assurances as to whether the claim will be successful.

4.1.2 Prison accommodation contract

The contract in question was a design and construct in relation to prison accommodation. When the contract was signed in October 2017, it was valued at \$61 million and involved two locations. The approach used modular buildings fabricated in China, an approach previously untested in New Zealand. Through a major variation or "reset" in May 2018, the contract was expanded and three locations were added at a cost of \$125 million. The contract's total value was then \$186 million. After a further variation, the contract reached a value of \$198 million.

The key problem with the contract was cracking around the joints between walls which could not be remedied to Corrections' satisfaction. It appears that adequate consideration may not have been given to how wall units were to be joined at the time the concept was approved and this issue ultimately led to the contract's failure.

The cracking problem caused time delays in completing the works. It appears that time delays also occurred due to sites not being ready for access. I understand Decmil NZ and Corrections initially worked collaboratively toward a solution to the cracking problem. It appears that the intention was that these efforts would result in a 'reset' of the contract, which would incorporate and resolve time delays and other instances of contract non-compliance. Records available to me indicate that the 'reset' was actively discussed until July 2019.

In September 2019, Decmil NZ was advised by Corrections that the previous project director would no longer be involved and a replacement was assigned. From that point onward it appears that Corrections' attitude toward the contract changed. The 'reset' was no longer under consideration and instead strict adherence to the contract was required. Corrections demanded a 'defect free' outcome with no further concessions. Progress payment claims went unpaid, largely due to liquidated damages of \$12 million being assigned. A difficulty with the timeline is that it appears that Decmil NZ kept working on the contract in good faith during the 'reset' / collaboration phase only to find that, upon replacement of the project director, Corrections was no longer willing to pay costs incurred by the Company during that period.

Decmil NZ submitted variation claims totalling \$49 million. These have not been approved.

Key financial elements of the contract are summarised below:

| | \$M |
|--|------------|
| Original contract value re two locations - Oct 2017 | 61 |
| Major variation / 'reset' - May 2018 | 125 |
| Further approved variations | 12 |
| Approved contract value | 198 |
| Unapproved variations | 49 |
| Contract value including all variations | 247 |
| Liquidated damages withheld by Corrections | 12 |
| Performance bonds called by Corrections (refer to section 4.1.4) | 13 |

It appears that talks between the Company and Corrections broke down in February 2020. The amount under dispute at the time was approximately \$61 million. Decmil NZ purported to terminate the contract on 18 February 2020. Corrections purported to terminate the contract one week later on 25 February 2020.

Following termination, the parties entered into discussions about referral of the dispute to arbitration, however, the terms of such process were not signed or finalised at the time of my appointment.

I am in the process of reviewing the available documents and records in the liquidation to assess the merits of the dispute. At this early stage, and based on advice I have received, it appears that Decmil NZ has a claim against Corrections. The claim is not without risk and it is something I am considering carefully. **It is my view that a successful outcome in the litigation process offers unsecured creditors the best prospect of receiving a return in the liquidation.**

I have a Queen's Counsel briefed on this matter and would not take action unless it was clear that there was a purpose in doing so, that purpose being recovery for creditors (all creditors).

4.1.3 Section 261 examination notices issued

Despite the volume of documents already reviewed, some key questions remain unanswered. In particular, I wish to understand why Corrections' project director was replaced in September 2019 and also why the 'reset' strategy was abandoned at that time. To obtain answers I have issued notices under Section 261 of the Companies Act 1993 (**the Act**) to relevant individuals of Decmil NZ, DGL and Corrections. The examinations are under oath and commenced on 10 June 2020.

I have conducted many examination procedures in the past and have found them effective in clarifying events and uncovering evidence that may assist with asset recoveries for creditors.

4.1.4 Performance bonds called by Corrections

Soon after my appointment, on 17 April 2020, Corrections advised that it was calling on \$12.5 million in performance bonds previously provided by the Company in Corrections' favour.

It was not clear to me that Corrections should be permitted to cash the bonds. Firstly, it was possible at the time, and I have become more convinced of this, that Decmil NZ was actually a creditor of Corrections (and not the other way around). In that case, Corrections should not be allowed to financially benefit further at the Company's expense. Secondly, in order to call the bonds, Corrections was relying on the occurrence of an insolvency event, being the Company's liquidation. However, the liquidation event happened after the contract's termination. I queried whether Corrections should be allowed to call the bonds in these circumstances and my legal advice supported this.

