

ATTENDANCE NOTE

Assignment: Aberdeen House Care Limited ("the Company")

Date: 14 December 2023

Created by: GW

Summary of meeting between Gareth Wilcox ("GW"), Partner and Licensed Insolvency Practitioner of Opus Restructuring LLP ("Opus"), and Rakesh Kotecha ("the Director")

Background to introduction

GW was introduced to the Company by Azhar Ahmed of Business Helpline on 8 December 2023. Business Helpline had been approached by the Director for assistance with the Company's financial positing and a meeting was duly arranged for 12 December 2023 at Opus' offices. The meeting was attended by GW, the Director, Nicole Sharples and Kerry Marsh of Business Helpline.

Prior to the introduction by Business Helpline, neither GW or Opus have had a prior relationship with the Company or the Director. Further, neither GW or Opus has any known prior relationship with the other directors on the board of the Company, or any connected entities.

Background & Current Circumstances

The Company was incorporated in June 2011 and trades as a residential care home in Rutland, Leicestershire. The premises from which the Company trades is owned by a connected company, Aberdeen House Property Limited ("AHP") and trades as part of a wider group of entities, each involved in the operation and/or ownership of care settings.

It is understood that the property owned by AHP is currently under offer, and vacant possession is required to be granted by the Company in order for the sale to proceed. In addition to this, the Company is currently understood to be lossmaking, with only 9 residents current in occupation, being supported by a payroll of 20 staff. The setting operated by the Company is understood to have traded for over 30 years, with certain of the staff having commenced employment in the 1980s and been subsequently employed by the Company by way of a TUPE transfer.

The most recent accounts supplied to 31 March 2023 show that the Company has tangible assets with a book value of £10,572, which comprises fixtures, fittings and equipment. The value of its plant, machinery and computer equipment has been written down to zero. As such, whilst there may be some limited value in the physical assets, it is unlikely that this will be significant, and there may be onerous disposal costs for certain assets (e.g. beds) owing to their having been used in a care setting.

The Company has cash at bank of around £3,500, but wages of £10,500 due to be paid by 22 December 2023. There are further payments due from the local authority which are likely to exceed this amount, although it is uncertain whether any further sums will be received in the event of closure since the local authority would be required to rehouse the residents affected.

In addition to these assets, a trial balance supplied by the Director indicates that there are intercompany balances owing to the Company, with a combined value of £101,945 as follows:

1. Owing from Wayside Care Ltd ("WCL") - £80,000;
2. Owed by Wayside Property Ltd ("WPL") - £14,980;
3. Owed by Trinity House Care Ltd ("THC") - £6,965.

It is understood that THC has ceased to trade, although it may have sufficient reserves to make a repayment of the amount outstanding. WCL, however, is in financial difficulty of its own and is not in a position to make immediate repayment of the sum it owes. WPL owns the setting from which WCL operates, the Director has advised that a sale of the property owned by WPL is under offer, however, repayment of the balance will only be possible when a sale is concluded.

In terms of liabilities, it is understood that HM Revenue & Customs ("HMRC") is owed around £60,000 to the Company, the majority of which is PAYE. Additionally, there is a significant contingent liability to staff, due to the length of service of certain of the individuals. The purchase ledger per the trial balance is £13,369.37, and there are amounts totalling £26,769.09 owing to the directors, as well as £76,229.89 to connected companies.

The Company has granted fixed and floating charges over its assets to Lloyds Bank Plc ("Lloyds") although it is anticipated that any amounts owing to Lloyds will be repaid in full by AHP upon the conclusion of the sale. Based on the above, there do not appear to be any assets of value which will be available for realisation under Lloyds' security.

On the basis of the above, and the loss-making position, the Director has concluded that it is appropriate for the Company to cease trading as a care home. This will inevitably result in the redundancy of all members of staff, and the crystallisation of substantial redundancy costs. The Company has no significant assets of value and cannot rely on prompt repayment of the intercompany balances. Consequently, it appears that the Company is insolvent.

The following options have therefore been considered:

Do Nothing

When the Company ceases trading, significant liabilities will crystallise against it, and it will not be able to make payment of the redundancy liabilities owing to staff. As such, it is not appropriate for the board to cease trading and take no further steps.

Members Voluntary Liquidation ("MVL")

In view of the Company's asset and liability position summarised above, it is not in a solvent position to enable the board to swear a declaration of solvency, therefore an MVL is not available.

