



**Silva Enterprises Pty Ltd (In Liquidation)
Trading as Mimmos Express Pizza (Formerly trading as
Melt Pizza Express)
A.C.N. 605 119 739 (“the Company”)**

Statutory Report to Creditors

19 August 2022

1. Executive Summary

1.1. Liquidator appointment

I was appointed as Liquidator of the Company by special resolution of the members of the Company passed at a duly convened meeting on 20 May 2022.

This report should be read in conjunction with my initial report to creditors dated 2 June 2022.

1.2. Purpose of this report

The purpose of this report is to:

- provide you with an update on the progress of the liquidation;
- advise you of the likelihood of a dividend being paid in the liquidation; and

If creditors have not already done so, you are requested to complete and submit to this office a Proof of Debt form (attached as **Annexure A**).

Should you have any queries in relation to this matter, please contact Tom Farquhar on (02) 8020 5861 or via email at tfarquhar@hogansprowles.com.au.

Creditors have the right to request a meeting that complies with the guidelines set out in the ARITA information sheet "Creditors Rights in Liquidation" as attached as **Annexure B**. I am not proposing to hold a meeting of creditors at this time.

1.3. Summary of investigations

At this stage, there are insufficient assets or recoveries available in the liquidation to enable a dividend to any class of creditors.

The Company's business and assets were sold shortly prior to my appointment, to a related company that is controlled by the same director. The consideration in relation to the sale of the business has been paid by the director. Further information in relation to the sale is provided at section 2.2.

At this stage, I have identified the following possible offences and recovery actions available for me to pursue.

Investigation / Recovery	Corporations Act	Total claim \$
Unreasonable Director-Related Transactions	Section 588FDA	151,736
Insolvent trading	Section 588G	Not commercial to pursue

Should creditors wish to fund my investigations, please contact Tom Farquhar of my office on 02 8020 5861 or via email at tfarquhar@hogansprowles.com.au by 8 September 2022.

2. Update on Liquidation

2.1 Company Background

The Company was registered on 2 April 2015 and traded a pizza shop 2/20 Aubrey Street, Collaroy Plateau 2097. It had previously traded in Dee Why NSW 2099.

Historically, the Company experienced difficulties in complying with its tax obligations. In order to reduce the Company's tax debt, the director, Keith Lucas ("the Director") lent the Company funds in FY19. However, the Company was significantly impacted by Covid-19 restrictions and this debt has since deteriorated.

The Company ceased to trade prior to my appointment on or around 19 May 2022, when it was sold to an entity under the control of the Director.

2.2 Sale of Business

The Company ceased to trade prior to my appointment on or around 19 May 2022, when it was sold to a related entity, Melt Pizza Express Pty Ltd ("the Purchaser"), a company also under the control of the Director.

My investigations in relation to the sale of the business are continuing, however it appears that the sale of business included the transfer of the assets of the Company.

I have obtained a list of the assets transferred as part of the sale of business and have had these valued by Slattery Auctions. These assets included various plant and equipment and a motor vehicle with a net auction realisable value of \$6,305.

The Purchaser has continued to trade out of the same premises. I note that there is also a rental bond of \$6,673 which was transferred over to the Purchaser.

The management accounts for FY21 and FY22 detail that the Company was in a loss-making position, and it would be reasonable to expect that the sale price would be at or close to asset value, being \$12,978.

If you consider realisation costs of 15%, the Sale of Business is valued at \$11,031. I have accepted an \$11,000 up-front payment inclusive of GST, made by the Director as consideration for the assets transferred. Please refer to Section 3.2 for the Sale of Business calculation.

My investigations are continuing in relation to the sale of business and whether there is any further outstanding consideration.

