

Is it Time To Change The Pre-Pack Rules?

As house arrest in the UK begins to loosen and at least in England people tentatively try and start up their damaged businesses we are going to see a very harsh landscape for our sector and there are many who went into this unprecedented event ill prepared for any sort of 'rainy day'. But this is more than a rainy day it's a tsunami of liquidity and shortly solvency as well because a market where capacity already exceeded demand will see that factor magnified hugely as that demand falls.



We will see business failures that are not anyone's fault, they will be caused by the complete shutdown of the UK economy and to be fair there is not one business owner Director or Manager you could have expected to plan for that. On the flip side we will see some take advantage of this to yet again exploit the Companies Act and indulge in the Pre-Pack, not something that is unique to the window industry but it does seem to be something that suppliers and customers have taken for granted and even ignored after a bit of salacious gossip on social media. For those unsure how it works (and good for you if you don't!) a company is covertly lined up for a process that involves declaring it insolvent and immediately assets are bought back (usually with only one bidder who is cited as 'the best offer immediately available or likely') and here is the problem, often these assets are bought back by previous owners or beneficial owners of the business or their wife or kids (or some proxy company).

What's the problem? Well this is not a victimless event, suppliers don't get paid, employees don't get money due, the taxpayer loses what they are properly owed (remember the NHS, that's not for free) and customer's warranties well go sing for em! the customer picks up the cost. The argument in favour is that the business gets to continue and some people get their jobs back (if they are lucky but the experienced pre-packer will be keen to avoid TUPE liabilities and will certainly short change any contractual liabilities to employees), suppliers have a brand new customer solvent and ready to place orders but wait, think about that. If you pay your taxes, employees and debts albeit that in present circumstances you have to ask for a bit of breathing space and a bit of help then the pre-pack is a nasty threat. Imagine your supplier supplies that newly squeaky clean business, your price includes their unpaid debt (as the supplier has to cover the costs) and competing with the pressure and disadvantage you have had to shoulder against someone who has been wiped clean, picked up assets on the cheap and can undercut you because they have not had to restructure like you have then you should see it as not only unfair but downright immoral. Under present rules that's all fine legally.

The supplier temptation is great, they've lost money anyway and some are not above doing some sort of side deal that inflates the newco price a bit 'until the old debt is paid off' (though often they pick up a new bad debt from newco well before that day) and they can keep at least some of the volume the failure has cost them. That's very short term thinking and has led us to an undercapitalised industry with many weak and inefficient businesses perpetuated..... because going bust and pre-packing is easier than running an efficient customer focussed business and it allows shareholders to milk a business dry and never suffer from the inevitable crash because the people who **don't** suffer in this, whilst customers suppliers employees and the taxpayer do is.... the shareholders, they had a worthless asset anyway and now they have a valuable asset at a hugely discounted price.

The pre-pack has it's place, it may allow good businesses to survive that have otherwise been flattened by circumstance, it can keep people employed and it can allow a fresh start but I'd ask

for one tiny change to company law. If you were involved with the failed business as a shareholder, owner, dividend recipient or the wife husband mum sister or uncle of one of those people you can't take part in picking up the so called Phoenix business and neither can a proxy or a proxy of a proxy do it on your behalf. I'd make one exception, if an employee (and only employees) co-operative wanted to pick it up. If a third party investor (who again shouldn't have a back door to the old owners) wants to invest then fine. Suppliers even in these circumstances should think hard and when they make the decision to supply newco they should be able hand on heart to look their customers in the eye and say "we've done it but there is a good reason and we've weighed our relationship with you in coming to a decision to supply".

How about if the pre-pack is of a consumer facing business, then there is no supplier conflict of interest right? Well if you are happy to supply people who walk away from warranties and have likely cut corners whilst saving cash and who have let customers down and caused them worry and stress over deposits and half finished work and done it with your brand and your product... then yes no problem.

Let's see what happens when the chips are down.

*Chris Ball is a Director of MBA , MBA Associates Ltd is a specialist consultancy that partners clients to **Recruit, Retain and Develop Top Performing Teams.***
info@mba-associates.co.uk www.mba-associates.co.uk

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