SPC Guiding Case No. 214: Bankruptcy Liquidation Converted to Bankruptcy Reorganization of Shanghai [X] Port Industrial Co., Ltd.

Dan Young Business Consultancy — www.danyoungcpa.com

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Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on October 20, 2023.

Keywords

Civil / application for bankruptcy liquidation / application for bankruptcy reorganization / pollution remediation / common benefit debts

Holding

1. In hearing a bankruptcy reorganization case involving a port and wharf operating enterprise within a river basin, the people's court shall take environmental pollution remediation as an important factor in realizing the value of reorganization, and shall promptly eliminate the state of environmental pollution that affects the continued existence of the wharf's operating license qualifications.

2. Where a port and wharf operating enterprise has caused environmental pollution through deficiencies in the construction and maintenance of relevant infrastructure, and failure to promptly remediate it will affect the value of its bankruptcy reorganization, the administrator shall carry out remediation in accordance with law. Where the administrator requests that the relevant environmental remediation expenses be treated as common benefit debts and be repaid at any time from the debtor's property, the people's court shall uphold such request in accordance with law.

Basic Facts

Shanghai [X] Port Industrial Co., Ltd. ("Shanghai [X] Port Company") was established in September 1993, with its principal business being wharf leasing, warehousing, loading and unloading services, and the like. Its location was adjacent to the Yangtze River estuary, connecting to the Shanghai Waigaoqiao Port Area and the bonded zone to the east and bordering the Huangpu River to the west. In November 2019, upon application by a creditor, the Shanghai Third Intermediate People's Court ruled to accept the bankruptcy liquidation case of Shanghai [X] Port Company. Upon investigation by the administrator, it was found that the wharf lessees had engaged in disorderly management and that the facilities and equipment were old and deteriorated, posing major hidden dangers of environmental pollution. During the trial, the environmental protection and traffic management authorities jointly issued a rectification notice requiring rectification of the wharf's sewage and dust treatment facilities within a prescribed period; otherwise, Shanghai [X] Port Company's operating license qualifications would be revoked.

Shanghai [X] Port Company held intangible assets such as a shoreline use permit and a port operation permit, and had a shoreline length of 150 meters, with the depth of water at the control line at the wharf front being 2 m ≤ depth < 5 m, and an annual cargo throughput of approximately 2 million tons. To preserve the operating value of Shanghai [X] Port Company and safeguard the interests of all creditors, the court ruled, upon application, to convert the case to reorganization proceedings.

Under the court's guidance, the administrator, on the one hand, urgently communicated and coordinated with the environmental protection and traffic management authorities to understand the specific environmental rectification requirements, and on the other hand promptly commissioned a third party to carry out construction rectification, expanding the construction of facilities and equipment such as the sewage grit

chamber, ditches, and floors to ensure that surface rainwater and sprayed water were uniformly collected into the sewage grit chamber and, after sedimentation treatment, recycled for spraying within the port, greatly improving the port's wastewater reuse rate and effectively avoiding the direct discharge of wastewater into the river. In addition, enclosing walls were installed, and gravel enclosures and coverings and truck-loading water spraying devices were added, effectively controlling wharf dust and preventing the exceedance of air pollutants in the surrounding area. Where the property taken over was difficult to use to pay the relevant construction and price-review fees, the administrator coordinated a third party to advance RMB 587,068 in the first instance, and, after the reorganization funds were in place, repaid it as common benefit debts in accordance with Article 2 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III). Some of the fees were arranged through rent deductions, coordinating the tenants to carry out timely remediation and payment.

At the same time, in accordance with Article 15, paragraph 1 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III), the environmental problems in the wharf's operation were fully disclosed to the creditors' meeting by way of a special proposal, explaining the repair and remediation expenses and the manner of handling them, and were approved by vote of the creditors' meeting. This effectively resolved the problem of insufficient environmental rectification funds, improved the efficiency of environmental remediation, and ensured the green and environmentally friendly operation of the wharf. In the process of recruiting investors, in addition to the investors' own financial strength and enterprise background, attention was also paid to the investors' willingness and ability to operate the wharf in a green manner. After two rounds of market-based public recruitment, an investor was introduced with an investment of more than RMB 87 million, and the wharf's subsequent environmental protection operation plan was specifically incorporated into the draft reorganization plan. After reorganization, the enterprise would enhance its wharf operation capability in three dimensions: upgrading facilities and equipment, standardized and intelligent wharf management, and environmentally friendly green operation, so as to provide supporting services for the Waigaoqiao Bonded Zone and the port area. Upon vote by the creditors' meeting, the investor group failed to vote within the prescribed period even after all means of service and announcement had been exhausted, while the secured creditor group, the tax creditor group, and the ordinary creditor group all voted to approve the draft reorganization plan. The administrator requested the court to rule to approve the draft reorganization plan of Shanghai [X] Port Company.

Judgment

On August 10, 2022, the Shanghai Third Intermediate People's Court rendered Civil Ruling (2019) Hu 03 Po No. 320-6: (1) approving the amended Reorganization Plan (Draft) of Shanghai [X] Port Industrial Co., Ltd.; and (2) terminating the reorganization proceedings of Shanghai [X] Port Company. During the execution of the reorganization plan, with the assistance of the court and the administrator, the enterprise smoothly resolved the problems of the expiry of its business license and the overdue port operation permit.

