



Southern Steel Group Pty Ltd
ABN 43 003 067 838

319 Horsley Road
Milperra NSW 2214

PO Box 342
Panania NSW 2213
Australia

T: 02 8761 2205

www.southernsteelgroup.com.au

Monday, 12 October 2020

Manager
Market Conduct Division
Treasury
Langton Crescent
PARKES ACT 2600

By email: MCDInsolvency@Treasury.gov.au

Dear Sir

Corporations Amendment Act (Corporate Insolvency Reforms) Bill 2020

Southern Steel Group (SSG) are the largest privately owned steel distribution business in Australia operating 22 businesses from 35 sites in metropolitan and regional areas in all mainland states. We have a large and diverse customer range.

We continue to support reform of the insolvency regime in Australia having experienced firsthand the poor returns from external administration, the impost of preference claims when we are at arm's length and simply going about business and the difficulties in making what should be straight forward claims with External Administrators on valid PPSR claims.

SSG acknowledges the difficulties being experienced by many businesses in these unprecedented times and we have been doing our best to support our customers wherever possible. That being the case we are supportive of the intent of the proposed measures however have concerns in a number of areas. These concerns revolve around

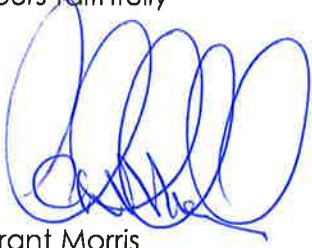
- The non enforceability, in fact inability to rely on personal guarantees and PPSR securities during a restructuring period
- The difficulties in credit assessment and the continued provision of credit during a restructuring period
- The qualifications and registration/oversight of the restructuring practitioner
- The increased risk of unfair preference claims



Our concerns and recommendations related to the draft legislation and proposed subsequent regulations are attached.

We would welcome the opportunity to discuss and expand on our concerns and recommendations further.

Yours faithfully



Grant Morris
National Credit Manager
gmorris@southernsteel.com.au
02 8761 2205

Corporations Amendment Act (Corporate Insolvency Reforms) Bill 2020 Submission Attachment

The non enforceability, in fact inability to rely on personal guarantees and PPSR securities during a restructuring period

This is effectively the withdrawal of the security held by us, the supplier, from inception of trading to the point of restructuring ie just as the business reaches the nadir of its financial position we, the supplier, having supported them with a line of credit usually for quite some time, effectively have our position substantially diminished.

- This may come with no warning eg account has been conducted satisfactorily to that point and the danger is suppliers become more cautious and the level of credit is reduced.
- Allows the guarantor to potentially move personal assets during restructuring
- The Act will cause the supplier to revisit their position and due to the loss of security most likely
 - Reduce the credit limit
 - Shorten the trading terms
 - Cease further supply
 - Insist on cash up front
 - Seek alternate security eg
 - bank guarantees,
 - charges over plant and equipment if not already fully secured,
 - other 3rd party guarantees
 - real property assets if available

This would place further strains on the business cash and borrowing position at a time when the business needs the most help and the additional security options do not happen overnight thus causing further delays at the worst possible time when the business needs to maintain momentum.

- Staying action under PPSR security will likely cause a suppliers exposure to increase through consignment stock and/or a loss of funds available to the supplier. Specifically
 - Consignment Stock
 - The debtor company may inadvertently benefit from consignment stock located on the customer's premises which the supplier cannot easily restrict access to, recover or quarantine on short notice. Further the supplier may be forced into being an unwilling creditor.
 - Loss of funds
 - Supply has been made leading up to appointment
 - Goods are produced and sold
 - Proceeds are received during the restructuring period
 - These proceeds go into consolidated revenue and are used on a day to day basis
 - If a Voluntary Administrator had been appointed the supplier would have security over the proceeds and the VA would make these

proceeds available to the supplier rather than being unidentifiable in the business bank account and therefore not claimable.

SSG Requests

1. Clarification that all supporting personal and cross company guarantees can be called upon and enforced outside the restructuring period.
2. Guarantors not to divest assets during any restructuring period
3. PPSA security rights be maintained including
 - a. Access to consignment stock, and
 - b. Any secured proceeds received during a restructuring period be quarantined for the secured creditor.

