

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2023-

Under	Part 19 of the High Court Rules
In the matter of	A scheme of arrangement under Part 15 of the Companies Act 1993
Application by	MHM Automation Limited, a duly incorporated company having its registered office at 53 Lunns Road, Middleton, Christchurch, 8024, New Zealand
	Applicant

**ORIGINATING APPLICATION FOR ORDERS APPROVING SCHEME OF
ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated: 8 December 2023

BUDDLE FINDLAY

Barristers and Solicitors
Christchurch

Solicitor Acting: **Olly Peers**
Email: olly.peers@buddlefindlay.com
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To the Registrar of the High Court at Christchurch

This document notifies you that -

1. The applicant, MHM Automation Limited (**MHM**), will on
at am/pm 2023 apply to the Court for orders that:
 - (a) the proposed scheme of arrangement (the **Scheme**) between the applicant, MHM, and its shareholders, as described in the Scheme Plan (a draft of which is **annexed** to this application and the final version of which will be submitted to the Court prior to the hearing of this application) (the **Scheme Plan**), is approved and binding upon MHM, all of its shareholders, Bettcher Industries, Inc., Merlin NZD Bidco Limited and all such other persons as are necessary to give effect to the Scheme; and
 - (b) MHM is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.
2. The grounds on which each order is sought are as follows (and as set out in the accompanying memorandum of counsel):
 - (a) part 19 of the High Court Rules 2016 requires this application to be made by originating application (High Court Rule 19.2(c));
 - (b) section 236(1) of the Companies Act 1993 (the **CA**) provides the Court with powers to make orders that the Scheme is binding on MHM and its shareholders and on such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit;
 - (c) by the date on which this application is determined MHM will have:
 - (i) complied with the initial orders made by this Court and the requirements of Part 15 of the Companies Act;
 - (ii) fairly put the Scheme to the class of shareholders affected by the proposal, who will be fairly represented by those in attendance at the meeting; and

- (iii) confirmed whether the requisite resolutions have been approved in accordance with the requirements of s236A(4) of the Act.
- (d) in accordance with s 236A of the CA, MHM has, at the same time as filing this application, notified the Takeovers Panel of this application;
- (e) the Takeovers Panel has issued a Letter of Intention dated 6 December 2023 indicating that (based on the information before it), it intends issuing a No-objection Statement prior to this application being determined;
- (f) the Scheme is such that:
 - (i) an intelligent and honest person of business acting in respect of his or her interest would reasonably approve it; and
 - (ii) it is generally fair and equitable,
- (g) Bettcher and Bettcher NZ, each being a party to the Scheme and being bound by the Scheme, have executed and delivered to MHM a copy of the Deed Poll, complying with the Scheme Plan.

3. The application is made in reliance on:

- (a) Part 15 of the Companies Act 1993, particularly ss 235, 236, 236A, and Schedule 10;
- (b) Part 19 of the High Court Rules 2016;
- (c) *Re Abano Healthcare Group Ltd* [2020] NZHC 3343; *Re Fliway Group Ltd* [2017] NZHC 3216; *Re Nuplex Industries* [2016] NZHC 1677; *Weatherson v Waltus Property Investments Ltd* [2001] 2 NZLR 103 (CA); *In re CM Banks Limited* [1944] NZLR 248 (CA); *Re PGG Wrightson Ltd* [2019] NZHC 1780; *Re Tilt Renewables Ltd* [2020] NZHC 1398; *Re Pushpay Holdings Ltd* [2023] NZHC 1083; *Re Tower Ltd* [2022] NZHC 328;
- (d) the affidavit of Trevor John Burt dated 7 December 2023, and any further affidavits/affirmations to be filed in support of this application; and
- (e) the memorandum of counsel filed in support of the application (without notice) for initial orders and in support of this application.

DATED 8 December 2023



O D Peers
Solicitor for the applicant

This document is filed by **EGILL (OLLY) DAVIDSSON PEERS**, solicitor for the applicant whose address for service is at the offices of Buddle Findlay, 83 Victoria Street, Christchurch 8013. Documents for service on the abovenamed may be left at that address or may be:

1. Posted to the solicitor at PO Box 322, Christchurch 8013; or
2. Left for the solicitor at a document exchange for direction DX WX11135, Christchurch; or
3. Emailed to the solicitor at olly.peers@buddlefindlay.com and laura.elliott@buddlefindlay.com.

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CIV-2023-409-664
[2023] NZHC 3610**

UNDER Part 19 of the High Court Rules 2016
IN THE MATTER of a scheme of arrangement under Part 15 of
the Companies Act 1993
BETWEEN MHM AUTOMATION LIMITED
Applicant
AND

Hearing: (On the papers)
Counsel: E D Peers for Applicant
Judgment: 11 December 2023

JUDGMENT OF ASSOCIATE JUDGE LESTER

[1] The applicant, MHM Automation Limited (**MHM**) wishes to implement a scheme of arrangement (**the Scheme**) between it and its shareholders concerning the acquisition of 100 per cent of the shares in MHM by Merlin NZD Bidco Limited (**Merlin**).

