

To Whom it May Concern,

Following correspondence between myself and the Financial Services Division of Treasury, I have been encouraged to make a submission to this inquiry.

The following is a case study of an actual occurrence deliberately kept brief and the writer is more than willing to provide much more detail if required. Importantly at this time I add the following comments which I believe are important.

- At no time leading up to the appointment of an Administrator did the Company breach any of its Bank Covenants. (acknowledged by the Banks Officers)
- The value was clearly established at \$4.3 M yet the Receiver accepted around 40% of that amount.
- The Receiver did not market the business adequately and by their own admission did not target any of the many Equity companies that purchase distressed assets.
- The largest Company in the world (General Parts Co) through their subsidiary Repco Australia, made an offer but requested another week for due diligence in order to "firm up" their offer this was declined by the Receiver. Given Metcash had performed all their DD prior to the Receiver being appointed they were at a distinct advantage to the other major bidder (Repco).
- Banks appear to be totally unaccountable in these matters and simply "seize" assets without being required to justify their actions. Surely they should be required to apply to a Court or some independent body.
- In the case of DPSS it was generally considered that with a Chapter 11 arrangement the business would have survived.

The DPSS Story

DPSS was formed in May 2003 by Ray and Michael Della-Polina (following the sale of Marlows to Supercheap Auto in April of that year) with a focus on indenting as agents for retailers. From this base they were joined by Matt Conder and Des Ellis (past Marlows executives) in mid-August 2004 to set up and launch Malz. The business experienced usual start-up issues but by December 2008 had four stores up and running.

Directors recognised that to be truly profitable six stores would be needed to provide sufficient critical mass, nevertheless start-up was very encouraging although dampened considerably with the GFC and soft retail trading conditions that followed.

With full confidence in the model which was developing the Directors entered into lease arrangements (on favourable terms) for a store at Malaga and then later on a store at Joondalup.

By mid-2012 and before the Malaga store was due to open, tight cash flow began to impact adversely on sales – the directors were however assured by a colleague that he could raise \$1 million in capital or on worst-case scenario provide \$500-600K of the capital himself. Feeling confident of the future the Directors ordered shopfitting's for the new Malaga store and following a great deal of research outsourced the design and building (to a detailed specification) a modern e-commerce website.

Neither of the capital injection assurances came to fruition and by late 2012 the Directors approached Metcash (who had recently acquired Automotive Brands Group (ABG) the owners of Autobarn) to see if they had an appetite to acquire the MALZ business.

The MD of Metcash referred our approach to the MD of their subsidiary ABG. The approach from ABG was to go down the route of a JV but after 8+ weeks of negotiation, ABG withdrew from the negotiation on the basis that all the “metrics” required by Metcash could not be met in the immediate short-term.

Concerned that tight liquidity was not only adversely impacting on sales but inhibiting the growth plans of the business essential to reach critical mass, the Directors began exploring the opportunities of raising capital from the private equity market and had discussions with parties involved in this area.

This culminated in a very detailed business plan/offer being launched in late 2013 by a company experienced in the raising of private equity capital. The value placed on the shareholders equity in this proposal was \$6 million and in line with the opinion of another similar business which placed in an equity value of \$5 million on the shareholders interests.

Unfortunately the offer which was to go public on 28 September was not released until the end of October and by the time it had run its course that date was well into December with the capital raising not successful there was no time available to regroup and relaunch prior to the Christmas break.

As a consequence of this marketing ABG returned to the table at this time as a purchaser. Following negotiations a price was agreed on January 2nd 2014 for the sale of the business and all its assets for \$4.3 million (subject to minor adjustments).

An extensive BSA comprising 93 pages, 137 clauses and nine schedules was prepared, all were agreed with the exception of three clauses involving warranties and guarantees to be provided by the Directors and demanded by Metcash/ABG which in effect would provide preferential treatment of certain Trade Creditors. Our advice from insolvency experts (both practitioner and lawyer) was that we should not sign this document as it could have quite severe and dramatic consequences, the worst case scenario terminating in jail terms for the Directors.

Despite lengthy discussions Metcash/ABG could not be persuaded to remove or modify the offending clauses, but instead opted to “walk away” making a statement that they “ would buy the business from a receiver for a lot less “.

“Walk away” occurred around 26th January up until that time arrangements were going well with the aim of completion and signing of the BSA by 22nd January and lease assignments et cetera well in hand for completion of the transaction and takeover scheduled for 31st January.

Had this sale will proceeded secured creditors would have received 100% of the monies owing to them while unsecured creditors would have received 31.9 cents in the dollar. (Should be noted that shareholder/related party loans amounted to \$3.225M).