Reasoning

The court's effective judgment held as follows:

In examining and approving a draft reorganization plan, it is necessary to respect the autonomy of the creditors' meeting and adhere to the principle of legality review, while also considering whether it can maximize social value on the basis of a balance of interests. In this case, the repayment rate of the ordinary creditor group was improved compared with the zero repayment under simulated liquidation. Where Shanghai [X] Port Company was already seriously insolvent, the reorganization plan's scheme of adjusting the investor group's equity interests to zero was fair and reasonable, and the operating scheme in the draft was feasible, could effectively continue the operating value of Shanghai [X] Port Company, and was conducive to restoring the operating capability of Shanghai [X] Port Company. The bankruptcy

administrator's application complied with the law and was conducive to achieving the dual effects of enterprise sustainable development and ecological environment protection, and should be granted. The people's court should give full play to the bankruptcy adjudication function, integrate the concept of green development into the entire judicial process of reorganization, and explore and establish a flexible and efficient working mechanism in terms of the repair and remediation of environmental problems, expense arrangements, and the formulation and execution of the reorganization plan, so as to make reorganization an effective path for boosting the green and low-carbon transformation of enterprises in difficulty. Specifically:

(I) On the responsibility for environmental pollution remediation of the reorganized enterprise and the nature of the expenses

In accordance with the relevant provisions of the Environmental Protection Law of the People's Republic of China, the Port Law of the People's Republic of China, and other laws, as well as the principle of "whoever pollutes shall remediate," an enterprise's responsibility for environmental pollution remediation shall continue after its bankruptcy is accepted. Where a port and wharf enterprise undergoing reorganization has caused environmental pollution through deficiencies in the construction and maintenance of relevant infrastructure, it shall, as the subject responsible for environmental remediation, carry out the remediation. The administrator, as the executor of bankruptcy affairs, shall be responsible for implementing the specific remediation acts. Such acts enable the debtor enterprise's operating qualifications to be preserved and its operating value to be maintained, thereby enhancing the repayment interests of all creditors. Because the expenses arising from remediation are expenses incurred for the benefit of all creditors, where the administrator requests that they be found to be common benefit debts in accordance with Article 2 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III), the people's court shall uphold the request.

(II) On the path of environmental pollution remediation during the reorganization period

The wharf pollution involved in this case was mainly concentrated in two aspects: water pollution and air pollution. Under the guidance of the court, the administrator, in accordance with law, coordinated and advanced environmental pollution remediation and reorganization proceedings: First, coordination between the government and the court. The court and the administrator visited the local subdistricts and towns and the environmental supervision authorities to fully understand the environmental protection responsibility requirements of the wharf shoreline involved and the prospects of subsequent planning. After communication and coordination, the relevant authorities extended the rectification period, gaining time for environmental pollution remediation. Second, remediation in advance. When the rectification notice was issued, the administrator had not been able to take over the rent receivables and other funds. In order to complete the various environmental pollution remediation measures within a short period and preserve the enterprise's operating qualifications, the administrator communicated with the wharf lessee enterprises to first commission a third-party professional institution to carry out rectification against the standards. Through the expansion and improvement of the sewage grit chamber and ancillary facilities, the phenomenon of rainwater and site wastewater leaking into the environmental water bodies without treatment was resolved, and the wastewater reuse rate was improved; through the installation of dust reduction and noise reduction equipment, atmospheric dust pollution was reduced, ensuring that air quality met the standards and enhancing the ecological environment quality of the Yangtze River estuary basin. Third, implementation of expenses. The main expenses were first advanced by the lessee enterprises and, after the reorganization funds were in place, repaid as common benefit debts, resolving the difficulty of remediation funds. Fourth, information disclosure. The creditors' right to know, right to participate, and right to supervise were fully respected, and, in accordance with Article 15, paragraph 1 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III), the environmental pollution remediation matters were subject to a special vote as a major disposition of property, and the course of environmental pollution remediation and the bearing of expenses

were disclosed in the draft reorganization plan, seeking the creditors' support for and cooperation with the reorganization work.

(III) On the relationship between environmental pollution remediation and the preservation of reorganization value

In this case, environmental pollution remediation was closely related to the enterprise's reorganization value and was a key factor determining whether the enterprise could realize its reorganization value. Once an enterprise violates the relevant laws and regulations on the prevention and control of environmental pollution and faces a penalty of being deprived of its administrative license qualifications, it will lose its reorganization value. Therefore, in the trial of a bankruptcy reorganization case of a port and wharf enterprise, attention should be paid to organically combining environmental pollution remediation with the preservation of the enterprise's reorganization value, promptly eliminating the state of environmental pollution that affects the continued existence of the wharf's operating license qualifications, and taking environmental pollution remediation as an important factor in realizing the value of reorganization.

(IV) On the formulation, approval, and execution of the reorganization plan

When formulating the reorganization plan, the principle of green development should be reflected, guiding investors to write environmental protection operation plans and environmental protection commitments into the plan, and paying attention to whether the enterprise can practice environmental responsibility in the future and promote the coordinated development of the economy, society, and the environment. When examining and approving the draft reorganization plan, comprehensive consideration should be given to legal factors such as the enterprise's liquidation value and procedural legality, as well as social factors such as the enterprise's sustainable development and ecological environment protection. During the execution of the reorganization plan, obstacles to the enterprise's continued operation should be coordinated and resolved. By exploring a new mechanism for the coordinated advancement of bankruptcy adjudication and judicial protection of the ecological environment, the source-level treatment of pollution reduction and carbon reduction in the Yangtze River basin and the green and low-carbon transformation of enterprises should be realized, promoting the organic unity of ecological environment protection, enterprise revival, and the maximization of creditors' interests.

Relevant Legal Provisions

Article 73 of the Yangtze River Protection Law of the People's Republic of China.

Articles 42 and 43 of the Enterprise Bankruptcy Law of the People's Republic of China.

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