If Corrections were able to call on the bonds, the bond issuers would become unsecured creditors of the Company for the amounts they paid, i.e. \$12.5 million, increasing the Company's unsecured creditor claims by 30%. Given the significant dilution that would result, I felt compelled to apply to the court for injunctive relief and did so on 23 April 2020. This was despite the court's historical reluctance to accept such applications. Our arguments were strong enough to warrant a full hearing on 11 May 2020 but were ultimately unsuccessful, and the prospect of successfully appealing was low. I therefore did not pursue this further.

4.1.5 Corrections' claim

Corrections submitted a claim against the Company in the amount of \$64 million. Of this amount, \$60 million is the estimated cost to complete the contract. I advised Corrections of my concern that the estimate was based on high level calculations and required further substantiation. Corrections have not responded.

The remaining \$4 million are debts assigned to Corrections by subcontractors before the liquidation began.

4.1.6 Corrections' effort to replace me

As further discussed in Section 9, Corrections is soliciting support from other creditors to have me replaced.

4.2 Bank account

As explained in previous circulars, the Company's bank account contained \$3.3 million at the time of my appointment. This sum was transferred into the bank account on 1 April 2020.

I am seeking advice on the status of these funds as retention sums. Given the significant amounts involved and the violation of all creditor rights that may occur if the bank account is treated incorrectly, I am applying to court for directions. **I appreciate that subcontractors owed retentions have been patient and that this is an important issue for them.** I therefore made it a priority to begin reviewing the retention claims as soon as the liquidation started. I will provide an update to creditors in relation to retentions as soon as I have the court's response.

4.3 Ministry of Education (Education)

At the time of my appointment, Decmil NZ had one live contract with Education, referred to as 'Waiheke'. The Waiheke contract was a design and construct project relating to the redevelopment of Te Huruhi School and Waiheke High School on Waiheke Island. Te Huruhi School was finished and Waiheke High School was 85% complete. The contract had a value of \$24 million and was signed in April / May 2018.

Soon after my appointment, on or around 20 April 2020, I reached out to Education with a view toward discussing the contract's status and how it may proceed. I also made arrangements for health and safety inspections to be done at the sites.

On 23 April 2020, I received notification that Education was terminating the contract following an unremedied breach initially communicated to the Company on 6 April 2020. The breach was associated with Decmil NZ's purported failure to employ key personnel on the sites and not to remove them without the engineer's prior written consent. I note that Decmil NZ appears to have made its New Zealand employees redundant at the end of March 2020. I also note that New Zealand's Level 4 lockdown began on 26 March, which I understand would have prevented the sites from being staffed in any event.

I am querying the validity of the contract's termination in light of the lockdown conditions. I also note that I attempted to engage with Education beforehand.

My investigations indicate that debtor amounts owed to the Company by Education when the liquidation began were \$1.1m, comprised almost entirely of retentions on Waiheke and other completed contracts. Education has submitted a proof of claim in the liquidation for outstanding contract works of \$930,000. I am assessing whether Education is a creditor in light of the above information.

4.4 Taxation

It appears from Decmil NZ's books and records that GST input tax credits exceed GST payable by approximately \$800,000. On the face of it, this may result in a refund for the Company and I have been corresponding with Inland Revenue to understand the tax position. Initial responses indicate that one or more returns are outstanding and that an adjustment may also be required for the liquidated damages imposed by Corrections.

Decmil NZ appears to have paid income tax in 2018 and 2019. Those outcomes may require review in light of losses sustained by the Company on the prison accommodation contract, which crystallised in 2020.

The matters outlined above are complex and require further investigation. It is possible that they result in refunds for the Company or claims against it.

4.5 Insurance

A number of insurance claims were in progress at the beginning of the liquidation. At least one of them, with a face value of approximately \$2m, was to reimburse the Company for costs incurred. My insurance advisor, Arthur J. Gallagher, is assessing this claim and will advise me on strategy to pursue it.

