



## HIGH COURT OF AUSTRALIA

12 September 2018

MIGHTY RIVER INTERNATIONAL LIMITED v BRYAN HUGHES & DANIEL  
BREDEKAMP AS DEED ADMINISTRATORS OF MESA MINERALS LIMITED & ANOR;  
MIGHTY RIVER INTERNATIONAL LIMITED v MINERAL RESOURCES LIMITED & ORS  
[2018] HCA 38

Today the High Court published reasons for orders it made on 19 June 2018 dismissing two appeals brought by Mighty River International Ltd ("Mighty River") from decisions of the Court of Appeal of the Supreme Court of Western Australia.

Mesa Minerals Ltd ("Mesa Minerals") was placed into voluntary administration and administrators were appointed. At the second meeting of creditors, a majority of creditors voted in favour of entry into a deed of company arrangement ("the Deed"). The Deed was executed in the terms proposed by the administrators. Amongst other things, the Deed provided for a moratorium on creditors' claims; required the administrators to conduct further investigations and report to creditors concerning possible variations to the Deed within six months; and provided that no property of Mesa Minerals be made available for distribution to creditors.

Mighty River, a creditor of Mesa Minerals, brought proceedings in the Supreme Court of Western Australia claiming that the Deed was void. Its claim was heard together with a claim brought by another creditor, Mineral Resources Ltd, that the Deed was not void. At first instance, Master Sanderson dismissed Mighty River's claim and made a declaration that the Deed was not void. The Master held that the Deed was consistent with the object of Pt 5.3A of the *Corporations Act 2001* (Cth); that s 444A(4)(b) did not require some property to be made available to pay creditors' claims; and that the use of a "holding" deed of company arrangement was one "gateway" to extend the period for convening a second creditors' meeting beyond the timeframe set by s 439A(5), the other being a court order under s 439A(6). Mighty River appealed to the Court of Appeal, which dismissed the appeals.

By grants of special leave, Mighty River appealed to the High Court. In essence, it made two submissions. First, the Deed was not a valid deed of company arrangement, principally because it was an agreed extension of time that had not been ordered by a court under s 439A(6) and was contrary to the object of Pt 5.3A. Secondly, the Deed should have been declared void under s 445G(2) for contravening ss 438A(b) and 439A(4), or s 444A(4)(b), or both.

A majority of the High Court held that the Deed was a valid deed of company arrangement. It had been formally executed in compliance with Pt 5.3A. The Deed created and conferred genuine rights and duties. It did not involve an impermissible sidestepping of s 439A(6) as it only had the incidental effect of extending the time for the administrators' investigations. The provision of a moratorium while Mesa Minerals' position was further assessed was consistent with the object of Pt 5.3A. A majority of the High Court also held that the Deed was not required to be declared void under s 445G(2). Section 444A(4)(b) did not require the Deed to specify some property to be available to pay creditors' claims, and the administrators had formed and expressed the opinions required by s 438A(b) and, at the relevant time, s 439A(4).

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*