October 2023

Newman & Partners
Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at **insolvency@newmanandpartners.co.uk**

UK court clarifies Director liability in wrongful trading case

In a landmark case that scrutinises the obligations of Directors under the Insolvency Act 1986, a UK court recently ruled against the sole Director of Safe Depot Ltd, a company providing storage solutions across three locations in the northwest of England.

The case sheds light on how the law navigates complex scenarios of insolvency, particularly when Directors proceed with what is termed as 'informal winding ups'.

Background

Safe Depot Ltd found itself grappling with cash flow issues as early as 2014, becoming cash flow insolvent by April 2016 and balance sheet insolvent by September 2016.

Despite this, the Director engaged in the disposal of various assets, including transferring a customer list to a competitor and book debts to a connected company. By the time the company was formally wound up in July 2017, its liabilities had soared by at least £433,000.

Legal proceedings

The Joint Liquidators brought proceedings against the Director, alleging wrongful trading, transactions at undervalue, and breach of duty to the company. They argued that the Director failed in his responsibilities as stipulated under Section 214 of the Insolvency Act.

This section mandates that once a Director becomes aware—or should reasonably become aware—that the company has no hope of avoiding insolvent liquidation, they must take every reasonable step to minimise loss to creditors.

Court's findings

The judge found the company to be cash flow insolvent from April 2016 and definitively insolvent by August 2016. The Director was deemed to have breached his duties to creditors by effecting transfers of assets without due consideration. However, the court could not conclusively establish that these transfers were aimed at defrauding creditors. Most crucially, the court ruled that the Director engaged in wrongful trading. Despite claiming that the company had ceased to trade in July 2016, evidence showed that the company continued to incur liabilities. The Director was found to have conducted an 'informal winding up', transferring the profitable elements of the business to a connected company while liabilities continued to accrue.

Implications

The case is significant for several reasons. Firstly, it demonstrates the court's readiness to enforce Section 214 of the Insolvency Act if Joint Liquidators or other officeholders can provide compelling evidence of wrongdoing.

Secondly, the judgement indicates that even if company records are lacking, sufficient evidence can still lead to a conviction for wrongful trading. Lastly, the case is particularly notable as it does not fall under the period covered by the Corporate Governance and Insolvency Act 2020, which suspended liability for wrongful trading from 1 March 2020 to 30 June 2021.

This reminds us that the core principles governing Director liability for wrongful trading continue to apply robustly outside of such extraordinary measures. Directors should also be aware that under sec 214, a Director found guilty of wrongful trading can be required to personally contribute to the liquidation estate. The case serves as a stark warning to Directors to tread cautiously when insolvency looms, reinforcing the stringent legal obligations that they are under to protect creditors.

To remain compliant during insolvency it is always best for Directors to consult the experts. To find out how we can assist, get in touch with our team today.

Former Carillion CEO disqualified from Directorial positions for eight years

Richard Howson, a former Director of Carillion, a British multinational facilities management and construction services company, has been disqualified from holding a Directorial position for eight years by the Insolvency Service. Howson was responsible for numerous financial irregularities at Carillion, specifically related to its major construction contracts and transactions with Wipro.

According to the findings of investigations, he also manipulated financial statements for the years 2015 and 2016, concealing losses and overstating profits, thereby violating various International Accounting Standards and the Companies Act 2006. The misrepresented accounts resulted in the business reporting significantly higher profits and lower debts than were true. He also failed to disclose key information to auditors, both of which led to skewed financial reporting.

Additionally, Mr Howson was found to have made misleading market announcements and unjustifiably authorised a large dividend payment in 2017, knowing the company's poor financial status. Overall, he engaged in practices that distorted the real financial position of Carillion, which he ought to have known was misleading and unlawful, hence his eight-year ban.

The collapse of Carillion in January 2018 sent shockwaves throughout the UK construction and outsourcing industries. As one of the UK's largest construction firms, its failure left a gaping hole, affecting not just its immediate employees, but also a wide network of subcontractors and suppliers. Public services, including hospitals and schools, which relied on Carillion for facilities management, faced disruptions.

The financial fallout also led to a loss of faith in the viability of public-private partnerships, leading to increased scrutiny and more cautious procurement practices in the sector. The collapse served as a cautionary tale about the risks inherent in relying too heavily on large contractors for public services and has led to calls for greater oversight and regulation.

The collapse of Carillion has become internationally renowned as an example of poor financial management that ultimately led to insolvency. However, the lessons from its failures provide an example of what not to do. If you suspect that your clients might be following a similar path or facing insolvency, speak to us.

UK SMEs are in desperate need of business debt relief

Faced with soaring insolvencies and a battered economy, the UK's small and medium enterprises (SMEs) are in dire need of debt relief. With the Centre for Economics and Business Research predicting that business insolvencies will surge from an average of 4,100 per quarter in 2019 to a staggering 7,000 by 2024, there's no denying that UK businesses are on shaky ground.

These woes have been exacerbated by a sudden and steep interest rate hike from zero to 5.25 per cent by the Bank of England, leaving SMEs with little time to adapt. This unfavourable economic landscape isn't solely the fault of higher interest rates. Factors like Brexit, the Ukraine War, and the residual effects of the pandemic have been more potent drivers of inflation.

The Bank of England appears unyielding in its commitment to high-interest rates as a cure-all, ignoring their inflationary impact. It's a challenging picture for the British private sector, with business debt tripling from 25 per cent of GDP in 1979 to 77 per cent today. Households haven't fared much better; their combined debt with businesses now stands at 163 per cent of GDP, up from 58 per cent in 1970.

This double burden stifles consumer spending and puts additional pressure on already struggling businesses. To restore economic vibrancy, the UK government must explore innovative debt relief solutions for SMEs. Streamlining insolvency laws could be a start, enabling struggling businesses to recover faster.

A more radical proposal could involve offering SMEs the option to swap equity for reduced loan amounts and monthly payments. In cases where the loan value exceeds the collateral value, lenders should be encouraged to write down the shortfall and restructure the debt, while extending the recognition of these losses over several years for accounting purposes.

The crux of the issue remains unaddressed: the UK economy is swamped by unsustainable levels of private sector debt, making any genuine recovery elusive. It's high time policymakers tackled this debt crisis head-on.

If your clients require assistance with restructuring their debts or gaining some breathing space from creditors, we can help. Our team have years of experience helping businesses of all sizes, so please contact us.

CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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The content of this bulletin should not be considered by any reader to comprise full proper legal advice and should not be relied upon.