www.theengine.biz | admin@theengine.biz | (09) 869-3990

The Impact of Company Liquidation on Employees

By Claire Mansell - 20 Nov 2023

The recent closure of online supermarket retailer Supie has highlighted the challenges faced by employees when their employer enters liquidation. This process often results in a "lose-lose" situation for all parties involved. The decision to liquidate an insolvent company is made when there are insufficient funds to cover all creditors, including employees. In most cases, the insolvent company will cease operations, and employees' employment will abruptly end.

The liquidator's responsibility is to distribute the company's assets in accordance with the priorities outlined in Schedule 7 of the Companies Act 1993. In recognition of their precarious status, some employee claims receive priority status. These include wages for the preceding four months, holiday pay, and redundancy compensation. These claims must be paid out ahead of most other creditors, with the exception of costs incurred in administering the liquidation or preserving company assets.

There is a cap on the amount an employee can claim as a priority claim, currently limited to a maximum of $25,480. This cap is particularly disadvantageous for employees who have accumulated significant unused annual leave. Note that it does not include payment for any notice period. This can lead to an abrupt cessation of income, posing significant financial challenges for affected employees.

Unfortunately, the funds available to the liquidator for paying employees are limited. In a liquidation, there are two types of creditors: secured creditors, whose debts are secured against company assets, and unsecured creditors. Secured creditors can claim the asset they have a security over to repay the debt owed by the company in liquidation. Unsecured creditors lack this ability and must rely on the liquidator's ability to access funds or sell assets not subject to a security agreement. As a company faces financial difficulties, it is often forced to provide security for the debt it incurs. This frequently leaves little for unsecured creditors. Special rules exist for accounts receivable and inventory, which are earmarked for unsecured creditors. Liquidators may also pursue legal claims against other parties to increase the pool of funds available for unsecured creditors.

For employees, the situation worsens when their employer enters liquidation. Any personal grievance claim will be suspended, and any proceedings filed in the Employment Relations Authority or the Employment Court cannot proceed without the liquidator's consent. In most cases, liquidators are unwilling to spend money contesting a claim in the Employment Relations Authority or the Employment Court if there is insufficient money to pay the employee in any event.

Despite these challenges, there are still avenues for employees to recover funds outside of the liquidation process. Some employees have successfully brought claims against the directors or shareholders of companies in liquidation on the grounds that they "aided and abetted an employer to breach its employment agreement." If the company in liquidation is part of a group, it may be possible to pursue a claim against another company within that group structure on the basis of a triangular employment relationship or that the real employer is another company within that group structure. This type of claim could be brought where, as in the case of Supie, employees are employed under a separate "payroll" company, but their employment is controlled by another company within that group.

The demise of Supie serves as a stark reminder of the difficulties faced by employees when their employer enters liquidation. While there are some mechanisms in place to protect employee claims, the financial and emotional impact can be significant. Employees should be aware of their rights and seek legal advice if they find themselves in this situation.

Resource supplied by

CLAIRE MANSELL

EMPLOYMENT LAW