5 Liquidator's other activities

5.1 Subcontractor retentions

To date, I have verified the amounts of retentions that were statutorily required to be withheld from payments to subcontractors pursuant to legislative amendments to the Constructions Contracts Act 2002. Based on the Company's books and records, and discussions and correspondence with the subcontractors, the amount statutorily required to be held on trust was \$3.1 million across 85 subcontracts.

As stated above, I commenced an urgent review of the retentions immediately after my appointment, as I recognised the importance of distributing available cash trust assets with minimum delay. As explained in Section 4.2, I will seek court directions on the categorisation of the \$3.3 million in the Company's bank account at the time of my appointment.

5.2 Books and records

The Company's books and records are largely held in electronic form. I have secured the electronic records having accessed the Company's systems and databases. The Company's laptops and other electronic devices which may have relevant information on them have also been secured and shipped to my office where they are being reviewed and records extracted.

5.3 Plant and equipment

The Company's tangible assets comprise furniture and fittings located in leased office premises and IT equipment. The book value of these items is \$190k and I have requested a valuation if the items were sold at auction. As is typical of auction values for these types of assets, the auction value is at a substantial discount to book value.

5.4 Employee entitlements

Decmil NZ had 46 employees prior to my appointment. Virtually all of them were made redundant by the end of March 2020. I have reviewed the payment of their entitlements and found no instances where entitlements remained outstanding.

6 Investigations re directors and DGL

Since my appointment 8 weeks ago, I have been focusing on securing key assets in the Company and mitigating further losses. My investigations into the conduct of the Company's directors and DGL as parent are embryonic. DGL is a significant creditor with a claim of \$25.2 million against the Company and the commercial merit of any claim will need to be considered against these figures.

I intend to investigate Decmil NZ's failure and hold parties, including its directors, accountable if there is a cause to do so. I have pursued directors for wrongdoing in the past and will do so in this instance if the evidence warrants it.

7 Declaration of independence, relevant relationships and indemnities (DIRRI)

My DIRRI was attached to my first report to creditors dated 22 April 2020. For ease of reference I have attached it to this report.

8 Liquidator's remuneration

In accordance with normal practice in liquidations, my remuneration is charged on an hourly basis at standard hourly rates, which are set out below. Amounts are in New Zealand Dollars

| Title | Rate (NZD) | Experience |
|---------------------|------------|---|
| Partner / Appointee | 590 | The Partner/Appointee has more than 10 years of corporate insolvency and restructuring experience, may be accredited as a registered liquidator by the Australian Securities and Investments Commission, is a member of the CAANZ or equivalent body, is a member of the Australian Restructuring, Insolvency and Turnaround Association (ARITA), and brings specialist skills to the administration or insolvency task. |
| Senior Manager | 475 | Generally, more than 7 years' experience with at least 2 years as a Manager. University degree; member of the CAANZ or equivalent body, member of the ARITA; very strong knowledge of relevant insolvency legislation and issues. |
| Manager | 400 | 4-7 years' experience with well-developed technical and commercial skills. University degree; member of CAANZ and, generally, the ARITA; strong knowledge of relevant insolvency legislation and issues. |
| Senior Analyst | 275 | Generally, 2-4 years' chartered accounting or insolvency management experience. University degree; completed or completing the CAANZ's program. Good knowledge of basic insolvency legislation and issues. |
| Analyst | 220 | Generally, 2-3 years' chartered accounting or insolvency management experience. University degree, CAANZ's program commenced. |
| Personal Assistant | 180 | Appropriate skills including machine usage. |

Notes:

- The hourly rates are exclusive of GST.
- The guide to staff experience is intended only as a general guide to the qualifications and experience of staff engaged in the liquidation. Staff may be engaged under a classification considered appropriate for their experience.
- Time is recorded and charged in six-minute increments.

Disbursements are recharged at cost. Printing and photocopy expenses are charged at nil.

9 Proposed replacement

I am aware that Tempest Litigation Funders (**Tempest**) and Corrections are seeking my replacement.

Tempest became a creditor of the Company by acquiring a debt of \$3,680 owed to Protranz Earthmoving Ltd for \$1,000. I am assessing Corrections' standing as a creditor.

Although creditors are ultimately entitled to form their own views about who they wish to be appointed, I wish to address some matters that have been raised by Mr Damien Grant (**Mr Grant**) of Tempest through various communications he has in the public domain.