A Voluntary Arrangement

The option of seeking a Voluntary Arrangement ("VA") with creditors (either formally or informally) was discounted since the Company does not have any significant assets which are capable of realisation, and it has effectively been forced to cease trading. It therefore will have no surplus income going forward, or other assets, which it could offer to creditors in settlement of its debts by way of a VA.

Administration

Administration is an effective restructuring option where a “Business” can be rescued by either the current Management team or a third-party purchaser. Through Administration the assets/business only are purchased by a third party, which could include the current management team, for an amount verified by an independent valuer, based upon an Insolvency value as opposed to a Net Book value. A purchaser does not acquire the liabilities but is free to take on obligations by choice e.g. an assignment of leases, premises etc. The only liability that transfers by law is the transfer of undertaking of all existing employees at the date of transfer; a purchaser cannot transact out of this; so by operation of law, where a business is acquired under an Administration, all employees contracts automatically transfer to the purchaser.

The option of an Administration is not suitable in this instance since there is no marketable business to save given the loss-making position. There would be no inherent value in the business to a third-party given that the lack of future orders and/or branding or other intellectual property of value.

As a result, there is no benefit in seeking to have an administrator appointed and it would not be possible for any of the objectives of administration to be achieved. In particular, administration would not lead to a better outcome than liquidation.

Liquidation

Owing to the above, it appears that it is appropriate for the Company to be placed into insolvent liquidation. Insolvent liquidation can either be by way of Compulsory Liquidation or Creditors’ Voluntary Liquidation.

Compulsory Liquidation

Compulsory liquidation is a process whereby an order of the court is made to wind up an entity, following the presentation of petition by a relevant party (usually a creditor). If an order to wind-up was made, the Official Receiver would be appointed as Liquidator to deal with the affairs of the Company, although another liquidator may be appointed in due course.

It would most likely take several months to commence since it relies on enforcement action being taken and a court date being fixed which would delay the ability for the employee claims to be processed and creditor claims to be dealt with. Accordingly, having regard to the duties of the Director, it is not considered that awaiting enforcement action and a Compulsory Liquidation would be the most appropriate option for the Company in the circumstances.

Creditors Voluntary Liquidation (“CVL”)

The other liquidation process is a CVL, which would be instigated by the Company’s board which would pass resolutions to (with the assistance of an Insolvency Practitioner) convene a meeting of Shareholders and a Creditors’ decision procedure, with a view to passing resolutions to wind-up the Company voluntarily, appoint a Liquidator and deal with other ancillary matters.

In preparation for a liquidator being appointed, an assessment can be made as to whether any value can be realised in the Company’s assets. An appointed Liquidator can also deal with the claims of former employees efficiently, with liquidation giving rise to an ability for them to submit claims for consideration by the Redundancy Payments Service (“RPS”). The claims of former employees can be dealt with more quickly in the event of CVL than a Compulsory liquidation since claims can only be

submitted to the RPS once an appointment is made. A liquidator will also have a duty to realise the other assets of the Company, i.e. the intercompany loan accounts.

The CVL process has been explained to the Director, i.e., that an Insolvency Practitioner would be engaged to assist with convening of the required meetings and preparing the necessary paperwork. During this period, the board will remain in control of the Company, however, the Insolvency Practitioner (as advising member) can provide guidance and assistance.

There will be a fee chargeable in preparing the documentation to convene the meetings of members and creditors, assisting with advice regarding the winding-down as required, and the preparation of a report and statement of affairs. This report and statement of affairs would be delivered to the meeting of creditors and subsequently circulated to all known creditors of the Company.

Further and separate to the pre-appointment charges incurred in the above, the Director has been advised that a liquidator would be entitled to charge remuneration for carrying out his functions, but the basis for agreeing such a fee is a matter for the creditors to consider (who may also appoint their own choice of liquidator should they wish). The Director has also been provided with an outline of the investigations which will be carried out by an appointed liquidator, including the fact that there will be an independent review of any transaction concluded to purchase the Company's assets, the nature of which will also be disclosed to creditors in due course.

In light of the relative speed with which a liquidator can be appointed as part of a CVL process and having regard to the Director's responsibilities to the Company and its creditors, it is considered that this is the most appropriate solution in the current circumstances.

Gareth Wilcox
Partner
Opus Restructuring LLP

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