2.3 ASIC Search

An ASIC Search conducted for the Company discloses the following:

Company Details		
Registration Date	2 April 2015	
Registered Office	Equil Advisory Pty Ltd Level 7, 2 Bulletin Place, Sydney NSW 2000	
Principal Place of Business	2/20 Aubrey Street, Collaroy Plateau 2097	
Director	Appointed	Ceased
Keith Lucas	1 March 2022	-
Darlene Lucas	2 April 2015	1 March 2022
Secretary	Appointed	Ceased
Keith Lucas	1 March 2022	-
Darlene Lucas	2 April 2015	1 March 2022
Share Structure	Amount Paid	Amount Unpaid
10 Ordinary Shares	\$10.00	\$0.00
Current Shareholders	Shares Held/Type	Fully Paid
Darlene Lucas	10 Ordinary Shares	Yes

2.4 Personal Property Securities Register (“PPSR”)

A search of the PPSR indicates that there is two (2) registered security interests. A summary of the interest according to the PPSR register is provided below:

Creditor	Registration	PMSI?	Collateral	Discharged?
Silver Chef Rentals Pty Ltd	201709110037957	Yes	Other goods	Yes
Silver Chef Rentals Pty Ltd	201608050035158	Yes	Other goods	Yes
Pepper Asset Finance Pty Ltd	201905150078924	Yes	Motor Vehicle	No

Silver Chef Rentals have advised that contracts with the Company were completed in 2019 and there are no outstanding liabilities. Silver Chef Rentals discharged these securities on the 6 June 2022.

To this date, I have not received a response in relation to the Pepper Asset Finance security. The Director has informed me that this security relates to the Black 2014 Jeep Grand Cherokee Laredo 4x4 motor vehicle.

Further investigations are required to determine the owner of this motor vehicle encumbered by Peppers Asset Finance. Notwithstanding, the Director has made an offer of \$3,500 for the equity left in the motor vehicle.

2.5 Directorship search

A personal historical search has been conducted of ASIC's record for the Director, Keith Lucas ("Mr Lucas"). Below is a summary of the directorships of the Director held over the last five (5) years:

Company	Position	Commenced
Keith Lucas		
Melt Pizza Express Pty Ltd	Director & Secretary	5 April 2022
Silva Enterprises Pty Ltd	Director & Secretary	1 March 2022
Lucas Productions Pty Ltd	Director & Secretary	10 September 2004 - 5 March 2022

3. Estimated Position Statement

Below is an estimated position of the Company:

	Notes	RoCAP (\$)	Liquidator's estimate (\$)
Assets			
National Australia Bank	3.1	380	380
Sale of Business	3.2	11,031	11,000
Less: Secured creditors			
Peppers Asset Finance Pty Ltd	3.3	TBC	TBC
Surplus / Deficiency from secured creditors		TBC	TBC
Circulating assets / recoveries			
Division 7A Loan	3.4	151,736	Uncertain
Insolvent Trading	3.5	-	Uncommercial
Less: Liquidation costs			
Liquidators remuneration and disbursements	3.6	-	10,000
Total surplus/deficiency for priority creditors		TBC	TBC
Priority unsecured creditors			
Employees - wages and superannuation	3.7	48,238	48,238
		48,238	48,238
Total surplus/deficiency for unsecured creditors		TBC	TBC
Unsecured creditors			
Australian Taxation Office	3.8	237,967	237,967
AGL Sales GAS & ELECTRICITY		3,003	3,003
Equil Advisory Pty Ltd		1,145	1,145
Icare		322	322
		242,436	242,436
Total surplus/deficiency		TBC	TBC

Notes

Note 1 Cash at Bank

The pre-appointment National Australia Bank bank account had a \$380 CR balance on the date of my appointment. I have transferred the balance of this account to the liquidation account.

Note 2 Sale of Business

The equipment, motor vehicle and rental bond were transferred as part of the sale of business to the Purchaser.

I have provided a summary of the Sale of Business calculation below.

Silva Enterprises Pty Ltd (In Liquidation)	
Sale of Business Calculation	
Fridge	200
Food warmer	50
Commercial Mixer 1	200
Commercial Mixer 2	200
Pizza Oven	300
Stainless Steel Bench Tops	500
Fridge and Bench Top	200
Stove Top (Oven not functional)	500
Technology	200
Various	250
Dough Cutter	200
Freezer	5
Thermal room	-
Black 2014 Jeep Grand Cherokee Laredo 4x4	3,500
Rental bond	6,673
Total (Incl GST)	12,978
Less: Relisation Costs (Say 15%)	(1,947)
Total	11,031

Note 3 Secured Creditors

I have not received a response from Peppers Asset Finance regarding the amount still outstanding at the date of my appointment.

Note 4 Division 7A Loan

A review of the Company's records disclosed that the Director received \$151,736 in relation to DIV 71 Loan. Please refer to section 6.3 of this report for further information.

