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Inside Story: A-Wear retail chain pre-pack receivership - Ireland

This month's Inside Story is brought to you by Jim Luby (LubyJ@mcstayluby.ie), Partner Mcstay Luby, Dublin, Ireland

The retail sector in Ireland has been badly damaged by the recession. Since 2008, consumer spending has fallen every year. Retail sales have fallen by 30%. We have seen many well-known local retailers and branches of multinationals enter insolvency proceedings or restructuring including Clerys, Superquinn, HMV, Black Tie, Pamela Scott and others.

The problem is compounded by Irish property lease structures. In many cases retailers are locked into long term upward-only leases, with rents at unrealistic pre-recession levels. Landlords have their own financial difficulties, with many properties effectively under the control of lenders or NAMA.

A-Wear has been trading for over 25 years and is one of Irelands best known ladies high street fashion retailers, operating over 30 stores with more than 400 employees.

In 2007 the business was acquired by private equity and management in a €70m buyout. It subsequently enjoyed several years of growth. However by 2011, despite management introducing cost reductions and an e-commerce platform, the business was incurring significant losses.

In October 2011 the restructuring specialist firm Hilco acquired the Company's bank debt and implemented further cost saving initiatives. However the Company continued to incur losses.

Following an extensive M&A process and complex negotiations on the terms of the sale agreement, international investor Jesta Group agreed to acquire the business via a pre-pack receivership. Jim Luby of McStay Luby was appointed as receiver.

It is essential for a successful pre-pack receivership sale that the receiver is fully engaged in the negotiation of the sale agreement. The terms relating to occupation of leased properties, lease assignments, employees and reservation of title creditors are especially critical.

In accordance with best practice, an explanatory note was issued to creditors providing the rationale for the pre-pack sale, the consideration realised, the identity of the purchaser etc.

This was probably the first genuine Irish pre-pack receivership sale. The examinership process was not suitable for this case, as the business did not have sufficient funding available to trade through a period of examinership. The pre-pack receivership preserved the goodwill value for the affected creditors and employees, and maximised the outcome.

The new owners have been successful in renegotiating property lease arrangements, and the business continues to trade successfully.

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