Mr Grant has made a number of comments about my experience and knowledge. I wish to reiterate that I would not have accepted the appointment, if I believed that I could not discharge my duties. I have set out my previous experience and record that I have been involved in managing a number of larger matters including a number of ASX-listed companies. This includes experience in pursuing legal claims against large, multi-billion dollar organisations such as Brookfield Multiplex and Lendlease.

I also respond as follows to other issues raised about my ability to manage the liquidation:

9.1 I am not based in New Zealand

The fact that I am not in New Zealand does not prevent me from discharging my role. At the time of appointment, the Company had stopped operations; its one potential live site, being Waiheke, was nearly complete. Tangible assets were modest. There were no earthmoving assets. The key assets to be investigated were a bank account and a number of debtor amounts and potential legal claims. They do not require in-country presence in order to properly address them.

9.2 I was appointed by the Company's shareholder am not based in New Zealand

Mr Grant has challenged my independence from DGL. I draw attention to the fact that many liquidations and voluntary administrations in Australia arise from appointments by directors. I have taken many such appointments and where appropriate I have pursued directors for insolvent trading and breaching their duties. I have also reported many directors to the Australian Securities and Investments Commission, as well as to the Western Australia Police. Furthermore, I do not have an indemnity or any other financial backing from DGL.

9.3 New Zealand and Australian insolvency laws are not the same

The insolvency laws of New Zealand and Australia share the same core principles. As I am strongly familiar with Australian insolvency law, I can confidently apply those ideas in respect of the Company. As with any other New Zealand based insolvency practitioner, I have sought assistance from legal advisors in New Zealand where required.

Corrections' efforts to replace me

I am concerned about the objections by Corrections to my appointment and whether these have been made in good faith. Corrections would stand to benefit financially from any inaction against it in relation to the construction claim. Either way, based on media reports, Mr Grant and Corrections appear to have discussed taking steps in concert to have me removed.

10 Contact details and electronic reporting

Enquiries regarding the meeting, forms to be completed or liquidation in general should be directed to:

| | |
|----------------|--------------------------------|
| Eve Switka | eswitka@aviorconsulting.com.au |
| Terrence Chong | tchong@aviorconsulting.com.au |
| Lucy Lowe | llowe@aviorconsulting.com.au |
| Kelly Meyn | kmeyn@aviorconsulting.com.au |

Phone: +61 8 6145 0700

This report and all previous correspondence to creditors are available on my firm's website <https://www.aviorconsulting.com.au/creditors>.

Yours faithfully
For the Company



Dermott McVeigh
Liquidator

Encl.

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

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

CIV-2019-404-703

| | |
|---------------|---|
| UNDER | Sections 243 and 284 Companies Act 1993 and Part 19 of the High Court Rules 2016 |
| IN THE MATTER | of DECMIL CONSTRUCTION NZ LIMITED |
| BETWEEN | DERMOTT JOSEPH McVEIGH of AVIOR CONSULTING PTY LIMITED as liquidator of DECMIL CONSTRUCTION NZ LIMITED (in liquidation) Applicant |

Hearing: On the papers

Minute: 3 June 2020

MINUTE OF ASSOCIATE JUDGE SMITH

Solicitors / Counsel:
Anthony Harper, Auckland, lynne.van@ah.co.nz

Case Officer:
A Lesa

[1] Mr McVeigh is the Australian-based liquidator of a company called Decmil Construction NZ Limited (in liquidation) (“Decmil”). Mr McVeigh was appointed liquidator by resolution of the shareholder of Decmil, on 15 April 2020.

[2] Mr McVeigh initially decided that no creditors’ meeting was required.¹ However, two parties claiming to be creditors exercised their right under s 245(1)(b)(iii) of the Companies Act 1993 (the Act) to require the liquidator to call a meeting of creditors. Although Mr McVeigh considers that there are issues over whether these two claimants are in fact creditors, he has decided that a meeting of creditors should be called.

[3] Mr McVeigh has filed an ex parte application asking for an extension of time under s 243(4)(A) the Act to convene the first creditors’ meeting, to no later than 15 working days following the date of the Court order.

[4] Mr McVeigh has also sought various other directions for the conduct of the meeting, including a direction that the meeting may be conducted using the Zoom audio and video platform, under Schedule 5 clause (1)(b) of the Act.