Note 5 Insolvent Trading

Please refer to section 6.4 of this report for further information.

Note 6 Liquidators remuneration and disbursements

On 24 June 2022, I received remuneration and disbursements approval from the creditors via proposal without a meeting of \$10,000 and \$1,000 excluding GST respectively.

To this date, I have incurred fees of circa \$15,000.

Note 7 Priority creditors

The outstanding wages and superannuation amount of \$48,238 is owed solely to the Director, Mr Keith Lucas.

This amount has not been transferred as part of sale of business.

Note 8 Unsecured creditors

My investigations to date reveal the following unsecured creditors:

Creditor	Amount (\$)
Australian Taxation Office	237,967
AGL Sales GAS & ELECTRICITY	3,003
Equil Advisory Pty Ltd	1,145
Icare	322
Employee - Keith Lucas (Director)	48,238
TOTAL	290,674

4. Report on Company Activities and Property (“ROCAP”)

The Act requires the director and secretary to comply and provide to the liquidator a ROCAP, detailing the financial position of the company at the date of my appointment, being 20 May 2022.

The Director returned the ROCAP on Friday, 15 July 2022. A summary of the ROCAP was provided in section 3 of this report.

5. Financial Analysis

At the date of this report, I have obtained the following information which I have based my preliminary investigations on:

- Bank statements for the period 20 May 2019 to 20 May 2022 provided by National Australia Bank;
- Access to the Company’s accounting system, Xero provided by the Director;
- Freedom of Information documents (“FOI documents”) from the ATO;

I have relied on the management accounts with Xero for my review of the financial records for the periods FY18, FY19, FY20, FY21 and 1 July 2021 to 20 May 2022 (“YTD22”).

5.1 Profit and Loss

Profit and Loss	FY18	FY19	FY20	FY21	YTD22
	(\$)	(\$)	(\$)	(\$)	(\$)
Operating Income	848,385	768,323	785,942	730,510	589,429
Cost of Sales	283,101	290,385	314,148	313,191	240,200
Gross Profit	565,285	477,937	471,794	417,319	349,230
Gross Profit Margin	< 67%	62%	60%	57%	59%
Operating Expenses					
Advertising	900	378	310	404	3,239
Bank Fees	330	1,576	552	354	707
Cleaning	-	987	2,607	4,179	1,861
Computer Expenses	1,208	564	433	1,573	2,399
Consulting & Accounting	15,782	25,939	13,400	10,900	8,190
Director Fees	42,422	-	-	-	-
Insurance	7,861	22,976	4,509	10,916	8,822
Legal expenses	-	3,216	1,200	340	-
License Fees	-	3,955	4,322	7,500	4,000
Light, Power, Heating	12,397	17,369	21,781	13,040	14,408
Motor Vehicle Expenses	2,157	6,557	3,388	6,586	9,872
Rent	47,673	42,843	36,400	37,100	32,199
Repairs and Maintenance	5,801	8,513	3,646	5,197	8,775
Rubbish	6,095	7,808	7,427	5,221	4,311
Subscriptions	3,086	3,396	2,885	2,481	1,894
Superannuation	34,890	25,387	24,366	24,611	17,531
Telephone & Internet	6,387	5,892	6,008	6,885	3,670
Wages and Salaries	379,279	313,515	283,694	299,186	244,231
Work Cover Insurance	2,606	6,585	5,938	370	5,040
Retrospective Adjustment	17,485	(7,684)	-	-	-
Other Expenses	16,729	7,653	14,573	12,221	10,330
	603,088	497,422	437,437	449,064	381,479
EBITDA	(37,803)	(19,485)	34,358	(31,746)	(32,249)
Add: Interest Income	7,988	5,694	8,397	9,515	-
Add: ATO Cash Flow Boost	-	-	14,216	19,256	-
Add: FBT Employee Contribution	-	-	1,361	1,885	-
Less: Depreciation	-	163	163	163	-
Less: Amortisation	2,624	25,019	1,286	900	-
Less: Interest Expense	12,839	8,607	10,510	9,708	-
Net Profit	(45,278)	(47,579)	46,373	(11,860)	(32,249)

My comments on the Company's profit and loss are as follows:

- Historically, the Company had a greater gross profit margin. However, this margin decreased from FY18 because of Covid-19 restrictions on trade.
- The Company's EBITDA reduced from a profit of \$34K in FY20 to a loss of \$32K in FY21 and FY22.
- It received government assistance in FY20 and FY21 in relation to Covid-19 pandemic which improved the Company's net profit of \$46K in FY20 and net loss of \$12K in FY21.
- In FY22, the Company records a similar EBITDA to the prior year, however, the Company doesn't receive government assistance which results in a greater net loss compared to FY21.

