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Offering Corporate & Personal Solvency Solutions

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VOLUNTARY ADMINISTRATION NO FATAL BLOW

Take a company with $300,000 in unsecured creditors. It has nil realisable value of assets after the secured creditors claim but a fundamentally sound core business. Cashflow is not completely shot but it is close.

Ignoring bad debts the company usually made around $80,000 profit a year before tax but after owners salaries. The sole director has equity in the matrimonial home.

How did this position arise? One large debtor fell over! This can be replaced by a large fraud or a separate unsuccessful venture. or a flawed business model which is repairable.

Where to from here? Suggestions and options abound.

Before discussing the options there needs to be some mention of the issues that exist. It should be pointed out that the ATO is a creditor and are starting to push. A directors penalty notice is on the cards. To continue to incur credit runs the gauntlet of the insolvent trading provisions of the Corporations Act with its criminal penalty and civil sanctions too. Now to the options and suggestions.

(1) Borrow against the house and put the extra finds towards creditors is the first suggestion most come up with. In certain circumstances this has merit but the down side is an increase in interest bill and leaving aside the $300,000 in creditors an immediate increase in the cashflow burden. There is also the loss of potential financial flexibility in the context of other options. If the borrowings are not sufficient to fill the shortfall then creditor pressure remains. A bandaid option at best.

(2) Hang on and hope like hell things improve which is like playing with fire.

(3) Appoint a voluntary administrator and put a proposal to creditors to pay them something now out of the directors equity in his house and future contribution out of trading profits. Creditors vote on the proposal under a formal procedure and providing the threshold majority is in favour of the proposal the dissenting creditors are bound by the proposal. It was not the directors fault the debtor fell over. Liquidation would provide unsecured creditors (not withstanding personal guarantees) with nothing. It need not be an offer of anywhere near 100 cents in the dollar to succeed and if the majority of contribution to creditors comes out of profits the company has bought time and the directors can use the remaining equity in his house for working capital if necessary.

Reminder, the ATO like all creditors would be bound by the Deed of Company Arrangement which would have arisen from the voluntary administration process. Too bad about the band aid solution it will make an interesting liquidation.

As ever we welcome your insolvency and related enquiries.

Apart from Formal Insolvency Services at Clouts we also Offer:-

Orchestrating Informal Arrangements with Creditors

Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

Business Valuations

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Small Business Courses

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