**COMPANY LAW ASSIGNMENT QUESTIONS**

# a. ) Advise the liquidator, with reference to the Corporations Act 2001 (Cth), as to what action she should take against Bruce and Lee and the chances of her success.

## Introduction

The liquidator of a company is assigned in order to identify the possible ways by which the company can interrogate a cause of an action to the directors and the officers of the enterprise. The provided scenario sheds light on the bankruptcy of the company namely Ninja Computer Pty Ltd because of the unofficial and insolvent behaviour of the directors of the company. It is evident from the scenario that the financial harm caused to the company is due to the unethical use of power and information of one of the directors of the company and along with that the incapability of the other director to monitor the financial on goings of the company. However, in order to identify possible solution to improve the current condition of the company, a liquidator has been assigned. The chief aim of this study to provide potent suggestion to the liquidator so that she can successfully undertake needful legal actions against the directors in terms of breaching their duty as the directors of the company. The provided scenario is a significant instance of insolvency as define in section 95(A)[[1]](#footnote-1) of the Corporations Act and referring to section 95A(2) [[2]](#footnote-2)Ninja Computer Pty Ltd belongs to the domain of insolvent companies as the company no longer holds ability to pay of the subsequent debt of $285,000 to the creditors of the company because of insufficient funds.

## Facts of the case

It is important for the appointed liquidator to summarize the potent facts in order to undertake necessary legal decision against the current situation of the company. The potent facts regarding the provided case can be summed up as follows:

* Bruce and Lee are the directors of the company and they are the shareholder of the Ninja Computers Pty Ltd. The managerial activities of the company is classified into two different groups. Bruce is assigned to take care of the financial concerns of the company and Lee is responsible for monitoring and public relations of the company.
* It is evident from the scenario that Bruce is associated with dishonest activities with the financial aid from the company’s fund. He has breached his duty as provided in The Corporations Act 2001 as the Director’s duty. The sections that defines the responsibilities and the role of the directors mentions that any activity that includes using the confidential information of the company or dishonestly using the funds of the company for individual benefit or profit is to be considered as the breach of Director’s duties. As per the scenario Bruce is responsible for several breaches including lying to the other director of the company regarding the creditor’s bills and the financial status of the company which have led the bankruptcy of the company. He can be charged for the brach of section 184 (reckless behaviour and intentional dishonesty)[[3]](#footnote-3) and section 191 (duty to make frank disclosure of information to the other shareholder)[[4]](#footnote-4) and both of the acts are considered to be criminal offences.
* Although Bruce is convicted of a grave offence Lee, the other director of the corporation has also failed to effectively perform his duty as the director of the company. It is a well known fact that it is a significant responsibility of a director of a company to monitor every activity of the employees along taking account of the financial activities that the directors and the officers of the company are involved in. However, Lee has failed to effectively perform his duty of the director and this can be considered as the breach of director’s duty of diligence and care as per section 180 of Corporations Act, 2001.
* Bruce is also responsible to perform his duty for the best interest of the company to his attitude towards the creditor and supplier of the company who are considered to be the subsequent stakeholders of the company.
* Both of the directors have failed to avoid the insolvency and the company in the provided scenario is insolvent.

Based on the general facts the liquidator has the authority to take legal action against the directors due to their breach of duty and for the insolvency that has taken place. The directors in this case are subjected to liability of recovery on the basis of:

* Breach of the subsequent duties of the directors
* Breaching the statutory provision
* As the primary debtor of the company who can be accused of overdrawing a loan account