5.2 Balance Sheet

Balance Sheet	FY18 (\$)	FY19 (\$)	FY20 (\$)	FY21 (\$)	YTD22 (\$)
Assets					
Current Assets					
Cash at Bank	1,099	3,379	3,900	4,252	(47)
GST Savings	8	3,215	3,033	1,647	10,216
Motor Vehicle - Grand Cherokee	-	-	-	-	-
Equipment	6,123	4,286	3,000	2,100	2,100
	7,230	10,880	9,933	7,998	12,269
Non-Current Assets					
Borrowing Costs	-	650	488	325	325
Deposits	642	642	642	642	642
Rental Bond	-	6,673	6,673	6,673	6,673
DIV 7A Loan	284,657	157,970	227,080	233,293	263,809
	285,298	165,936	234,883	240,933	271,449
Total Assets	292,529	176,816	244,816	248,931	283,718
Liabilities					
Current Liabilities					
Accounts Payable	34,432	58,680	36,754	15,980	4,458
ATO - Integrated Client Account	185,203	75,891	111,714	170,379	169,579
Credit Card	134	38	(61)	55	(325)
GST	4,156	8,304	11,540	8,681	47,321
Income Tax Payable	20,993	8,423	(1,579)	(10,259)	(11,859)
Owner A Drawings	-	-	-	-	64
Owner A Funds Introduced	-	20	-	-	10
PAYG Withholdings Payable	2,935	3,032	2,520	3,067	32,926
Superannuation Payable	37,217	37,562	56,907	50,540	38,373
Wages Payable - Payroll	-	-	-	-	9,865
	285,071	191,949	217,795	238,444	290,412
Non-Current Liabilities					
Less: Unexpired Hire Purchase Charges	-	(6,653)	(4,335)	(2,462)	(2,462)
Loan - Grand Cherokee	-	31,642	25,095	18,549	12,548
	-	24,989	20,760	16,086	10,085
Total Liabilities	285,071	216,938	238,555	254,530	300,497
Net Assets	7,458	(40,122)	6,261	(5,599)	(16,779)
Adjustments					
DIV 7A Loan Adjustment	-	(16,017)	(51,022)	(83,563)	(112,074)
Adjusted Net Assets	7,458	(56,139)	(44,761)	(89,162)	(128,853)

My comments on the Company's balance sheet are as follows:

- The Adjusted Net Assets position decreased from FY18. Total Liabilities increased from FY20 to FY22. For example, ATO Integrated Client Account solely increased by \$94K over this period. In FY22, GST and PAYG Withholding Payable increased by \$38K and \$30K respectively.
- The outstanding \$48K in Superannuation and Wages Payable is solely owed to the Director.
- The \$21K in Owner Drawings – TILL CASH relates to cash drawn from the till by the Director to pay for day-to-day business expenses.
- The Director loaned the Company monies in FY19 to reduce the Company's outstanding taxation arrears. This is evident by the ATO Integrated Client Account decreasing from \$185K in FY18 to \$76K in FY19.

- The DIV 7A Loan is incorrectly recorded in the management accounts because it includes Bluestone loan repayments. As shown in the below table, I have adjusted the DIV 7A Loan to remove these repayments.

DIV 7A Loan (\$)	FY18	FY19	FY20	FY21	YTD22
DIV 7A Loan 2018 - 2022	284,657	157,970	227,080	233,293	263,809
<i>Adjustment to deduct Bluestone loan repayments</i>	-	(16,017)	(51,022)	(83,563)	(112,074)
Adjusted DIV 7A Loan	284,657	141,953	176,058	149,730	151,736

Refer to Section 6.3 for more information on the DIV 7A Loan account.

6. Investigations

6.1 Books and records

Based on my review of Xero, and the books and records I have received to date, I am of the view that the Company's books and records were kept in a manner that complies with Section 286 of the Act.

