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Restructuring Department Bulletin

Delaware Bankruptcy Court Dismisses Debtors' Second Chapter 11 Filing As Improper Attempt to Modify Prior Confirmed Plan

In *In re SC SJ Holdings LLC*, Case No. 21-10549 (Bankr. D. Del. Jan. 30, 2025), the Delaware Bankruptcy Court dismissed the debtors' second chapter 11 bankruptcy because its sole purpose was to modify their previously confirmed and substantially consummated plan in violation of section 1127(b). Section 1127(b) of the Bankruptcy Code bars plan modifications after substantial consummation of a plan. Courts have dismissed chapter 11 cases that violated section 1127(b) as bad faith filings. In *SC SJ Holdings*, the debtor hotel owner suffered COVID-19-related downturns and filed for bankruptcy in 2021; the plan was confirmed the same year. Unable to renovate the hotel at anticipated costs, the debtors found themselves in default under their post-confirmation loan and filed their second chapter 11 cases in 2024. The secured lender moved to dismiss the debtors' second bankruptcy as an impermissible attempt to modify the prior chapter 11 plan and, thus, a bad faith filing. The court agreed, ruling that (a) the plain language of section 1127(b) did not permit the debtors' proposed de facto post-consummation plan modifications through the second filing, and (b) even if, as the debtors argued, changed circumstances were relevant, they would only be so for the purpose of determining whether the second filing was made in good faith, not because of a judicially created statutory exception to such modifications. The court found that the debtors had to show "extraordinary, unforeseeable changed circumstances" to prevail and they failed to do so, given that their ongoing pandemic-related problems, rising costs and higher interest rates were entirely foreseeable. The debtors appealed the ruling.

Bankruptcy Court Grants Chapter 15 Recognition to U.K. Subsidiary Created for Sole Purpose of Restructuring Mexican Parent's U.S. Governed Notes Through U.K. Scheme

In *In re Mega Newco Ltd.*, Case No. 24-12031 (Bankr. S.D.N.Y. Feb. 24, 2025), the debtor ("Mega"), a wholly-owned subsidiary of a Mexican financial services firm ("Parent"), sought recognition and enforcement of a U.K. proceeding in the United States through chapter 15 of the Bankruptcy Code ("Chapter 15"). Parent had issued New York law-governed notes and sought to restructure them with the support of an ad hoc group of noteholders. Because the U.S. notes required 100 percent noteholder consent to modify outside of bankruptcy, Parent incorporated Mega in the U.K. to do so through a U.K. proceeding.

DID YOU KNOW...

- *Turnarounds & Workouts* recognized Paul, Weiss for playing a key role in six of the past year's largest and most successful restructurings, highlighted on the publication's "Successful Restructurings of 2024" and "Largest Chapter 11 Cases of 2024" lists. The spotlighted matters include the restructurings of Digicel, Endo International, Enviva, Hornblower Group, Northvolt and Rite Aid.
- Restructuring partners Alice Eaton and Sean Mitchell participated in the Practising Law Institute's "Recent Developments in Distressed Debt, Restructurings and Workouts 2025" program. As co-chair of the event, Alice moderated panels on market updates, corporate governance and intercreditor dynamics. Sean spoke on the "Hot Topics: lightning Round" panel, discussing the out-of-court bankruptcy toolbox; golden shares, golden directors and board flips; and choosing between a path of planning or selling.

Chapter 15 governs cross-border insolvency cases and permits recognition and enforcement of foreign bankruptcies in the United States. To obtain such relief, a foreign debtor must satisfy statutory requirements to have its non-U.S. restructuring "recognized" as a foreign main or non-main proceeding. This requires evidence that the debtor has some presence in the jurisdiction in which it commenced its proceeding. Mega argued in the Bankruptcy Court for the Southern District of New York that because it had its registered office in the U.K. and that its restructuring efforts were negotiated in the U.K., its U.K. scheme should be recognized as a foreign main proceeding. Judge Wiles agreed that as a matter of form, Mega satisfied the chapter 15 requirements. Because there were no objections, he therefore enforced the U.K. note restructuring scheme in the U.S. but expressed reservations about the process used. "[T]he whole structure . . . was created for the purpose of restructuring the U.S. Notes issued by the Parent," Judge Wiles stated. "However, the Parent is not a party to the English Scheme Proceeding, and the Parent's [center of main interests] is in Mexico, not the U.K. . . . . If we were routinely to allow this structure in all cases, no mater what the circumstances, the ordinary predicates for Chapter 15 relief could be stripped of meaning." This case illustrates the benefits of cooperation across borders and stakeholders but serves as a cautionary tale about the potential judiciary limits to doing so.

Questions? Please contact any of our Restructuring Partners to discuss these or other topics in greater depth.

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