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MK Floors - The Liquidation We Didn't Have To Have?

Few business people understand insolvency law and given that the Australian economy may be heading for uncertain times this article examines the demise of MK Floors and was originally written for the benefit of ATFA (Australasian Timber Flooring Association) members.

What Do You Do When The Cupboard Is Bare?

You seek professional advice. Fast. The tendency is see your regular accountant. Most accountants are not equipped to give advice about insolvency because it is a specialised area. Furthermore, they may know that they may be partly to blame for not recognising the symptoms earlier.

The directors/owners of a distressed business should consult insolvency and commercial tax lawyers and consider all options available. These include a restructure of the business and possibly a proposal that can be put to creditors.

The MK Floors group included companies in New South Wales, Queensland, Victoria and the Australian Capital Territory. In October 2016 they had the following problems:

- cash flow issues, including slow payment by customers and lack of funding
- accounts on stop credit or reduced credit limits
- garnishee notice issued by the ATO to divert customer payments to pay tax debts
- inability to meet statutory obligations, e.g. lodge BAS on time, pay superannuation and tax
- default on ATO payment plan
- trading losses
- shareholder disputes

They owed the following debts:

- $7.3 million - secured debt to Commonwealth Bank of Australia
- $10.9 million - unsecured creditor debt, including ATO debt

The cupboards at MK Floors were sparse in October 2016.

What Did They Do?

Administrators were appointed in October 2016. Although administrators were appointed to the companies in the MK Floors group, no deed of company arrangement was proposed within the period allowed and so the companies in the group were put into liquidation. The whole process in MK Floors badly handled. The advice given to owners was suspect and/or poor decisions were made. Since then there are ongoing legal disputes including public examinations and other allegations which we will not comment about.

What Is Voluntary Administration?

Voluntary administration is governed by the Corporations Act 2001 and allows companies in financial difficulty to restructure and propose a deal with creditors.

The directors and/or shareholders of a company propose a restructure which must be approved by creditors. Such a restructure normally involves fresh money being injected into the company by the shareholders/directors and the creditors agreeing to accept a lessor amount in payment of debts owed. If this proposal is agreed to by creditors it results in a deed of company arrangement (DOCA).

This agreement then prevents creditors from claiming any further monies from the company and the company can continue trading. If there is no agreement then the proposal is rejected and the company goes into liquidation.

How Do You Recognise That You Need Advice?

There are numerous indicators, including:

Early Indicators

- Inaccurate or no financial records
- Failure to lodge tax returns or BAS returns
- Financial losses and inability to obtain working capital
- Competition from new competitors or technological change
- Poor debtor management or inability to survive if a large debtor doesn't pay
- Inability to pay GST, PAYG and superannuation or juggling cash flow
- "Maxing out" personal credit cards
- Reduced turnover, bad debts and/ or delayed payment by debtors
- Employees or contractors are unpaid
- Difficulty paying creditors
- Inability to borrow funds
- Post-dated cheques

Time To Panic Indicators

- Threats that a creditor will issue a statutory demand for payment
- Receipt of statutory demand or winding up application
- Suppliers demanding COD or refusing further supply
- Substantial director or shareholder loans
- Worry about business closure
- Income tax audit, payroll tax or similar audit likely to result in unpaid tax as well as penalties

Where Can I Obtain This Advice?

Everybody says they are insolvency experts. Insolvency is a highly technical area involving the intersection of legal knowledge, accounting knowledge and taxation knowledge. Directors and business owners can end up being personally liable if incorrectly advised and may end up losing a business that can be saved.

The key is to seek the right advice early, explore all options and act promptly. Insolvency law in Australia is the same Australia wide. You may be located in a regional or remote area, however the same insolvency laws apply to you as to a company based in Sydney.

CharterLaw Legal has specialist solicitors who are experts in insolvency and tax law, including sorting out disputes with the ATO and tax effective restructuring. We work closely with the best insolvency practitioners available. Call us on (02) 9220 9600 and get a better result than MK Floors.

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