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IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

BLACK J

WEDNESDAY 18 FEBRUARY 2026

2025/00300503 - IN THE MATTER OF TAHMOOR COAL PTY LIMITED
2026/00062876 - IN THE MATTER OF TAHMOOR COAL PTY LIMITED
(ADMINISTRATORS APPOINTED)

JUDGMENT – EX TEMPORE (Revised 18 February 2026)

Further adjournment of the winding up application

By Amended Interlocutory Process filed on 17 February 2026, Mr Hayes and Mr Johnson as voluntary administrators of Tahmoor Coal Pty Ltd (administrators appointed) (“Tahmoor”) sought alternative relief, namely, first, on the giving of a specified undertaking, an adjournment of a winding up application brought by the Plaintiff (“CMI”) in respect of Tahmoor to 28 April 2026 or, alternatively, an adjournment of the Originating Process to 4 March 2026. CMI has indicated that it would consent to an adjournment of the Originating Process to 4 March 2026 to pursue its investigations into matters which are to be addressed by Mr Hayes’ evidence in respect of the application.

There are two alternative bases on which an order adjourning the winding up application can be made, and the Court has once before adjourned this application for a short period to today. The first is under s 440A of the *Corporations Act* 2001 (Cth), which relevantly provides that the Court is to adjourn a winding up application if the company is under voluntary administration and the Court is satisfied it is in the interest of the company’s creditors for the company to continue under voluntary administration other

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than be wound up. It is plain enough, from the submissions that have been made by Mr Sulan with whom Ms Dyon appears for the voluntary administrators, and Mr Withers with whom Mr Gee appears for CMI today, that there are considerable complexities in applying that test in the particular circumstances. Those complexities include, at least, identifying with any degree of precision the manner in which a voluntary administration would proceed, involving any relevant sale with Tahmoor's assets or the shares in Tahmoor, so as to compare its outcome with a winding up, and identifying the manner in which any proceeds of a sale of assets or share would pass, if they passed, to creditors of Tahmoor.

The alternative basis for an adjournment is the Court's usual jurisdiction to adjourn proceedings, which is not bounded by the statutory criterion in s 440A of the *Act*. I am satisfied that an adjournment can be granted on that basis today, where CMI and the voluntary administrators both consent to that course; second, an interested party, the voluntary administrators of LPMA does not oppose that course; third, numerous supporting creditors in the winding up do not oppose that course; and fourth, the submissions and evidence led today make clear that there are issues that still need to be resolved, within the parties' respective positions, in order to properly undertake the comparison that would be required for a longer adjournment of the winding up, or even for a series of rolling adjournments, as continuing funding was or was not provided by a party that had entered a funding agreement as to the voluntary administration.

For these reasons, I am satisfied that the winding up should be further adjourned to 5 March 2026, so as to accommodate the availability of senior

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counsel for the voluntary administrators. I will also make orders in respect of the making of submissions.

As I noted in the course of submissions today, I do not propose to require, and I would not accept, the administrators' undertaking as to what would be done at a meeting of creditors, if funding under the funding agreement is no longer available, because that undertaking presumes the continuance of the voluntary administration in circumstances where a winding-up order might well then be made. The preferable course is to order that the matter be restored to the Court, if a default in respect of funding arises, when the question of any continuing adjournment, or the vacation of the adjournment made today, can then be considered.

Accordingly, I propose to make, and unless parties point to any error in the following orders, do make the following orders:

- (1) order that the winding-up application now pursued by Coal Mines Insurance Pty Ltd be further adjourned before Black J at 10.15am on 5 March 2026;
- (2) order that Messrs Hayes and Johnson, as joint and several voluntary administrators of Tahmoor Coal Pty Ltd, relist the matter upon notice to the associate to Black J and to all the interested parties, within one business day upon any default of funding under the Funding Agreement with Clydesdale Engineering Ltd, or if a request for funding under the Funding Agreement is not met when due.
- (3) direct the voluntary administrators to serve, and send to the Associate to Black J, any Further Amended Interlocutory Process, further evidence and submissions in respect of a further adjournment of the winding up

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by noon on 3 March 2026.

- (4) Direct any other party, or supporting creditor, which seeks to lead further evidence or make further submissions, to serve and send to the Associate to Black J that further evidence and further submissions by 4pm on 4 March 2026.
- (5) Liberty to apply on one business day's notice specifying the relief sought.

Personal liability of voluntary administrators as to Funding Agreement and leases

On 16 February 2026, I made orders limiting the personal liability of the voluntary administrators under the Funding Agreement and extending the time for the voluntary administrators to give notice for the purposes of ss 443 and 443B of the *Act* in respect of, inter alia, leased property of Tahmoor. The effect of those orders was, broadly, to absolve the voluntary administrators for personal liability while the question whether the voluntary administration should continue or the company should be wound up remained open, and to extend the time for an election whether to occupy such property, in circumstances that there were numerous leases.

It seems to me that the same order should now be continued to 5 March 2026, where the winding up will now be adjourned to that date. I bear in mind that the voluntary administrators had initially sought an extension of time in respect of leased properties only to 9 March 2026, but I also recognise that there are complexities in this matter which are emerging as the matter continues, and the voluntary administrators' resources may well be thinly spread given the complexity of the relevant issues. I also recognise there is plainly a disadvantage to lessors of properties, if that period is extended for too

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long. Nonetheless, I am satisfied that it should at least be extended to 5 March 2026, where it would be unrealistic, given the fundamental issues that the voluntary administrators need to address as to the structure of the voluntary administration, to expect them to have reached determinations as to the large number of leases involved within that period.

Accordingly, I make orders in the same form as the orders made on 16 February 2026, replacing the date in order 1 with a reference to 5 March 2026 at 10.15 am and replacing the references to 18 February 2026 in paragraph 3(a) - (c) with 5 March 2026 and replacing the reference to the cost of the hearing on 16 February 2026 in paragraph 6 with a reference to the hearing today 18 February 2026.