[5] Clause 1 of Schedule 5 of the Act provides:

Methods of holding meetings

A meeting of creditors may be held—

(a) by assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or

(c) by conducting a postal ballot in accordance with clause 7 of those creditors entitled to take part.

¹ Companies Act 1993 s 245.

[6] Mr McVeigh says in his affidavit that there are in the vicinity of 250 creditors of Decmil. In those circumstances, it will be impossible to call an “in person” meeting of creditors – the present Alert Level 2 requirements under the pandemic prevent more than 100 people meeting in the same location.

[7] Section 243(5) of the Act provides that the meeting of creditors must be conducted in accordance with Schedule 5. The difficulty in this case is that, with possibly up to 250 creditors participating, Mr McVeigh believes it will not be practicable to convene the meeting by Zoom in a manner allowing each participant to simultaneously hear each other participant throughout the meeting.

[8] Mr McVeigh submitted a detailed protocol proposed for the creditors’ meeting, which included a provision:

11. All participants will be put on mute by the meeting chairperson.

[9] Mr McVeigh accepted that such a provision would mean that the meeting would not be carried out in accordance with cl. 1(b) of Schedule 5 – participants would not be able to simultaneously hear each other throughout the meeting.

[10] Mr McVeigh invited me to exercise the Court’s broad jurisdiction under s 284 of the Act to give directions in relation to any matter arising in connection with the liquidation, to approve the Zoom meeting as proposed. My difficulty with that is that I doubt that the Court’s jurisdiction under s 284 could extend to giving a direction that would appear to run directly counter to the mandatory requirements of s 243(5) of the Act. I invited counsel for Mr McVeigh, Ms Van, to attend in chambers on 22 May 2020, and I heard brief submissions from her then. I then invited her to file a memorandum addressing the issue of jurisdiction under s 284 of the Act. I have since received and considered a memorandum dated 26 May 2020 from Ms Van

[11] In the course of the hearing on 22 May 2020 I raised with Ms Van the possibility that if the meeting could not be successfully conducted using the Zoom platform, it might be possible to convene a meeting by postal ballot, under cl. 1(c) of Schedule 5 to the Act, that meeting to be preceded by an “information session” with creditors that the liquidator would conduct by Zoom. I noted that any such

“information session” could not qualify as a formal meeting of creditors under Schedule 5 to the Act.

[12] Having considered Ms Van’s memorandum dated 26 May 2020, I remain of the view that the Court should not exercise its general power under s 284 of the Act to direct that a creditors’ meeting be held in a manner that does not comply with cl. 1 of Schedule 5 of the Act. However, Ms Van did advise in her memorandum that the liquidator has now instructed her that he is comfortable holding an “information session” (which would not be a creditors’ meeting – the formal meeting would be held by postal ballot as provided at Schedule 5(1)(c)). Ms Van advised that, if the matter were to proceed by information session followed a creditors’ meeting by postal ballot, certain orders would be required.

[13] Having considered the application and Ms Van’s submissions, I make the following orders:

- (1) Confirming that the liquidator’s application was properly made on an ex parte basis.
- (2) Extending the time under s 243(4A) of the Act for the applicant, as liquidator of Decmil, to convene the first creditors’ meeting, to no later than **15 working days** following the date of this order.
- (3) The liquidator shall give notice of the first creditors’ meeting as follows:
 - (i) Posting the date and time of the creditors’ meeting method on Avior Consulting’s website, with instructions to contact the liquidator’s office for further details of the meeting;
 - (ii) Emailing each creditor a copy of the notice of meeting and all documents for the meeting (voting papers and proxies), and a copy of this Minute, to an email address which the liquidator

has used to communicate with the creditor since appointments;
and

(iii) Giving public notice of the time and date of the meeting, in the New Zealand Herald & Gazette, with instructions to contact the liquidator's office for details of the meeting.

(4) The liquidator may:

(i) Receive voting forms and proxy forms by return email; and

(ii) Otherwise exercise all powers reasonably necessary to conduct the meeting in an orderly and efficient manner in the circumstances.



Associate Judge Smith

Notice of Creditors Meeting

DECMIL CONSTRUCTION NZ LIMITED (in Liquidation)

Notice is hereby given that, pursuant to Section 243 of the Companies Act 1993 (**the Act**) and clause 1(c), Schedule 5 of the Act, a meeting of creditors is to be held by way of a postal ballot on 24 June 2020 at 4:00pm.