Failure to maintain books and records may also give rise to a presumption of insolvency pursuant to Section 588E of the Act. This presumption may be relied upon by the Liquidator in an application for compensation for insolvent trading and other actions for recoveries pursuant to Part 5.7B of the Act from the directors and related parties.

6.2 Reasons for Failure

The Director's comments on the reason for business failure was attributed to the following:

- Could not meet financial obligations.

My preliminary investigations reveal the Company's failure was also attributed to the following factors:

- Insufficient working capital and trading losses.
- The impact of Covid-19 restrictions on the ability to trade.

6.3 Recoveries, offences and voidable transactions

The liquidator is required to complete and lodge a report with the ASIC pursuant to Section 533 of the Act where it appears to the liquidator that a past or present officer of the Company may have been guilty of an offence in relation to the Company and in other limited circumstances. I intend to lodge a report pursuant to this section of the Act.

Pursuant to Part 5.7B of the Act, the liquidator is permitted to recover transactions that appear to be voidable transactions in respect of money, property or other benefits.

To the extent that information has been available, I have conducted the following preliminary investigations in relation to recoveries, offences and voidable transactions:

- Review books and records for the period approximately six months prior to the appointment of the liquidator to determine whether any creditors have been preferred over the general body of creditors as a result of any transaction; and
- Investigations into the Director's misconducts and breaches of director's duties.

The relation back date period is 20 November 2021 to 20 May 2022.

a) Unfair Preferences (Section 588FA)

Unfair preferences are transactions between the Company and a creditor resulting in the creditor receiving more than the creditor would receive if the transactions were set aside and the creditor was to prove for this amount in the winding-up. Voidable transactions must have taken place in the period beginning six (6) months prior to the relation back day and ending on the date of liquidation.

Based on my review of the Company's bank statements, I have not identified any unfair preference transactions. Further investigations are required to verify this claim.

b) Uncommercial Transactions (Section 588FB)

Section 588FB of the Corporations Act provides for transactions that were not beneficial or were detrimental to the Company as being void. The transaction must have occurred when the Company was insolvent or would become insolvent.

For an uncommercial transaction to be voidable, the transaction would have taken place during the two (2) years ending on the relation-back day or if a related entity was the other party to the transaction, during the four (4) years ending on the relation-back day.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

c) Unfair Loans (Section 588FD)

Section 588FD of the Act provides for loans to be voided in circumstances where interest or charges are considered extortionate.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

d) Unreasonable Director-Related Transactions (Section 588FDA)

Section 588FDA of the Corporations Act provides for transactions where it may be expected that a reasonable person in the Company's circumstances would not have entered into the transaction having regard to the benefits, detriments and respective benefits to other parties.

Division 7A Loan

Based on the company books and records, the Director has received a total of \$263,809 for Division ("DIV") 7A Loan from FY19 to the date of my appointment.

As shown in section 5.2 above, I have made an adjustment of \$112,074 to the DIV 7A Loan 2018 to 2020 to remove the Bluestone loan repayments from this account. It appears that these repayments were incorrectly recorded against the DIV 7A Loan account. I have calculated the actual figure that the Director has received for the DIV 7A Loan to be \$151,736.

The Director has alleged that he loaned the Company circa \$285K in August 2018 and that these funds were almost immediately used by the Company to pay for outstanding amounts owed to the ATO. The Director also explained that the funds he loaned to the Company were obtained from a \$435K loan that he personally financed with Bluestone Mortgages.

My investigations to this date reveal that the Bluestone loan repayments were incorrectly recorded against the DIV 7A Loan account represent the repayment of the funds that the Director loaned to the Company. The repayments should have been used to offset the loan advanced by the Director.

Further investigations are required to verify the loan from the Director and affirm the remaining DIV 7A Loan of \$151,736. I will need to also consider any reasonable wage adjustments and any claims made by the Director.

If creditors wish to fund further investigations and recovery actions for the adjusted amount, please contact Tom Farquhar of my office on 02 8020 5861 or via email tfarquhar@hoganspruwles.com.au by the 8 September 2022.

e) Related Party Transactions (Section 588FE(4))

Section 588FE(4) of the Act provides for payments to related parties may be voided where the Company was insolvent at the time of the transaction.

Based on the Company books and records available to me, I have not identified any transactions that would be subject to this Section of the Act.

