



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD2142/2018

**NEIL ROBERT CUSSEN AND MATTHEW JAMES DONNELLY IN THEIR
CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF BIG UN LIMITED
(ADMINISTRATORS APPOINTED)**

Plaintiff

WOW WORLD DIGITAL PTY LTD

Intervener

ORDER

JUDGE: JUSTICE STEWART

DATE OF ORDER: 11 April 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:


1. By 26 April 2019, the Plaintiffs give notice of their application under section 444GA of the *Corporations Act 2001* (Cth) in substantially the form of the notice attached to these orders as Schedule A ("**Proposed Notice**") to:
 - (a) all members of the Company;
 - (b) all creditors of the Company known to the Plaintiffs; and
 - (c) the Australian Securities and Investments Commission.
2. In respect of the classes of persons stipulated in order 1(a) and 1(b):
 - (a) notice of this application shall be given by the Plaintiffs by:
 - (i) causing the Proposed Notice to be sent by post to each of those persons;
 - (ii) in addition, causing an email attaching the Proposed Notice to be sent to each of those persons for which email addresses are known to the Plaintiffs;
 - (iii) uploading a copy of the Proposed Notice, the Interlocutory Process and the Affidavit of Neil Robert Cussen sworn 29 March 2019 to the Deloitte



website (<https://www2.deloitte.com/au/en/pages/finance/topics/insolvency-matters.html>); and

- (iv) lodging an advertisement for a period of one day in *The Australian*; and
 - (b) notice of this application need not be given by any other means.
3. By 8 May 2019, the Plaintiffs file any supplementary affidavits deposing to:
- (a) the Plaintiffs' compliance with orders 1 to 2;
 - (b) any correspondence or communications received by the Plaintiffs from each of the persons falling within the classes stipulated in order 1(a) to 1(c) in relation to the application, and the responses sent by the Plaintiffs to those persons; and
 - (c) any further matters relating to this application.
4. The Plaintiffs file any supplementary submissions in support of this application by 8 May 2019 of no more than 10 pages and an electronic bundle of OCR authorities with a hyperlinked index.
5. The application be listed for hearing at 10:15am on 13 May 2019 before the Corporations and Commercial Duty Judge.
6. The Plaintiffs may serve documents required to be served by the *Federal Court (Corporations) Rules 2000* (Cth) by email.
7. Liberty to apply to the Plaintiffs and any person falling within the classes of persons in orders 1(a) to 1(c) on three days' notice.

Date that entry is stamped: 11 April 2019


Registrar



SCHEDULE A

PROPOSED NOTICE

NOTICE TO SHAREHOLDERS

[DATE]

Dear Shareholder

Big Un Limited (Subject to Deed of Company Arrangement) ACN 106 399 311– Application for court approval for a transfer of 80% of your shares

We refer to the appointment of Matthew James Donnelly and I of Deloitte Financial Advisory Pty Ltd as joint and several deed administrators ("**Deed Administrators**") of Big Un Limited (Subject to Deed of Company Arrangement) ACN 106 399 311 ("**Company**") on 15 January 2019 under the *Corporations Act 2001* (Cth) ("**Act**").

This letter provides information about:

1. an application ("**Application**") which I have made, as joint and several Deed Administrator of the Company, to the Federal Court of Australia ("**Court**") for approval to transfer 80% of your shares in the Company to WOW World Digital Media ACN 629 978 570 ("**Proponent**") as part of a deed of company arrangement ("**DOCA**") approved by the creditors of the Company at the second meeting of creditors on 20 December 2018 ("**Second Creditors' Meeting**");
2. the steps which you will need to take if you wish to appear at the Court hearing on the Application, which is scheduled for 13 May 2019 at 10:15 am; and
3. the information which is available to assist you in deciding whether to appear at the Court hearing.

Background

On 24 August 2018, Mr Donnelly and I were appointed as joint and several voluntary administrators of the Company. At a meeting held on 20 December 2018, the creditors of the Company resolved to enter into the DOCA proposed by the Proponent. On 15 January 2019, the DOCA was executed by all parties.

The DOCA

Under the DOCA, subject to the satisfaction of certain conditions, including those detailed below, 80% of the shares of each of the shareholders of the Company will be transferred to



the Proponent in exchange for \$350,000 being payable into a deed fund established under the DOCA ("**Deed Fund**"). The Deed Fund will also comprise other assets of the Company, being any refund of GST due to the Company from the Australian Taxation Office, and the benefit of any claims or causes of action the Company may have against third parties (including its directors and officers, and former directors and officers) ("**Third Party Claims**").

