

## Banking & Finance

# What to do when the worst happens - bankruptcy

BY CHRIS MILLER

When a business is facing the challenge of mounting debts, filing for bankruptcy is not always the right answer and is only one option. Bankruptcy prevention solu-

tions such as a business workout or turnaround could provide a company much needed relief, allowing it to resolve debts without filing for Chapter 7 or Chapter 11 bankruptcy.

Workouts and turnarounds are established methods for saving and reorganizing a financially stressed business. David Ganje of Ganje Law Offices explained that while standing amidst the challenge of today's economic environment a business should not act quickly or overreact. Rather, seek advice from a reputable bankruptcy lawyer.

While bankruptcy protection might initially seem like the most appealing solution, according to Ganje it could come with numerous downsides and negative consequences, including large filing fees.

"Bankruptcy filing is usually something that occurs after a workout has been attempted," said Ganje. "However, sometimes you'll find that a business doesn't use the

process of a workout and files immediately for bankruptcy, although that's not the recommended procedure."

Most workout and business lawyers agree that a private resolution of the problems between the business and the creditors should first be tried and exhausted completely before Chapter 7 and Chapter 11 consideration.

"A workout is a private contractual agreement between a business and its creditor or creditors, resolving a financial problem or problems. It's not conducted in the public arena and it's not conducted by filings with the courts or any public agency," explained Ganje.

There are specific workouts that are accomplished with the help of government taxing agencies, but they too are private in most instances. The only time workouts are public when working with a taxing agency is if that agency decides to file some kind of lien.

"Workouts are done with creditors as well as government agencies and they're usually a private consensual agreement or contract that is performed in lieu of some sort of litigation or bankruptcy," Ganje said.

Many bankruptcy lawyers that offer innovative choices for bankruptcy filing find it surprising that companies that are encountering financial stress don't first find good counsel and accountants to exercise their rights for private workouts.

A business turnaround focuses on the structure of management and investors of

management. The turnaround provides the company an entirely new approach, changing capital structure and investment strategy, in addition to everyday finances, such as payroll.

The option of a private workout or turnaround seems to have remained a secret from most businesses. The business community, especially the small to mid-sized, have not had the opportunity to be educated of the bankruptcy alternatives, whether through seminars or various media outlets as has been the case for chapter filings.

"You don't find many workshops or television programs talking about workouts or turnarounds," expressed Ganje. "They're not known subjects and they're not a popular subject. Workouts and turnarounds are not taught at schools, are not taught at Chamber of Commerce programs and much of the information is not publicly available."

He stated that if an accounting firm or law firm that is representing a business finds financial distress within the company soon enough, establishing a workout or turnaround would save the company and, theoretically, save all the jobs.

Early detection of financial stress could prevent the need to file Chapter 7 or 11. Many bankruptcies do not result in the continuation of the business. Statistically, a business going forward into a bankruptcy has a greater chance of being liquidated rather than being reorganized.

Ganje explained that he works with a

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### Bankruptcy

business' accounting firm to provide an analysis and a diagnosis of the financial problems. He said being a bankruptcy lawyer that his offices are fully capable of handling the company's options but that he believes it is a good idea to incorporate the independent eye of the accounting firm that has been working with business for several years.

"Some clients, depending on their size, have their own chief financial officer and controller which is good because they can give me a portrait of the cash flow and the finances," he explained. "If the client-company has enough staffing to do that, it could make diagnosing the problem much quicker too."

Along with the help of the business' principals, Ganje said he examines the projections for sales or revenue going forward about six months and then determines if the company has enough strength to consider a non-court workout.

He said if the cash flow or the company looks extraordinarily weak that it can't be foreseen that the company would be able to service the fundamental debt obligations, then they might need to consider filing for bankruptcy.

Ganje said a surprising aspect of the state of the U.S. economy is that creditors are reasonably sophisticated about financial stress on businesses and are willing to negotiate a recasting of the debt, in most cases.

"The creditors, particularly banks, have enough experience at this that they know that there's a value to them working with the business," he stated. "If they could also assist in being part of the team that saves the business then they're going to get more of their claim back in payments."

Ganje noted that in today's economy spanning over the last ten to fifteen years that most banks are more receptive to working with workouts than is the rest of the general public. Especially due to our current economic climate, creditors are more likely to work with companies facing consideration of Chapter 7 or Chapter 11.

Ganje said that a lawyer would not recommend a filing for bankruptcy unless there is an emergency situation, i.e., the commencement of a foreclosure where the bank is about to attain a court order to recover all the manufacturing equipment.

"At that point, the bankruptcy filing would freeze the creditor from getting that equipment," he noted. "Generally, a bankruptcy is recommended when you're at a more serious or severe stage in terms of the creditor and business relationship. The cusp of a bankruptcy before a foreclosure sale, the seizure of the manufacturing equipment by the Sheriff, or a court order

freezing the banks accounts of the business - when you're in a state like that, bankruptcy is more often the recommended route."

Bankruptcy does offer a company some relief because it provides the business a breathing period so that it could attempt to reorganize, unless of course they file for a Chapter 7. This bankruptcy is a liquidation proceeding where the Chapter 7 trustee, if any, sells the business or individual debtor's non-exempt assets. All the proceeds are distributed to creditors according to the priorities among creditors established in the Bankruptcy Code.

The reorganization type of bankruptcy, known as a Chapter 11, by law provides a

business a period of at least 120 days within which to try restructure or reorganize its own financial affairs without letting any of the creditors foreclose against or sue.

"Chapter 11 doesn't necessarily mean it's a continuation of the business, this is a misconception of the public. A Chapter 11 bankruptcy could also be used as a legitimate tool to sell the business or as a legitimate vehicle to spin off a portion of the business for sale," Ganje explained.

According to Ganje, bankruptcy is a fact of life in a capitalistic society. He noted that, for legitimate reasons, good companies will rely on bankruptcy to restructure themselves and to continue in

business.

"I think that all businesses should first consult with their accountants and lawyers and bring up the subject of workouts and turnarounds," he expressed. "They shouldn't wait for their lawyers or accounts to bring up the option."

Ganje said he always encourages a company to seek a second opinion from another accounting firm or law firm when a serious problem such as financial stress is present, especially when the firms are ready to move forward with bankruptcy proceedings without the consideration of a business workout.

For more information call Ganje Law Offices, 518-437-9000.

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