6.4 Insolvent Trading (Section 588G)

Section 588G of the Act provides that a company's director(s) has a duty to protect the Company from incurring debt when there are reasonable grounds for suspecting that the Company will be unable to pay its debts as and when they fall due. Section 588M of the Act provides that a Liquidator is able to recover 'damages' from the director(s) of an insolvent company, in an amount equal to the loss or damage suffered by the Company as a result of a breach of duty.

Section 95A(1) of the Corporations Act 2001 provides a definition of a solvent entity as follows:

"A person is Solvent if, and only if, the person is able to pay all of its debts, as and when they become due and payable"

An insolvent entity is defined under Section 95A(2) of the Corporations Act 2001 as:

"A person which is not Solvent is Insolvent"

Based on the above definition of insolvency and the information available to me, I am of the view that the Company was insolvent from at least 30 June 2020.

a) Presumption of Insolvency

Pursuant to Section 286 of the Act, the Company is required to maintain financial records that would:

- correctly record and explain its transactions and financial position and performance; and
- would enable true and fair financial statements to be prepared and audited for the period of 7 years.

Failure to maintain sufficient books and records will give rise to presumption of insolvency throughout the period. As mentioned in section 6.1 above, it is my opinion that the books and records have been kept in a manner that complies with Section 286 of the Act.

b) Balance sheet test/net asset deficiency

The balance sheet test is commonly used in assessing a company's solvency as it reviews whether a company has sufficient realisable assets to meet its liabilities. As discussed in section 4.2 of this report, the Company's management account discloses adjusted net assets deficit since FY19.

Failure to lodge Commonwealth and State taxes

The Australian Taxation Office ("ATO") advised that the Company has yet to lodge Business Activity Statements for April 2022, May 2022, June 2022 quarter, income tax return for YTD FY21 and YTD FY22 and STP declaration for YTD FY22. The ATO has submitted a POD claim in respect to the running balance account ("RBA") (\$238,967.97).

According to the ATO records, the Company entered a payment plan with the ATO of \$200 weekly instalments on 24 May 2018 to repay an outstanding Income Tax Account of \$22,645.63.

The Company's RBA deteriorated from FY18 and the Company received multiple notices over the Covid-19 period to pay the growing outstanding amount.

Below is the table indicating the movement in the ATO's RBA balance for the previous three (3) financial years.

ATO	Jun-18	Jun-19	Jun-20	Jun-21	YTD FY22
Running Account Balance (\$)	213,287	95,649	111,714	170,379	238,968

As discussed previously, the Director loaned the Company monies in August 2018 to reduce the tax liability. However, the Company was unable to meet the tax liabilities going forward due to Covid-19 restrictions.

6.4.1 Insolvent Trading Quantum/Claim

On 24 March 2020, the Coronavirus Economic Response Package Omnibus Bill 2020 was implemented and specifically section 588GAAA was introduced into the *Corporations Act*

2001 granting temporary relief for financially distressed businesses. This amendment provides relief for directors from potential personal liability for insolvent trading.

On 7 September 2020, the Australian Government announced that the temporary relief would be extended until 31 December 2020. Accordingly, the liquidator will not have any ability to pursue the director for insolvent trading for this period.

Pursuant to section 588GAAA(i) the Director would be protected from any insolvent trading claim for any debt incurred in the ordinary course of business during the relief period.

Accordingly, the Director is granted relief from personal liability for insolvent trading pursuant to the Coronavirus Economic Response Package Omnibus Bill 2020 and section 588GAAA of the Act.

The insolvent trading claim after taking consideration the Covid-19 relief is estimated to be \$92,621 based on the debt owing to the ATO.

The likelihood of dividend from the above depends on the commerciality of the recovery, which lead me with the following factors to consider:

- The quantum of the claim;
- The litigation funding involved;
- The Director's ability to pay;
- The defences available for the Director; and
- The available Liquidator's fund for insolvent trading.

5.4.2 Insolvent Trading Defences

The defences available to directors pursuant to section 588FGB of the Act include:

- If it is provided that, at the payment time, the person had reasonable grounds to expect, and did expect, that the company was solvent at that time and would remain solvent if it made the payment;
- Had reasonable grounds to believe and did believe:
 - That a competent and reliable person (the other person) was responsible for providing to the first-mentioned person adequate information about whether the company was solvent; and
 - That the other person was fulfilling that responsibility.
- Expected, on the basis of information provided to the first mentioned person by the other person, that the company was solvent at that time and would remain solvent even if it made the payment.
- Because of illness or for some other good reason, the person did not take part in the management of the company at the payment time.

