SPC Guiding Case No. 252: Series of Enforcement Cases of Zhejiang [X] New Materials Co., Ltd.

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Enforcement / enforcement implementation / designated enforcement / coordination between enforcement and bankruptcy

Holding

1. Where the same judgment debtor is involved in multiple enforcement cases that have been separately docketed for enforcement by different people's courts, and unified enforcement by a single people's court would be conducive to carrying out the enforcement work lawfully, promptly and effectively, the superior people's court may designate one of the people's courts to carry out unified enforcement.

2. During enforcement, where the judgment debtor enterprise enters the pre-reorganization procedure, the case may be designated to a people's court with bankruptcy jurisdiction for unified enforcement, so as to advance the coordination between enforcement and bankruptcy.

Basic Facts

In September 2017, the Xiaoshan District People's Court of Hangzhou, Zhejiang Province docketed for enforcement a civil mediation statement in a financial loan contract dispute between the Yinfa Sub-branch of a Xiaoshan commercial bank in Zhejiang (“the Bank's Yinfa Sub-branch”) and Zhejiang [X] New Materials Co., Ltd. (“Zhejiang [X] New Materials”) and 11 other persons, with an enforcement subject amount of approximately RMB 100 million (same currency hereinafter). During the enforcement, the parties reached an installment performance settlement agreement, but the judgment debtor failed to fully perform its payment obligations. Upon application by the Bank's Yinfa Sub-branch, the Xiaoshan District People's Court docketed the case for resumed enforcement on November 29, 2021, continued to seal the vehicles, land, factory premises and machinery and equipment of Zhejiang [X] New Materials and other judgment debtors, and initiated the assessment procedure for the sealed property. The Bank's Yinfa Sub-branch enjoyed a mortgage right over the aforementioned sealed factory premises.

In August 2021, due to an administrative division adjustment, the location of Zhejiang [X] New Materials and other judgment debtors was transferred from Xiaoshan District, Hangzhou to Qiantang District, Hangzhou. In 2022, the Qiantang District People's Court of Hangzhou, Zhejiang Province docketed for enforcement three labor dispute cases involving Zhejiang [X] New Materials, but because all of the company's property had been sealed by the Xiaoshan District People's Court and there was no property available for enforcement, all three cases were concluded with termination of the current enforcement procedure. Thereafter, the Qiantang District People's Court successively accepted over a hundred labor dispute cases in which Zhejiang [X] New Materials was the judgment debtor. Since, before the administrative division adjustment, 28 cases in which Zhejiang [X] New Materials and others were judgment debtors had been under enforcement at the Xiaoshan District People's Court, and the main assets had also been first sealed by the Xiaoshan District People's Court and were in the process of being disposed of, the series of labor dispute enforcement cases accepted by the Qiantang District People's Court in which the company was the judgment debtor fell into a deadlock.

In addition, Zhejiang [X] New Materials and five other affiliated enterprises had total liabilities of more than RMB 4 billion, were already insolvent, and had applied to the Qiantang District People's Court for

pre-reorganization.

In order to resolve the enforcement of this series of cases in a “package” manner, the Hangzhou Intermediate People's Court of Zhejiang Province, in November 2023, designated the above 28 cases under enforcement at the Xiaoshan District People's Court to be enforced in a unified manner by the Qiantang District People's Court.

Based on the consideration of coordinating enforcement and bankruptcy, the Qiantang District People's Court conducted a comprehensive review of the cases of Zhejiang [X] New Materials and other judgment debtors, and convened the judgment debtors, creditor representatives and employee representatives for discussion. Upon investigation, the company owned independent intellectual property rights, its relevant technology was at a leading level in the industry, it conformed to the orientation of national industrial policy, had good industry prospects and relatively strong potential debt repayment ability, and had value and possibility of rescue.

Judgment

On January 22, 2024, the Qiantang District People's Court rendered Civil Ruling (2024) Zhe 0114 Po Shen No. 2: the application for bankruptcy reorganization of Zhejiang [X] New Materials was accepted. During the reorganization procedure, Zhejiang [X] New Materials and other enterprises formulated a reorganization plan draft in accordance with the law, arranging for the satisfaction of more than RMB 70 million in claims including employee wages, which was adopted by vote at the creditors' meeting. On June 18, 2024, the Qiantang District People's Court rendered Civil Ruling (2024) Zhe 0114 Po 1-6 No. 2: the reorganization plan of Zhejiang [X] New Materials and five other affiliated enterprises was approved, and the reorganization procedure was terminated.

Reasoning

In this case, the judgment debtor was involved in multiple cases that had been separately docketed for enforcement by different people's courts; during enforcement, the judgment debtor became insolvent and applied to the people's court for pre-reorganization. How to coordinate and advance the series of enforcement cases in a lawful and proper manner, and how to coordinate the relationship between the enforcement procedure and the pre-reorganization procedure, required special consideration.

First, the enforcement work was effectively advanced by designating a single people's court to carry out unified enforcement. Through designated enforcement, the series of cases of the same judgment debtor originally docketed for enforcement by different people's courts are concentrated in one of the people's courts for enforcement, which can effectively resolve problems such as “difficulty in enforcement” caused by multi-headed enforcement, overlapping compulsory measures and inconsistent enforcement approaches. In this case, multiple cases involving the main debts and mortgage debts of Zhejiang [X] New Materials and other judgment debtors were under enforcement at the Xiaoshan District People's Court; due to the administrative division adjustment, multiple labor dispute cases were subsequently under enforcement at the Qiantang District People's Court, and Zhejiang [X] New Materials applied to the Qiantang District People's Court for pre-reorganization. The Hangzhou Intermediate People's Court lawfully designated the Qiantang District People's Court to enforce the relevant series of cases in a unified manner, which could integrate resources and, while safeguarding the lawful rights and interests of all creditors, coordinate the negotiation and talks at the pre-reorganization stage, help the judgment debtor enterprise out of its predicament and achieve rebirth, and better realize the resolution of enterprise-related enforcement cases and the effective rescue of market entities.

Second, the coordination mechanism between enforcement and bankruptcy was made smooth, facilitating enterprise regeneration. For cases in which enterprises with operational difficulties are judgment debtors, measures such as strengthening coordination among case filing, adjudication and enforcement may be adopted, and classified policies may be implemented to advance the coordination between enforcement and

bankruptcy. For enterprises that are insolvent and truly have no necessity or possibility of rescue, the bankruptcy liquidation procedure shall be applied in accordance with the law for timely exit; for enterprises with potential and prospects, every effort should be made to help the enterprise resolve its crisis through bankruptcy reorganization, bankruptcy settlement and other means. In this case, although Zhejiang [X] New Materials was already insolvent, it owned independent intellectual property rights, its relevant technology was at a leading level in the industry, it had good industry prospects and relatively strong potential debt repayment ability, it had value of rescue, the relevant pre-reorganization plan had already gained the support of the majority of creditors, and it had the possibility of reorganization. Lawfully applying bankruptcy reorganization not only helps the company to regenerate itself, but also maximizes the fair protection of the lawful rights and interests of all parties and reduces the comprehensive cost of claim realization, which is conducive to achieving the best case-handling effect.

Relevant Legal Provisions

Article 38 of the Civil Procedure Law of the People's Republic of China

Paragraph 2 of Article 74 of the Several Provisions of the Supreme People's Court on the Enforcement Work of People's Courts (Fa Shi [1998] No. 15, amended in 2020)

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