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## INDUSTRY OPINION: Post-mortem of a shipping company – the Great Southern Shipping debacle



Former GSS chartered vessel, Wehr Warnow. Photo: Chris Mackey



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 March 28, 2018

Article by Nathan Cecil and Rebecca Niumeitolu\*

AT about the time of the worldwide phenomenon that was the Hanjin Shipping collapse, a much-watched Australian shipping start-up encountered the same fate.

The liquidation of the shipping company has been going for one year, marked by the liquidators' annual report to creditors released on 22 March 2018. The report provides a detailed post-mortem analysis of the main causes of the failure of the shipping company.

The shipping company was called Great Southern Shipping (GSS). Unfortunately, it failed to live up to its name, being neither 'great' and, arguably, not completing any 'shipping' during its period of operations.

### Short history

A short history is all that is required, as GSS had a short lifespan.

GSS was incorporated on 20 November 2015. GSS was to conduct an international shipping service between Australia and China.

Between 30 March 2016 and 15 September 2016, GSS entered into a series of agreements with certain Rizhao Port Group entities for the utilisation of port services, container slot purchases and marine fuelling. The financial and organisational backing of Rizhao Port Group was a significant pillar of the business.

GSS chartered three vessels, which all loaded, or part-loaded cargo in and around September 2016, when the service commenced.

A dispute arose between GSS and its Rizhao Port Group backers in relation to container slot purchase and marine fuelling cost payments.

GSS stopped trading in or about late November 2016.

GSS was wound up, with liquidators appointed on 22 December 2016.

### The aftermath

Outstanding employee entitlements total \$68,052. Notified unsecured creditors total \$24,945,773. No dividend is expected to be paid to any unsecured creditors.

The liquidators have concluded that:

*"The principal reasons for the Company's failure are undercapitalisation, poor financial control including insufficient and inaccurate records, inadequate cash flow or high cash use, poor strategic management of its business and the dispute with the Rizhao Group."*

The liquidators have also formed the view that:

*"... the Company may have traded whilst insolvent from early August 2016 onwards [to 22 December 2016]. The quantum of the insolvent trading claim against the directors may be as high as \$5,706,341."*

The impact on customers and suppliers was no less severe.

Customers had their shipments held indefinitely, with ship owners refusing to deliver cargo or complete voyages until they were paid their outstanding charter fees – whether by GSS or the cargo owners, many of whom had already paid GSS freight costs for the shipments and so were being asked to pay twice in order to obtain redelivery of their cargo. Ship owners were also hit hard, with millions in unpaid charter fees.

### Reasons for GSS' collapse

The liquidators' report attributes the collapse of GSS to the following five main reasons.

#### #1 Undercapitalisation

The liquidators have concluded that the company had insufficient capital to establish the desired service, having no access to debt or equity finance and being almost solely reliant on cash receipts from Rizhao Port Group to operate.

#### #2 Poor financial control, including insufficient and inaccurate records

The liquidators have found that GSS failed to have written agreements in place for key functions (e.g. liner agency services), did not appear to have working papers supporting the draft balance sheet and profit and loss accounts and did not maintain details of debtors. The liquidators concluded that:

*"...the Company may have lacked sufficient control procedures to manage the operations and cashflow of the Company."*

#### #3 Inadequate cash flow or high cash use

Rizhao Port Group were the largest source of income for GSS and GSS appeared to be highly reliant on expected cash flows from them to operate. Here, 'operating' proved to be a major hurdle. GSS failed to pay charter fees to the owners of its chartered ships, resulting in the ship owners withdrawing the vessels from the service and refusing to deliver shipments or complete voyages. Without any operating income, GSS could not generate cash flows to meet creditor payments.

#### #4 Poor strategic management of business

The liquidators have concluded that the fact that GSS did not have any detailed forecasts or budgets, unsurprisingly, impaired the directors' ability to make good strategic decisions.

#### #5 Disputes with Rizhao Port Group and vessel owners

Although details are scarce, Rizhao Port Group alleged certain breaches of contract by GSS and, presumably, stopped making payments upon which GSS was reliant for its continued operation. As a result, GSS could not meet its charter costs and ship owners withdrew their vessels, refused to deliver cargo or to conclude voyages.

**Potential recovery against directors**

The liquidators have concluded that GSS may have traded whilst insolvent for some 4-5 months, incurring up to \$5,706,341 in liabilities during that period. In addition, the liquidators have identified a number of other potential claims against the directors for breach of duties, uncommercial transactions and unreasonable Director-related transactions which could exceed \$15 million. So, claims against directors could amount to more than \$20 million.

**Lessons learned**

Shipping is a tough game. Seeking to start from scratch with an ambitious goal to run an international shipping service from Australia, where many established lines often encounter difficulty making profit, is even tougher. When taking on such an ambitious goal, proper budgeting, forecasting and funding are essential to get right before the service commences.

On the flipside, for those dealing with a fresh face in the international shipping sector, additional due diligence and/or secure payment or service guarantees are a good idea. Many cargo owners and freight forwarders were presumably taken in by promises that were too good to be true and could have been less impacted if they had only tipped a little bit of business in first, rather than going 'all in'.

In an interesting footnote, one of the key executives behind GSS was also one of the key executives behind two earlier failed Australian shipping ventures. Lightning can indeed strike twice, or even three times.

\* *Nathan Cecil is a partner in Holding Redlich's national Transport team. Rebecca Niumeitolu is a lawyer at Holding Redlich*

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