The difficulties in credit assessment and the continued provision of credit during a restructuring period

When seeking relief in a restructuring period every supplier will need to reassess their continued support or otherwise. This is best done in possession of as much factual information as possible and in this regard the following are critical

- An understanding of the cause of the problems leading up to appointment of a restructuring practitioner
- Knowledge of the current financial position of the business ie latest balance sheet, statement of position etc and be they external or internal accounts or ideally a combination of both eg external to June 2020 and internal to September 2020
- An understanding of creditors and including who, the size and age of the debt
- Knowledge of any tax debts as the ATO is generally the largest individual creditor in insolvencies
- Confidence regarding ongoing support of necessary creditors
- A virtual (zoom etc) meeting of creditors which can be held quickly, easily and at low cost to
 - confirm the assessment of the position, past trading etc
 - allow discussion on the current viability eg customer base, product mix
 - provide the restructuring practitioner with
 - confirmation of information supplied by the director
 - filling the gaps in his knowledge
 - the likely support or otherwise of critical suppliers
 - the ability of existing suppliers to fill gaps in non-continuing suppliers

SSG requests

1. Immediate implementation of the Transparency of Business Tax Debts measure as passed by the government on 22nd October 2019
2. The debtor/restructuring practitioner provide financial information immediately upon appointment ie despatched with advice to creditors of the appointment and ideally the latest externally prepared accounts combined with the current internal accounts eg external to June 2020 and internal to September 2020
3. An aged list of creditors be provided at the same time
4. A meeting (virtual by zoom etc) be called to
 - a. Consider the position
 - b. Consider the level of ongoing support

- c. *Provide the restructuring practitioner with knowledge gaps or certainty of advice sourced from the Director*
 - d. *Allow creditors to discuss the proposals and variations to those proposals*
 - e. *Vote on the proposals physically rather than by email*
5. *ASIC's register of companies and their details, particularly the Registered Office of a company, be expanded to include an email address for the service of notices and that list be made available on demand and at no cost to restructuring practitioners and for that matter Administrators/Liquidators for the issue of notices.*

The qualifications and registration/oversight of the restructuring practitioner

This is an important role in the life of a business and needs to be undertaken by someone with the skillset and knowledge to be able to move quickly. Everyone knows the longer a swimmer flounders in the surf the more likely it is to be fatal. On reflecting on this we have considered the damage we have seen in asset stripping and phoenix activity by many Pre-Insolvency Advisors and believe the skill set needed is

- Sound financial acumen
- Experience in dealing with distressed businesses
- Turnaround experience

And believe the only parties holding the full skill set are registered liquidators. It is noted there is a likely increase in appointments and work load for Liquidators and it is a very real concern any increased demand for their services not see the bar lowered for their registration.

Oversight to be government and we believe ASIC is best placed.

SSG requests

1. *Restructuring practitioners be registered liquidators*
2. *ASIC be the overseeing authority*

The increased risk of unfair preference claims

This has always been a mine field where arm's length creditors who have been paid receive demands from Liquidators to disgorge monies they have received for the provision of goods.

When customers are displaying signs of insolvency we are on notice of a significant risk that future payments may be subject to an unfair preference claim if a Liquidator is subsequently appointed to the company. This is a dilemma in that if we support the customer with say a repayment plan and he works his way out, then great for all concerned. However if he doesn't make it then our problem and debt grows substantially. In this call we may seek to mitigate our risk which really means a reduced level of support to our customer just when he needs us most. To be frank both sides of the transaction would benefit from changes and simplicity.

Steps we might take include

- More complex restructuring or repayment plans

- Reduce the credit limit
- Shorten the trading terms
- Cease further supply
- Insist on cash up front
- Seek alternate security eg
 - bank guarantees,
 - charges over plant and equipment if not already fully secured,
 - other 3rd party guarantees
 - real property assets if available

We understand > 90% of insolvencies return 0c in the \$ to unsecured creditors and the disgorging of preferences only serves to meet the costs of the Liquidators' investigations into and action of preference claims. It does not benefit other creditors, which is the aim.

The proposed Bill and Regulations adds another level of complexity with appointment of a restructuring practitioner being seen as an automatic sign of insolvency and hence immediate warning and danger to us, the supplier of a potential preference claim. This at a time when the Bill is advocating potential staying or loss of security by way of personal guarantees and PPSR.

Further many unfair preference claims are a shot gun approach, scant on detail or fact and/or come almost 3 years after the appointment of the Liquidator. They also seek to recover payments made 6 months before appointment of the Liquidator (relationship back date). Much time is subsequently spent on these matters by both the creditor/supplier and the Liquidator. Time which could be better spent turning around and saving businesses.

We creditors should be treated equally. Many times at SSG we see ourselves as a customer's largest supplier, agree to grant further extended credit accommodation by way of a repayment plan whilst all other suppliers are paid up to date and, if the business ultimately fails receive a preference claim for monies paid at 150 or 180 days. Those remaining creditors don't receive a claim as they were paid at 30 days and yet we are regarded as receiving a preference over other creditors.

SSG requests

1. *Payments received by arm's length/unrelated creditors in the ordinary course of business be exempt from unfair preference claims*
2. *Ordinary course of business be accepted as including all lawful and responsible actions a reasonable creditor might engage to obtain payment.*
3. *Liquidator to substantiate their claim from the time of the first demand*
4. *Burden of proof to be on the Liquidator*
5. *Relationship back date to be decreased from 6 months to 2 months*
6. *Limit the time for claims to be made from 3 years to 12 months*
7. *Excluding payments made during any debt restructuring process*
8. *Exempting creditors where a so called preference payment did not put them in a better position than the general body of unsecured creditors.*