The liquidator, Dermott McVeigh, is authorised to receive and count postal votes in relation to the meeting.

Creditor claim forms and voting papers must be received by no later than 4:00pm on Wednesday, 24 June 2020 by email to decmilnz@aviorconsulting.com.au.

The purpose of the meeting of the creditors by postal ballot is to:

1. confirm the appointment of the liquidator or to appoint another liquidator of the liquidator so appointed in accordance with section 243(1)(a) of the Act; and
2. to agree the establishment of a liquidation committee and if so, who the committee members will be.

All nominations for an alternative liquidator, together with the consent to act for that party, must be provided to the liquidator, no later than **6.00 pm Tuesday, 16 June 2020**.

Once all nominations are in, the liquidator will issue a further voting form which includes the names of all nominated parties and instructions on how to vote and return the forms.

Please direct any enquiries to decmilnz@aviorconsulting.com.au.

Dated this 11th day of June 2020

Dermott McVeigh



Liquidator

Audio-visual Information Session Instructions

Decmil Construction NZ Limited (In Liquidation)

1. Registration

The first meeting of creditors will be conducted by postal ballot.

In accordance with the Court's direction, the meeting will be preceded by an **information session for creditors** held on the Zoom Audio & Video platform on **Monday, 22 June 2020 at 2:00pm (New Zealand Time)**. It will not be possible to attend the information session in person. Creditors unable to use the video component of the Zoom Audio & Video platform may attend by teleconference by dialling in to the Zoom information session.

Attendance at the information session is not compulsory.

Creditors wishing to attend the information session must register their attendance by completing the "Creditor Registration" form via the link below:

https://aviorconsulting-au.zoom.us/webinar/register/WN_AG1RghmXQWudJf-ua3cpsQ

The completed Creditor Registration form must be submitted by 4:00pm (New Zealand Time) on Thursday, 18 June 2020.

Due to the expected large number of attendees, Creditor Registration forms submitted after the deadline will not be accepted.

2. Joining the information session

On the morning of the information session, creditors will receive an email by 10:00 am (New Zealand Time) to the email address specified on the Creditor Registration form, with a link to join the information session. **DO NOT forward this email link as the forwarded link will not work.**

The "ZOOM Cloud Meetings" App may need to be downloaded before the information session if you are using a mobile device. There is no cost to download this app.

If you hold a Zoom licence, ensure that the email address provided is the same one registered to your licence.

If you would like to test the Zoom function, please contact us **at least 1 day** before the information session. A test link will be provided to ensure the application is working. Technical support on the day of the information session will not be available.

3. Beginning of the information session

At 1:45pm (New Zealand Time) on the day of the information session, the link will become active and creditors will be able to join the information session.

Only the Liquidator and members of his staff will appear on video and be heard. Creditors will not be able to hear or see each other.

4. Agenda

The agenda for the information session is as follows:

1. Liquidator's review of liquidation to date; and
2. Questions from creditors.

5. Questions

Creditors will have the option of submitting questions before the information session via email and using the chat feature on the Zoom application during the information session.

The chat function is accessed by clicking the chat button at the bottom of your screen. Questions will only be visible to the Liquidator and not to other creditors.

A short break will be taken to review the questions submitted. The Liquidator will then read out the questions received and provide his responses.

6. Voting

The purpose of the information session is to provide an update to creditors on matters pertaining to the liquidation and provide the opportunity to raise questions of the liquidator in advance of the postal vote.

No voting will take place during the information session.

Creditors wishing to vote by postal ballot will need to return their Postal Voting form by 4:00pm, Wednesday, 24 June 2020, or Proxy Forms by 4:00pm by Wednesday, 24 June 2020 if someone else is to be casting the vote on their behalf.