[2] MHM has made an interlocutory application without notice for interim orders under pt 15 of the Companies Act 1993 (**the Act**). Mr Peers, counsel for MHM, has filed detailed submissions in support of the without notice application.

[3] Mr Peers explains that although it is not a pre-condition to an order approving a scheme of arrangement under s 236(1) of the Act, in practice, the parties seeking approval of a scheme will also apply for interim orders relating to the procedural steps including the materials to be provided to shareholders. After the special meeting of shareholders (**the Scheme Meeting**) and assuming the proposal is approved by the requisite quorum of shareholders, there will be a second hearing where the Court is asked to give its final approval to the Scheme.

[4] Accordingly, this judgment relates only to the application for interim procedural orders.

[5] In summary, the orders sought relate to the process by which all relevant parties are to be served with the Scheme, the arrangements for the Scheme Meeting, along with the mechanics as to how shareholders will vote.

[6] Mr Peers also seeks a hearing date for the Court to give its final approval to the Scheme, assuming it is approved at the Scheme Meeting.

[7] The Court must be satisfied that the application for interim orders can be dealt with on a without notice basis. I accept Mr Peers' submission that it is standard for such interim orders to be granted on a without notice basis as they are essentially procedural. Given MHM is a publicly listed company it would be impractical and involve a substantial and disproportionate time and cost for service on all shareholders. I accept Mr Peers' submission that it is appropriate that such procedural orders be dealt with on the papers.

Part 15 of the Companies Act 1993 – eligibility

[8] The proposed acquisition of MHM's shares by a third party is an arrangement for the purposes of pt 15 of the Act.¹

[9] Section 236(2) of the Act sets out the Court's jurisdiction to make initial orders in respect of proposed schemes. The purpose of these orders is to ensure there is a process by which all interested or affected parties are consulted before the Court makes its decision on the proposed scheme and that those parties are provided with sufficient information to enable them to properly consider and to decide whether or not to support the proposed scheme.

[10] MHM is a code company for the purposes of the Takeovers Act 1993, being a New Zealand registered company with its ordinary shares quoted on the NZX. As the scheme affects the voting rights of the shareholders, MHM is required to notify the Takeovers Panel of its application pursuant to s 236A(2) of the Act. The directions sought by MHM require the application to be served on the Takeovers Panel.

[11] The orders sought are procedural in nature. The orders describe the material to be sent to shareholders including a proxy form for voting, the means of communication which will be by way of email where shareholders have elected to receive materials by email or by ordinary post unless shareholders provide when those materials will be deemed to have been received. MHM will make copies of the Scheme Meeting available on its website. The orders sought provide that MHM may make amendments to the Scheme and how notice of those amendments will be given. Mr Peers, in a telephone conference, confirmed that of necessity any amendment to the Scheme would have to be minor and technical only and not affect substantive rights because a change would trigger a need for reconsideration by the Takeovers Panel.

[12] Provisions are set out for the running of the Scheme Meeting which are reasonably straightforward. It is anticipated the meeting will be held in person but with people having the ability to attend on line or to vote by proxy. Mr Peers explained that the voting arrangements are consistent with MHM's constitution.

¹ *Re Fliway Group Ltd* [2017] NZHC 3216 at [5] citing *Re Nuplex Industries* [2016] NZHC 1677.

[13] Finally, directions are sought in relation to how MHM will notify the outcome of the Scheme and the evidence it shall provide in relation to the Court dealing with its originating application for approval and how the parties will raise any opposition to the application.

[14] Mr Peers has supplied a draft order setting out the detail of the directions sought. I note only one matter and that is there are some 51 shareholders, accounting for approximately 0.03 per cent of MHM's shares for whom MHM does not have contact details and cannot serve. Mr Peers noted in the telephone conference that there has been some publicity in respect of the arrangement. If details for those shareholders are obtained or if they make themselves known then they will be provided with the materials.

[15] I am satisfied that the draft orders sought by Mr Peers which accompany this judgment are appropriate in terms of giving effective parties reasonable notice of the Scheme as well as setting out appropriate processes for them to participate in the Scheme Meeting.

[16] Accordingly, there are orders in terms of the attached draft.

[17] No order as to costs is sought and accordingly none is made on this aspect of the application.

[18] The originating application will be called in the 11:00am List on *29 February 2024* before me. If there is any opposition filed the applications will be heard on *Monday 4 March 2024 at 10:00am*.

Associate Judge Lester

Solicitors:
Buddle Findlay, Christchurch

From: [Brensell, Dylan](#)
To: [Olly Peers](#)
Cc: [Laura Elliott](#)
Subject: CIV-2023-409-000664 MHM Automation Limited
Date: 12 December 2023 16:51:48

Dear Counsel,

Please see minute for the above matter as per below:

The date of the final Court hearing is amended to 10am on Wednesday 21 February 2024.

***Associate Judge Lester
12 December 2023***

Ngā mihi,



Dylan Brensell

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