## Pertinent legal issue

1. As per section 180 of the Corporations Act 2001[[5]](#footnote-5) the general fiduciary duties of the director to act in the best interest of the enterprise and the general duties of the director which are the duties of act with care and diligence have been breached by both the directors.
2. The statutory duty of the directors to use the transaction of the property only with the approval of the company has been brached.
3. Section 588G of the Corporations act, 2001[[6]](#footnote-6) also defines the responsibility of the director of a company to prevent possible insolvency that both of the directors have failed to do. Bruce due to his dishonesty to the company and Lee because of his inability to monitor the financial transaction.
4. The illegal expenditure of Bruce is breach of both the statutory and the fiduciary duties of a director.
5. As per section 588G of the Corporations Act of 2001[[7]](#footnote-7) also mentions that it is the duty of the director to be accused of insolvent trading if the director of the company incurs debt in the time of the company being insolvent and if there are pertinent ground for the suspicion of the subsequent insolvency.
6. As per the scenario considering section 588(G) it is evident that both the directors have failed to perform their duties of preventing the company from incurring debt which is considered dishonest under the section.

## Subsequent case law

The relevant case law that can be mentioned in accordance with the scenario is *Ambrose (Trustee) in the matter of Poumako (Bankrupt) v Poumako [2012] FCA 889 (2012[[8]](#footnote-8))* where transfer void of bankruptcy was noted. *Valeba Pty Ltd v Deputy Commissioner of Taxation [2012] QSC 200 (2 August 2012)[[9]](#footnote-9)* is another case that demanded the consultation of the liquidator in order to charge the directors of the company for the case of insolvency. The case of Re SCW Pty Ltd NSWSC 302 in 2013 is the most significant instance of insolvency where a liquidator was appointed in order to resolve the issue.

## Application of the legal principles and the case law

After conducting a significant investigation in order to identify the pertinent issues for insolvency and the breach of director’s duty Bruce can be charged for criminal act and Lee for the breach of fiduciary duties. The directors of the company can be charged to compensate the corporation and the liquidator also needs to establish that the debt owned by Bruce is against the permission of the company and also the loan was not sanctioned by the company.

## Legal reason of the advice

The guideline of director’s duties under Corporations act of 2001 that defines the breach of director’s duties and the consequences are the foundation of the legal advice that has been suggested along with that the duty of the directors against the insolvency of the company can be cited for the suggested action against the directors by the liquidator.

## Conclusion

It is important for the company to delve deep into the facts and the attitude and the transaction using the company’s label in order to prevent further issues of insolvency.

# (b) Assume ASIC, instead of the liquidator, has taken legal action Bruce and Lee for breach of the Corporations Act identified in your answer in part (a). Explain, with reasons, what are the most likely potential legal consequences for Bruce and Lee?

In case of ASIC undertaking legal actions against the dishonest and irresponsible activities of the directors of Ninja Computers Pty Ltd, the actions would have been different. The action of ASIC can be evaluated in terms of the following laws and the suggested legal actions against the breach of the laws.

## Law and the legal actions against the directors

***Section 479(3) of the Corporation’s Act, 2001***

As per the guidelines of this particular section insolvency can be the major reason for the charge against Bruce and failing to prevent the insolvency against Lee. ASIC has the authority to charge the directors to repay the debt and also admit that the debt was accumulated by the dishonest use of the company’s name for the individual benefit or profit of the directors[[10]](#footnote-10).

***Section 588G of the Corporation’s Act, 2001***

As the simulations of this section suggests both the shareholders of the company can be charged for criminal action because of their inability to prevent the insolvency and on this basis the directors can be subjected to compensation proceedings[[11]](#footnote-11). Compensation order can be initiated in addition to the civil penalties.

***Section 1801 of the Corporation’s Act, 2001***

As this is a case of dishonesty associated with in insolvent trading Bruce can be subjected to the criminal charges that indicates a fine up to $2000 and imprisonment up to five years[[12]](#footnote-12).

Along with the mentioned measures, the company can receive s222AOE penalty notice for the unpaid tax[[13]](#footnote-13).

## Conclusion

In the light of the above study and the in depth analysis of the breaches it can be concluded that ASIC has the authority to disqualify from managing the corporations up to five years. Taking under consideration the criminal activities of Bruce ASIC can also ban him from the directorial position with a charge of compensating the corporation.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)
11. [↑](#footnote-ref-11)
12. [↑](#footnote-ref-12)
13. [↑](#footnote-ref-13)