- The person took all reasonable steps to prevent the company from making the payment; or there were no such steps the person could have taken.

Director's personal financial position

The Director has provided a statement of his personal assets and liabilities.

According to the NSW Land Title search the Director jointly holds 34% ownership in real property with his wife and former director Darlene Lucas.

Based on my preliminary review of the likely quantum of any potential claim, the likely costs to be incurred in pursuing any claim and the present uncertainty as to the current financial position of the director, it is my view at this stage that it would not be commercial to pursue any insolvent trading claim.

6.4 Breach of Directors' Duties

Section 180 to 183 of the Act sets out duties and powers of directors and officers of a company to enable Directors act in the interest of the Company. The duties include:

- Section 180 – Care and Diligence
- Section 181 – Good Faith
- Section 182 – Use of Position
- Section 183 – Use of Information
- Section 184 – Good Faith, Use of Position and Use of Information – Criminal Offences

Section 180 – Care and Diligence

Pursuant to section 180 of the Act a director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- a) Were a director or officer of a corporation in the corporation's circumstances; and
- b) Occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

In considering whether a director has met their duties in exercising care and diligence, various circumstances may be considered including the type of company, the size and nature of its business, the composition of its board and distribution of work between the board.

Based on my preliminary investigations, I have not identified any breaches of director's duties.

Section 181 – Good Faith

Pursuant to Section 181 of the Act, a director or other officer of a corporation must exercise their powers and discharge their duties:

- a) in good faith in the best interest of the corporation; and
- b) for a proper purpose

My investigations and enquiries as at the date of this report does not identify any breaches of this section of the Act.

Section 182 – Use of Position

Pursuant to Section 182 of the Act, a director or other officer or employee of a corporation must not improperly use their position to:

- a) Gain advantage for themselves or someone else; or
- b) Cause detriment to the corporation.

My investigations as at the date of this report does not identify any breaches of this section of the Act.

7. What happens next?

I will proceed with the liquidation, including, but not limited to:

- Reporting to the corporate insolvency regulator, the Australian Securities and Investments Commission (“ASIC”);
- Continue my investigations into the affairs of the Company;
- Any other matters relevant to the liquidation.

If I receive a request for a meeting that complies with the guidelines set out in the ARITA information sheet “Creditors Rights in Liquidation as attached at **Annexure B**, I will hold a meeting of creditors. If you have not already submitted your claim, please complete the Proof of Debt form attached as **Annexure A**.

I expect to have completed this liquidation within six months to twelve months.

8. Costs of the Liquidation

On 24 June 2022, creditors approved by circular resolution my fees in the amount of \$10,000 plus GST. To this date, I have incurred fees of circa \$15,000.

I am not seeking further remuneration approval at this stage.

9. Receipts and payments

Receipts and Payments For the period 20 May 2022 to 18 August 2022	
	\$ Incl GST
Receipts	
Funds advanced by Director	11,000.00
	<u>11,000.00</u>
Payments	
Liquidator Fees & Disbursements	11,000.00
	<u>11,000.00</u>
Cash at bank	-

10. Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (“ARITA”) provides information to assist creditors with understanding liquidations and insolvency.

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for “insolvency information sheets”).

If you have any queries or have any information to support the liquidation you can contact my office and speak with Tom Farquhar on 02 8020 5861 or via email on tfarquhar@hogansprowles.com.au.

Dated: 19 August 2022

Silva Enterprises Pty Ltd (In Liquidation) Trading as Mimmos Express Pizza (Formerly trading as Melt Pizza Express)



Michael Hogan
Liquidator

Attachments

- Annexure A Proof of Debt form
- Annexure B Information Sheet - Creditor Rights in Liquidation

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

Silva Enterprises Pty Ltd (In Liquidation)
Trading As Mimmos Express Pizza (Formerly Trading As
Melt Pizza Express)
A.C.N. 605 119 739 ("the Company")

Name of creditor:

Address of creditor:

.....

ABN:

Telephone number:

Amount of debt claimed: \$..... (including GST \$

Consideration for debt (i.e, the nature of goods or services supplied and the period during which they
were supplied):

.....
.....
.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....
.....
.....

