asic v adler (2002) 41 acsr 72

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**Executing Summary**

Asic v adler (2002) 41 acsr 72 is regarding the violation of the Corporate Act by directors of HIHC. Adler made payment to his firms for his benefit which caused the company several loses. The defenders of the case were William and Adler and petitioner Asic.

**Introduction**

Recently, significant attention of the media has been focusing on the corporate collapse of Ansett, OneTel and in the Adler’s case. It was started after the collapse of the HIH. The events which transpired provided the opportunity to look into appropriate stimulus to reflect upon and analyze potential damage which can arise as the result of the contraventions of relevant sections of the Corporate Act. In the case of ASIC v Adler (2002) 41 ACSR 72 four different types of transactions are involved. The defendants of the case were Rodley Adler who was the shareholders and non executive director of HH, an officer William Ray, the founder and the Chief Executive officer of HIH. According to Mulhern (2002), HIH is one of the largest insurance firms which are based on Australia. In June 2000, its executives were involved in payment of up to $10 million to acquire shares on the stock and other transactions as well, without proper approval as required by the corporate act.

**Fact**

It was pointed that in June 2000, HIH Insurance (HIH) made payment of $10 million for a unit within a trust which was under the control of Mr. Adler. At the time of payment, Mr. Adler was a non executive director of HIH. Adler was controlling the trust using Adler Corp and Pacific Eagle Equity Pty (PEE) (Hooper, 2011). It is also pointed that Adler Corp was the sole shareholder of PEE. This was a clear unethical and against the Corporate Act since it is evident that Adler approved and made payment to the company which he owns. The assets which were in trust managed by PEE were technology stocks and they were worth substantially less than $10 million. The PEE then used part of the trust of $10million to purchase the shares of HIH. Adler Corp also had acquired a lot of shareholdings in HIH. The loan was acquired through the approval of No shareholder and therefore all these put Adler in a controversial position regarding the operations of HIH, PEE and Adler Corp (Farrar, 2003). However, these made the ASIC to commenced investigation against Adler, Williams and Federa for violating the relating sections of the transaction, financial assistance and director’s duty provision under the Corporations Law of 1998.

**Issue**

The issues realized was the payment of $10 million load which was paid by HIH to PEE which the financial benefit was issued to the related party. It was unethical and wrong accordance to the Corporations Law. Most of the transactions occurred were against the procedures and the Law and therefore, Alder and fellow executives violated the law which caused HIH a lot of losses. The transaction was actually conducted at arms’ length and this provided a defense to Adler against a breach of the related party transactions provisions.

**Judgment**

The judges of the NSW Supreme Court made a ruling that the $10 million payment to PE, Adler Corp and Adler was a financial benefit, because the shareholder approval before the payment was made were sought by Adler. It is therefore, evident that Adler made payment individually without seeking the attention of the shareholders which in this case violated the Corporation Act (Wong, 2003). The judges also made a ruling that the payment of the law were unsecure, inadequately and permitted for the self acquisition of the securities managed by HIH. It is therefore, evident that the transactions were not conducted in respect of the regulations and laws which guide corporations’ financial transactions. It was therefore, ruled that section 180 (2) of the Corporation Act applies the protection to directors to make a sound decision and only applies when the care and diligence is carried when the transactions are made. But in the cases of Adler, the care and diligence were not applied during the transaction and therefore, the protection of the directors under section 180(2) cannot be applied. The court therefore, held that HIHC provided financial assistance illegal of up to $10 million to PEE which it utilized to acquire shares of HIH without disclosing the directors or the investment committee (Adson, 2004). It was then held by the court that Adler violated directors’ duties which fall under section 180, 181, 182 and 183 of the Corporations’ Law. It was also held that Williams also breached the directors’ duties under sections 180 and 181 of the Corporation Act. The judges pointed that he failed to ensure that there was proper security of the loan before permitting the HIHC to loan $10 million to PEE.

Conclusion

The Corporations’ Act was breached by Alder and Williams and therefore, it made then liable for the losses incurred by HIHC. It was pointed that the loan issued to PEE was against the financial transaction law and it was done without seeking for the necessary approval required before such transaction could be done. Therefore, Adler used his position at the company to benefit himself instead of uploading the law and conducting himself as required by the Corporation Act. Adler was found liable and held for the losses the company made. It is therefore, advisable for the company to implement several approval units within the company to avoid such cases from occurring in the future.

# Bibliography

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