

Case study

Business recovery and insolvency

The business, which was established in the 1920s, came close to receivership.

FMCG Manufacturer back from the brink

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Highlights

A \$3 million contract with a major supermarket chain has helped bring a long running regional margarine and associated products business back from the brink of financial collapse.

The twelve-month contract for the supply of canola oil is one of the biggest ever won by the company and has led to the creation of five new jobs.

The Challenge

The business, which was established in the 1920s, came close to receivership. We were approached by a concerned and exposed secured creditor of this margarine manufacturer, in which the exposure was in excess of \$5.5 million. Information provided to the secured creditor suggested the company was insolvent and unable to meet an impending repayment of approximately \$1.5 million.

At this time, unsecured trade liability also amounted to about \$3.3 million and employee entitlements were estimated to be as much as \$400,000 before considering the effects of redundancy entitlements.

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How we helped

Whilst advising on the various options available to the secured creditor, we devised a strategy that ultimately would deliver a better result for the secured creditor and all other stakeholders in the business. This strategy required the secured creditor to allow other stakeholders to have a say in the future of the business. This potentially reduced the power and control usually afforded to a secured creditor under other recovery options, but it was agreed to by the secured creditor. This resulted in BDO Kendalls being appointed as administrator of the company and effectively allowing all creditors a say.

The Corporations Act allows a voluntary administrator to be appointed in three ways:

- resolution of the majority of the company directors;
- appointment by a liquidator; or
- an appointment by a secured creditor.

Upon appointment, our assessment of the business confirmed that the business was insolvent but that the underlying business appeared viable.

This assessment of the situation confirmed voluntary administration was an appropriately flexible mechanism to deal with the company's predicament and seek to determine a way forward for the future of the company.

Within the first 48 hours following appointment meetings were held with all major customers to ensure the company would continue to have cashflow to function and an ability to service existing supply agreements.

These customers included several of the major Australian retail supermarket chains. The secured creditor assisted with this process providing additional comfort to customers by confirming their ongoing commitment and support of the business.

Also, crucial union support was received for this process. Without the assistance of the experienced staff, customer requirements wouldn't have been met and supply contracts would have been at risk of termination. Given the nature of the business, it is common for substantial supply orders to be received one week for supply the next, this was of critical importance.

With the trading of the company under administration bedded down focus then turned to devising a recover strategy to maximise the benefit and return to all stakeholders.

It was determined the best outcome would be facilitated by the company entering into a Deed of Company Arrangement ("the Deed").

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A Deed was put together and formally proposed to creditors by the secured creditor. The pertinent aspects of the Deed proposed were:-

- The business was to continue to trade under the Deed;
- The secured creditor was to continue to support the company and subordinate its debt so that trade creditors would be paid in priority;
- A fund of \$3 million dollars was to be established specifically for the payment of unsecured trade debt;
- Employees would continue to be employed and retain their entitlements to be paid when used;
- The directors of the company were to be replaced by nominees of the secured creditor; and
- The secured creditor to complete its exercise of its option over the shareholding in the company

The Deed was agreed upon by creditors at a duly convened meeting. The secured creditor now has ownership of the company and will realise its debt over time by continued repayments.

The establishment of the fund of \$3 million will provide for the return to trade creditors in the order of 85 cents in the dollar.

Client thought

With the Deed implemented the company has been allowed to focus on its ongoing trade and profitability. As a sign of its renewed strength and future prospects the company has recently won an additional contract that will increase turnover by \$3 million over the next twelve months and create five new jobs in the business. This contract was tendered for during the administration process.

For the future

As demonstrated by this case, the voluntary administration regime has allowed a creative approach to the administration and given comfort to various stakeholders to continue to support the business. This has resulted in the continuation of the business, retention of about 40 jobs, creation of new jobs and a significantly better return to creditors.

This approach has seen steps taken including the removal and replacement of directors, transfer of shareholding and subordination of secured liability to achieve a restructuring and turnaround of the company. A much more preferred scenario than the potentially devastating impact that a closure of the company would have had especially in a regional community.

For more information

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