As the Directors had negotiated a sale with Metcash/ABG that was insufficient to meet all of unsecured creditors debts WA Insolvency Specialists were engaged to manage the process, (they also assisted in trying to break the impasse with Metcash/ABG to allow the sale to proceed) when the sale process failed discussions progressed to a decision by DPSS Directors to appoint WAIS as Administrators of the business.

The WAIS plan was :

- Call a meeting of creditors and put into place a “Scheme of arrangement”
- Would guarantee suppliers that they (WAIS) would underwrite any future supplies so that creditors position could not deteriorate .
- Included in this undertaking was a commitment to lift stock levels by \$2-\$300,000 to a level sufficient to optimise sales potential.
- Run the business on until we were successful with a capital raising or an orderly and successful trade sale could take place (estimated to be 3 to 4 months).

The Directors appointed WAIS as administrators of the company on the morning of 3rd February and the bank appointed KPMG as receivers later that day.

Both the bank and the receiver prior to their appointment had provided a strong assurance to the Administrator and the Directors that they would continue to run the business as normal.

History records that the receiver did not by any stretch of the imagination abide by that assurance. Allowing only one purchase of stock (batteries) and cancelled almost all advertising. Under the receivers management, sales continued to decline by 10 to 15% compound per week. We could do nothing but watch the business slowly being totally gutted. This strategy was publicly criticised by the administrator at a creditors meeting held in February 2014.

While the Directors and Shareholders have been remarkably starved of information, the “tit bits” that have been provided indicate that the Metcash/ABG original offer was for \$1.35M and only one other serious offer was received this being from General Parts Company (owners of Repco and the largest player in this sector in the world) being for \$1.75m.

Metcash/ABG had conducted full due diligence during the direct process with DPSS , while GPC did not have this luxury and requested a further week to complete their due diligence and finalise their offer- this was declined by the Receiver, who the Directors believe accepted an offer from Metcash/Automotive Brands for \$1.9M only 44% of the original negotiated price and only 54% of the written down assets of the business. Unconfirmed indications to the Directors are that fees and charges from the Administrators were around \$1M. If this be the case the process instigated by the Bank has destroyed \$3.5M in value and left shareholders in a very perilous financial position.

The Directors of DPSS are of the view that the business was inadequately marketed by the receiver. Probably well illustrated by the opinion expressed by an Associate Director of KPMG working on/in the Receivership detail “ that all the business lacked was enough stores to provide sufficient critical mass” and for which the Directors had been striving.

The question needs to be asked as to why Australia has laws that allow a corporate giant (or anyone for that matter) with a market cap of \$2.5B to effectively “steal” money from small

business and effectively tip good honest hard working young men and their families out on the street.

The Bank did not have to appoint a Receiver to protect its interests. Had the Administration process been allowed to run its course it is more than probable that the Bank and other secured creditors would have received full payment of their debts and all creditors an extremely good chance of receiving full payment.

The directors engaged Debt Crisis Solutions to manage a very difficult situation as a consequence a Creditors meeting was held on 16th June 2014, the Bank was a no show and did not appoint a proxy. At that meeting a PIA was proposed and agreed with a very significant majority. The bank continued to obstruct the finalisation of the PIA for many months.

One Director (with a young family) was forced to sell the family home and remains homeless two others managed to refinance after considerable stress ,the three younger Directors were able to secure Executive appointments with significant businesses –but the 74 year old Chairman remains homeless and surviving on drawings from a depleted Superannuation Fund. He has been frustrated in an attempt to establish an Import/Export business and provide an income, or to draw funds from his Superannuation Fund to provide humble accommodation until the Pia was finalised and a Discharge provided by the trustee in early January of this year.

If the Government of Australia is serious about lifting profitability in this country then changes to the “Solvency Acts” that currently allow banks and professionals in the industry to destroy assets almost wantonly and certainly without sufficient levels of accountability. Perhaps there should be a serious study made of systems used in other countries- perhaps a good place to start is the USA.

Destroying business's out of hand that have good systems ; good technology and culture and who's only sin is under capitalisation can not be in the best interests of the country not to mention the pain and anguish wrought on hard working young executives and their families.

While changes to the Laws can not help myself or my colleagues,I am passionate about making any contribution I can to effect important reforms that may assist in the protection of those business owners deserved of protection , for the benefit of not only individuals but the community as a whole. In this regard I am more than willing to answer any questions and or provide more information. I can also introduce professional practitioners who can support and validate all of my comments.

Yours Sincerely

Ray.Della-Polina.

Scarborough WA 6922