

Axeon & PrePacks

Alistair Blair recently covered the case of Axeon in Investors Chronicle. This was an AIM company that was put into administration via a "pre-pack" arrangement at the behest of its main lender who was also a shareholder (Ironshield). The company was sold to AG Holding, a new company specially set up for the purpose by Ironshield about one hour after it entered administration. In effect, as with all pre-packs, the whole deal had been arranged some time before. In this case it seems even more outrageous than normal as the company's press release said that "creditors would be unaffected", so only the shareholders were deprived of their interest in the business. Usually pre-packs are a way for companies to escape both their creditors and their minority shareholders, and is the source of many "phoenix" companies who arise from the ashes with the same management, and some of the same shareholders.

This is what I wrote to Peter Luff, M.P., a few weeks ago who heads the Business and Enterprise Committee of Parliament. They are currently conducting a review of administrations (see www.parliament.uk/parliamentary_committees/berr.cfm if you wish to write to him):

"It is totally wrong for an Administrator to act in advance of his appointment as Administrator which is what happens in practice at present. Often arrangements are made with the connivance of the company's directors or bankers which are not in the interests of creditors or shareholders. These arrangements are often made in secret with no public knowledge and then put into place in a matter of a few hours after formal appointment of the administrator.

I have experience of this process not long ago in the case of Torex Retail Plc. This was a company that got into financial difficulty after an alleged fraud and claims of false accounting. The directors arranged to sell the business via a Pre-Pack Administration to some private equity investors – this mainly was to the advantage of the bankers who protected their loans to the company but also obtained a stake in the on-going business. This meant that shareholders were left with nothing, and creditors were presented with a fait-accompli.

Torex was in essence a sound business that could have traded out of its problems given a short period of stability and some protection from short term creditors.

Before the Administrator was officially appointed, we tried to arrange an alternative refinancing which would have protected shareholders and other stakeholders' interests, but the directors ignored our approach. We then requisitioned an EGM to remove the directors and replace them, but the Administration was pushed through that pre-empted this move.

In essence there was no approach by the Administrators to the open market, no consideration by them of alternative offers, and the whole deal was stitched up behind closed doors before most people knew anything about it.

This was surely not how Administration was conceived as working when it was put in place by the original legislation. Regrettably legal precedent has been established that seems to condone this practice, and now companies left, right and centre are using it to evade their debts and create new "phoenix" businesses from the ashes of companies in financial difficulties. The directors or parent/related companies often being the beneficiaries of these arrangements.

I hope therefore that you will try and get some changes to the legislation to outlaw this practice."

As a postscript, it's worth mentioning that I used to be shareholder in Axion, but sold my shares back in 2007 when there was a major share placing. I decided then that the directors seemed to be taking little regard to the interests of minority shareholders and one of the first principles of investment I have learned from past experience is never leave your money in the hands of people you don't trust. One of my better decisions it seems with hindsight.

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