Other information:

.....
.....

.....
Signature of Creditor
(or person authorised by creditor)

.....
Dated

Notes:

Under the Insolvency Practice Rules (Corporations) (IPR) 75-85, a creditor is not entitled to vote at a meeting unless:

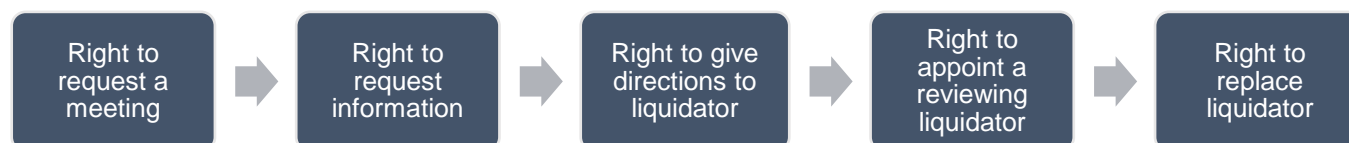
- a. his or her claim has been admitted, wholly or in part, by the Liquidator; or
b. he or she has lodged with the Liquidator particulars of the debt or claim, or if required, a formal proof of debt.

At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value
of the security (IPR 75-87).

Proxies must be made available to the Liquidator.

Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by $\geq 5\%$ of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$ but $< 25\%$ of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$ of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the liquidator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

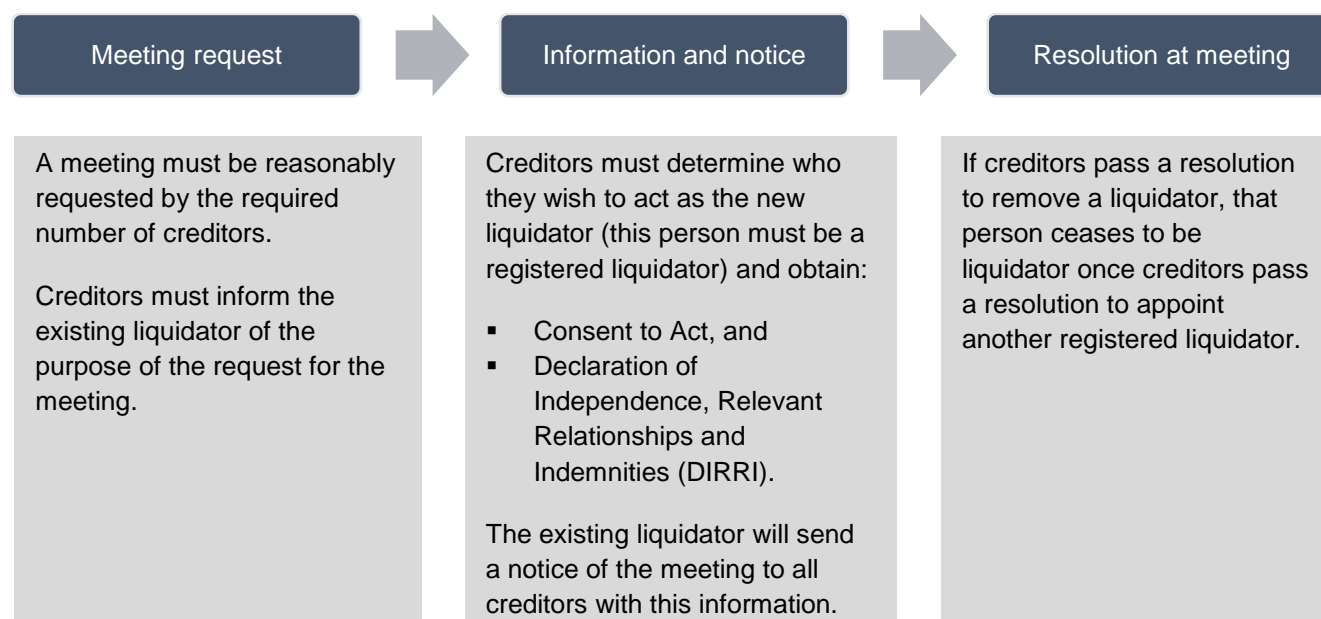
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to www.arita.com.au/creditors.
Specific queries about the liquidation should be directed to the liquidator's office.**