KING & SPALDING

Client Alert

Financial Restructuring Practice Group

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U.S. Bankruptcy Court for the Southern District of New York Confirms Chapter 11 Plan Less Than Two Weeks After Commencing Bankruptcy

On January 10, 2017, in the case of *In re: Roust Corporation, et. al.*, (16-23786) (RDD), pending in the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), Judge Robert D. Drain entered an order confirming the debtors' prepackaged chapter 11 plan of reorganization less than two weeks after the commencement date. More specifically, the confirmation order was entered eleven days after the debtors commenced their chapter 11 cases in a bankruptcy proceeding where the confirmation hearing was held a mere seven days into the cases. Judge Drain confirmed the plan over a number of objections, including an objection from the U.S. Trustee's Office regarding, among other things, the pace of the chapter 11 cases. At the confirmation hearing, Judge Drain found that, under the particular circumstances of the debtors' chapter 11 cases, the plan solicitation was proper and the extremely short amount of time between the petition date and plan confirmation was justified.

Background

Roust Corporation and certain of its subsidiaries ("Roust"), one of the world's largest vodka producers, were overleveraged on account of approximately $488 million in principal amount of senior secured notes and $279 million in principal amount of senior convertible PIK notes. Roust entered into discussions with its equity sponsor and informal groups of its funded debt stakeholders.

On November 9, 2016, Roust entered into a restructuring support agreement with its equity sponsor, holders of 90% in aggregate principal amount of the senior secured notes and holders of approximately two-thirds in aggregate principal amount of the convertible PIK notes. The RSA set forth the material terms for a proposed prepackaged chapter 11 balance-sheet restructuring. The only impaired claims against and interests in Roust under the proposed prepackaged chapter 11 plan were the senior secured note claims, the convertible PIK note claims, and the existing equity interests, substantially each of whom were RSA parties; all other claims against Roust were designated to "ride through" unimpaired under the proposed plan.

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Roust commenced plan solicitation on December 1, 2016. Voting concluded on December 30, 2016, with the plan having received overwhelming acceptance from the RSA parties (*i.e.*, the only parties entitled to vote to accept or reject the plan). In a somewhat unorthodox approach, *prior to commencing solicitation for votes*, Roust scheduled a hearing date with the Bankruptcy Court on January 6, 2017, to consider the solicitation procedures, the adequacy of disclosure in the disclosure statement, and confirmation of the plan. Notice of the January 6 court date was distributed to all voting creditors and parties in interest concurrently with the documents soliciting votes to accept or reject the prepackaged plan. With the necessary votes in hand, Roust commenced its chapter 11 cases on December 30, 2016.

Ruling on Plan Confirmation

At the hearing on January 6, 2017—only seven days into Roust's chapter 11 cases—the Bankruptcy Court presided over Roust's combined first-day and confirmation hearing. As noted above, objections to confirmation were pending at the hearing, including an objection from the U.S. Trustee's Office regarding the quick timing of the confirmation hearing. The U.S. Trustee's Office also objected to the scope of the plan's non-debtor third-party releases. At the hearing, Judge Drain overruled the confirmation objections and indicated that the Bankruptcy Court would enter an order confirming the prepackaged chapter 11 plan. The confirmation order was entered on January 10, 2017.

The average duration of a prepackaged chapter 11 case is approximately 35 days based on notice requirements under Bankruptcy Rule 2002, which generally requires 28 days' notice of a hearing to confirm a chapter 11 plan and the deadline by which to object. Judge Drain, however, held that the shorter timeframe within chapter 11 was sufficient because (i) affected parties in interest received notice of the hearing and had sufficient opportunity to object to the disclosure statement and plan and (ii) the notice provided in conjunction with the December 1 solicitation satisfied the requirements of Bankruptcy Rule 2002. More specifically, Judge Drain observed that Bankruptcy Rule 2002 merely requires 28 days' notice; not 28 days' notice following the commencement date. Judge Drain also noted the special circumstances of the case—the sophistication of the parties involved, the limited number of unsecured creditors and the benefit to Roust of being able to timely pay excise taxes from the proceeds of the rights offering contemplated by the plan (thereby avoiding what Roust described as "serious issues" resulting from the failure to pay such taxes)—as distinguishing factors warranting the expedited timeline. With respect to the objections concerning the allegedly improper non-debtor third-party releases, Roust agreed at the hearing to revise the third-party releases to a more limited scope.

Conclusion and Lessons Learned

The *Roust* ruling shows that under the right circumstances—*i.e.*, where there are sophisticated parties, a limited number of unsecured creditors, and near unanimous support of a plan of reorganization by impaired creditors—a debtor can structure a prepackaged chapter 11 plan process to achieve confirmation with only an extremely short period of pre-confirmation time in bankruptcy. The possibility of such a short window between filing and plan confirmation, in certain circumstances, may weigh in favor of a company and its supporting creditors pursuing a balance-sheet restructuring through an in-court process instead of out-of-court, even in situations where a traditional prepackaged timeframe could prove materially value-destructive to the debtor's go-forward operations.

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