INSOLVENCY MANAGEMENT CASE STUDY 6

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Receivership

Background

Cookie Co Pty Limited (fictional name) was an Australian company that imported American biscuits, chips, chocolate, sauces and non-alcoholic drinks. It distributed these through supermarkets.

A long-term loan and an overdraft facility were supplied by a bank, which held a fixed and floating charge over Cookie's business and assets. It also held a mortgage over the directors' home.

Cookie's principal assets were warehouse premises, plant and equipment, trucks, debtors, stock and goodwill. It employed 30 staff.

The company lost its distribution rights for some products. Some US suppliers also entered the Australian market. It suffered trading losses, and the directors had a matrimonial dispute.

The bank required that the company re-finance elsewhere. This did not occur. The bank issued a demand and contacted Levi Consulting.

David Levi was appointed as receiver and manager.

Description of the course of action taken by the Receiver and Manager

The receiver paid the proceeds from the realisation of the land, plant and goodwill to the bank. Proceeds from the realisation of debtors and stock were paid first to employees, with the remainder paid to the bank.

The receiver then retired.

The directors sold the family house and part of the proceeds were paid to the bank. They were given the opportunity to refinance the family home, and have the new financier pay the bank.

No monies were available for unsecured creditors, and no creditors or the directors sought the appointment of a liquidator or voluntary administrator, as they were entitled to. As the company did not enter into liquidation, no action was brought against the directors for possible insolvent trading or uncommercial transactions.

Conclusion

The receiver carried on the company's business while it was advertised for sale.

The business and assets were sold on a 'going concern' basis to a competitor because there was value in the distribution channels developed in Australia (ie major supermarket outlets) and in the trading relationships with American suppliers.

What factors would encourage a substantial secured creditor to appoint a receiver, appoint an administrator, apply to wind up, or simply wait and see in the face of its debtor's financial stress?

Typically the secured creditor will either appoint a receiver or alternately reserve its rights and rely on the administrator.

This will depend upon pragmatic issues such as whether the secured creditor has enough security including collateral security; and whether the secured creditor is happy with the strategy of the administrator.

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