Creditor Claim Form

| | |
|--|---|
| <p>NAME & POSTAL ADDRESS OF CREDITOR IN FULL</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Email: _____</p> <p>Telephone Number: _____</p> <p>My Reference is: (if Applicable) _____</p> | <p>* Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1993.</p> <p>The information will be used and retained by Insolvency Management and will be released to the other parties only with your authorisation or in compliance with the Privacy Act 1993.</p> <p>Under section 304(1) of the Companies Act 1993 any claim by an unsecured creditor against a company in liquidation must be in this prescribed form and must:</p> <p>(a) Contain full particulars of the claim; and</p> <p>(b) Identify any documents that evidence or substantiate the claim.</p> <p>You may have access to and request correction of any personal information.</p> <p>(*Not applicable, if creditor is not an individual within the meaning of the Privacy Act 1993.)</p> |
|--|---|

NAME OF COMPANY IN LIQUIDATION:
 DECMIL CONSTRUCTION NZ LIMITED (In Liquidation)

I _____
 (If claim is made on behalf of creditor, specify relationship to creditor and authority)

Claim that the company was, at the date it was put into liquidation, indebted to the abovementioned creditor for the sum of
 (Amount in words & figures:) _____

\$ _____

Either: I hold no security for the amount claimed or I am surrendering my security and I am claiming as an unsecured creditor (Omit whichever does not apply)

Full particulars of the claim are set out, and any supporting documents that substantiate the claim, are identified on the reverse of this form.

(The liquidator may require the production of a document under Section 304(2) of the Companies Act 1993. You are **required to attach supporting documents** to aid the Liquidator in assessing your claim).

SIGNED: _____ Date: / /

WARNING - It is an offence under Section 304(6) of the Companies Act to –

Make or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or

Omit, or authorise the omission from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.

| | |
|---------------------------------|---|
| Received (Date Stamp) | <p>RESERVED FOR OFFICE USE:</p> <p>Claim admitted/rejected for voting purposes: (Delete one)</p> <div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">Signed:</div> <div style="border: 1px solid black; padding: 5px; width: 45%;">Date: / /</div> </div> |
|---------------------------------|---|

| | | |
|------------------------------------|--|--|
| CLAIM REJECTED FOR PAYMENT: | <div style="border: 1px solid black; padding: 5px; width: 100%;">Signed:</div> | <div style="border: 1px solid black; padding: 5px; width: 100%;">Date: / /</div> |
|------------------------------------|--|--|

| | | | |
|---|--|--|--|
| Or | <p>CLAIM ADMITTED FOR PAYMENT:</p> <p>Preferential Claim for: Ordinary Claim for Deferred Claim for:</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="border: 1px solid black; padding: 5px; width: 30%;">\$ _____</div> <div style="border: 1px solid black; padding: 5px; width: 30%;">\$ _____</div> <div style="border: 1px solid black; padding: 5px; width: 30%;">\$ _____</div> </div> | | |
| <div style="border: 1px solid black; padding: 5px; width: 100%;">Signed Liquidator:</div> | <div style="border: 1px solid black; padding: 5px; width: 100%;">Date: / /</div> | | |
| <p>Note: If the decision to admit or reject a claim is amended, the Companies Act 1993 Liquidation Regulations 1994 requires that it be recorded in writing.</p> | | | |

PARTICULARS OF CLAIM

Where the claim includes goods supplied by the creditor to the company under a Retention of the Title clause, please give full details including description of the goods and their value.

If the creditor owes money to the company, please give full details.

| Date | Details of Claims and Identification of Documents that Evidence or Substantiate the Claim | Amount \$ |
|------|---|-----------|
| | | |

If applicable record here your GST registration number: _____
and total GST included in your claim: \$ _____

Nomination for a replacement liquidator form

DECMIL CONSTRUCTION NZ LIMITED (in Liquidation) (the Company)

Instructions: In completing this proxy form, please refer to the instructions on the last page.

A. Name and contact details of creditor

1

(if entitled in a personal capacity, given name and surname; if a corporate entity, full name of Company, etc)

2 of

(address)

3 Tel:

4 Email:

B. Nomination for a replacement liquidator

I / We, a creditor of the Company, nominate the following person(s), to replace the appointed liquidator at the meeting of creditors to be held by postal ballot at 4:00pm on 24 June 2020.

1

(name of person nominated)

2

(name of person nominated)

I attach to this form a **signed consent to act from the above-named person(s)**.