The transfer of shares under the DOCA is conditional on, amongst other things, the following:

1. an Order being made by the Court under section 444GA of the Act giving the Deed Administrators leave to transfer 80% of the Company's shares to the Proponent ("**Share Transfer**"); and
2. the Australian Securities and Investments Commission ("**ASIC**") granting such exemptions or modifications from the requirements of Chapter 6 of the Act as are necessary to permit the Share Transfer to occur without the approval of the shareholders of the Company.

These conditions must be satisfied by 31 May 2019 or such other date that may be agreed upon by the Deed Administrators and the Proponent.

Upon effectuation of the DOCA, a Creditors' Trust will be established and the Deed Fund (after payment of approved fees, costs and expenses) will be transferred to the Creditors' Trust for the purpose of paying a dividend to creditors (and, in the event that there are surplus funds available from the recovery of Third Party Claims once all creditors' claims are paid in full, shareholders of the Company as at 24 August 2018) in accordance with the terms of the Creditors Trust Deed.

All claims of creditors of the Company, including any claims held by any persons in their capacity as shareholders of the Company, will be extinguished and transferred to the Creditors' Trust to be adjudicated by the Trustee of the Creditors' Trust in accordance with the Creditors' Trust Deed (save in cases where the Company is insured against such claim under a contract of insurance entered into before our appointment as administrators, where separate provisions apply).

In the event that either an Order under section 444GA or relief from ASIC is not obtained by 31 May 2019, or such other date as may be agreed between the Deed Administrators and the Proponent, the Deed Administrators will convene a meeting of Creditors of the Company to consider the future of the Company and options including that:

1. the Company vary the DOCA; or
2. the DOCA terminate and the Company be wound up.

Court approval for the transfer of shares



As contemplated by the DOCA, to effect the transfer of 80% of the shares of each of the current shareholders in the Company, I have made the Application to the Court.

A copy of the Application and supporting affidavit is available to you. Details of how you can obtain a copy are set out below.

The Federal Court of Australia will hear the Application at 10:15am on 13 May 2019. The Court is located at the Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000.

How does the Application affect you?

If the Application is approved, the other conditions to implementation of the DOCA are satisfied and the Proponent has made the necessary payment as required under the DOCA:

1. I will transfer 80% of the shares you hold in the Company to the Proponent;
2. you will be bound by the terms of the DOCA in accordance with section 444G of the Act; and
3. any claims you have against the Company in your capacity as shareholder will be extinguished. Such claims will be transferred to the Creditors' Trust and adjudicated by the Trustee of the Creditors' Trust in accordance with the Creditors' Trust Deed. This will not affect any claims you may have against third parties. Please also note that separate provisions of the DOCA apply (further details of which can be provided on request) in the event that the Company is insured under a contract of insurance entered into prior to our appointment as administrators of the Company in respect of any claim you may have against the Company in your capacity as shareholder.

Can you participate in the Court hearing?

You should seek independent legal, financial and taxation advice before making a decision to take any action in relation to the Application.

If you wish to appear in Court to oppose the Application, you must file and serve on us a notice of appearance, in the prescribed form and any affidavit on which you intend to rely on at the hearing. The notice of appearance and affidavit should be served on us by no later than 7 May 2019.

Our address for service is c/- Hogan Lovells, Level 17, 20 Martin Place, NSW 2000 (Attention: Scott Harris / James Hewer) or scott.harris@hoganlovells.com / james.hewer@hoganlovells.com.

What information is available to assist you?

To assist you in deciding whether to appear at the Court hearing:



1. a copy of the following Court documents in relation to the Application is available on the Deloitte website (www2.deloitte.com/au/en/pages/finance/topics/insolvency-matters):
 - (a) the Application;
 - (b) the supporting Affidavit of Neil Robert Cussen, sworn 29 March 2019; and
 - (c) orders made by the Court at the first return date of the Application on 11 April 2019; and
2. our reports to creditors under section 72-225 of the *Insolvency Practice Rules (Corporations)* 2016 are also available on the Deloitte website.

Alternatively, you may request copies of those documents from us and they can be emailed to you. Please contact Jessica Szeto of my office (jszeto@deloitte.com.au and +61 (02) 9840 6768) if you would like us to email you copies of the above documents.

Yours sincerely

Neil Robert Cussen

Joint and Several Deed Administrator.