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PRE-PACK ADMINISTRATIONS, WHERE NEXT?

Whilst universally not accepted, it is widely believed that pre-pack Administrations produce a better result for the creditors of a Company in financial distress. They enable a failing business to be sold at a higher price than in a Liquidation which safeguards the future of that business as a trading entity with minimal disruption and jobs secured.

In 2014, the Graham Review made certain recommendations which aimed to make pre-packs more transparent and, wherever possible, the best price be achieved for the business. There has however always been a conflict of interest between the pre-pack Administrators being instructed by the Company's Directors and then selling the business to them. The Graham recommendations were put forward to provide assurance that a business was properly exposed to the market so that the best consideration possible may be achieved.

However, this year in the case of Ve Interactive Limited, the Court removed the Administrators of a Company which had entered into a pre-pack sale of its business to connected parties. The Court pointed out that once a decision had been taken to pre-pack, a conflict of interest arose as it will always arise when a Company's Directors seek to purchase a Company's business. The Court considered whether or not the Directors had breached their duty by favouring their own interests ahead of others and also whether or not the Administrators had breached their duties resulting in a loss being caused to the Company by endorsing a sale of its business at an undervalue.

The Court pointed out that a number of matters required investigation including whether or not the business had been properly marketed and had the Directors taken advantage of information which they did not share with other parties.

The case highlights the risks run by Administrators who enter into pre-pack sales to connected parties. Creditors must have confidence that the sale is at the correct price and has objectively been assessed by the Administrators.

In December 2017, the Government announced that it was undertaking an assessment of the impact of the voluntary measures introduced in November 2015 to improve the transparency of connected party pre-pack Administrations. The results of that review are currently awaited and if it is deemed that the voluntary measures are not working, then the Government may decide to prevent the same Insolvency Practitioners acting in both pre and post appointment roles.

A similar situation occurred during the 1990s when a number of Banks decided that the Insolvency Practitioners instructed to carry out an independent business review could not subsequently be appointed Administrative Receivers. Whilst possibly a coincidence, it was duly noted thereafter that the number of Receivership appointments where those particular Banks were involved fell considerably.

Please note that should you require any confidential advice regarding any insolvency matter you are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.