C. Signature

1 Dated:

2 Signature:

3 Name / Capacity:

D. Submitting the form

If you wish to nominate an alternative liquidator(s), this form is to be completed and submitted, together with the signed consent to act from the nominated alternative liquidator(s), **by no later than 6:00 pm (New Zealand Time) on Tuesday, 17 June 2020** to:

Email: decmilnz@aviorconsulting.com.au

Creditor Assistance Sheet: Completing a Nomination Form

Section A – Name and contact details of creditor

1. Insert the full name of the employee, individual, sole trader, partnership or Company that the debt is owed to.
2. Insert the address of the employee, individual, sole trader, partnership or Company that the debt is owed to.
3. Insert the telephone number of the employee, individual, sole trader, partnership or Company that the debt is owed to.
4. Insert the email address of the employee, individual, sole trader, partnership or Company that the debt is owed to.

Section B – Nomination for a replacement liquidator

1. Insert the name of the person(s) who you wish to nominate to replace the appointed liquidator. Ensure you have made enquiries of that person(s) and received their signed consent to act, which must be included when returning this form.

Section C – Signature

1. Insert the date that the nomination form is being signed.
2. The form should be signed by **one** of the following persons:
 - If the debt is owed to an employee/individual, then the individual that the debt is owed to; or
 - If the debt is owed to a sole trader, then the sole trader that the debt is owed to; or
 - If the debt is owed to a partnership, then one of the partners of the partnership; or
 - If the debt is owed to a Company, then a duly authorised officer of the Company (normally a director or secretary of the Company).
3. Insert the name of the person signing the form, and note their capacity (that is, their role):
 - If the debt is owed to a sole trader, note their capacity as proprietor, eg: “[Full name], proprietor”; or
 - If the debt is owed to a partnership, note their capacity as partner, eg: “[Full name], partner of the firm named in Section A above”; or
 - If the debt is owed to a Company, note their capacity as director or secretary, eg: “[Full name], director/secretary of the Company named in Section A above”.



DECMIL CONSTRUCTION NZ LIMITED (in Liquidation) (the Company)
Company Number 542 2686
NZBN 942 904 136 3485

Declaration of Independence, Relevant Relationships and Indemnities

Practitioner/s appointed to an insolvent entity are required to make declarations as to:

- A Their independence generally
- B Relationships, including
 - a) the circumstances of the appointment;
 - b) any relationships with the company and others within the previous 2 years;
 - c) any prior professional services for the company within the previous 2 years;
 - d) that there are no other relationships to declare; and
- C Any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of myself and Avior Consulting.

A Independence

I, Dermott McVeigh, and Avior Consulting have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

B Declaration of Relationships

(i) Circumstances of Appointment

I was contacted by the Company's director, Mr Scott Criddle, on 25 March 2020 to discuss the Company's position and the prospect of placing the Company into Liquidation. Following that telephone call, I had further telephone calls with Mr Andrew Barclay (in house lawyer for the Company) on 25 & 26 March 2020 to further discuss the prospect of liquidating the Company.

On 26 March 2020, I wrote to Mr Barclay explaining the process of appointing a liquidator, my experience as a liquidator and my firm's hourly rates that would apply if I was appointed liquidator of the Company. In that letter I also identified the minimum funds that the Company should be in possession of at the time of my appointment in order to fund the core aspects of the liquidation.

I had four telephone calls with Mr Barclay and sent 6 e-mails to him between 26 March 2020 and the date of my appointment. Those calls and e-mails related to the prospect of my appointment and did not include any substantive discussion in relation to the Company's position.

I have provided no other information or advice to the Company, the directors and its advisors prior to my appointment beyond that outlined in this DIRRI.

(ii) Relevant Relationships (excluding Professional Services to the Insolvent)

Neither I, nor Avior Consulting, have, or have had within the preceding 24 months, any relationships with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property.

(iii) Prior Professional Services to the Insolvent

Neither I, nor Avior Consulting, have provided any professional services to the Company in the previous 2 years.

I also confirm that there are no matters within section 280 of the Companies Act 1993 that would preclude me from accepting this appointment as Liquidator.

(iv) No Other Relevant Relationships to Disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 2 years with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property that should be disclosed.

C Indemnities and up-front payments

I have not been indemnified in relation to the liquidation, other than any indemnities that we may be entitled to under statute and, have not received any up-front payments in respect of our remuneration or disbursements.

Dated this 22nd day of April 2020



Dermott McVeigh
Liquidator