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BANKRUPTCY UPDATE

Expert Analysis

From Jeans to Toys, Retailers Opt For Restructuring Over Liquidation

By
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This issue of the Bankruptcy Update focuses on recent restructurings in the retail sector. The column delves into the bankruptcy proceedings of True Religion Apparel, Toys "R" Us and Charming Charlie and their efforts to restructure rather than liquidate in the face of changing consumer preferences.

True Religion Apparel

On July 5, 2017, premium jeans company True Religion Apparel and certain affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. District Court for the District of Delaware. *True Religion Apparel* (Bankr. D. Del. Case No. 17-11460).

The debtors reported losses of $78.5 million for the 12-month period ending Jan. 28, 2017 as the company struggled in the face of a fundamental shift in consumer behavior from mall patronage to online shopping. As sales in the premium denim market declined for several years, the debtors' cost cutting measures included three reductions in force and store closings prior to the Chapter 11 restructuring. Moving forward, the debtors plan to focus on a global e-commerce expansion with targeted campaigns to raise brand awareness and licensing and an increase in the company's pop-up outlet stores and its Last Stitch locations.

The debtors entered Chapter 11 armed with a restructuring support agreement with the majority of their term loan lenders and their private equity sponsor and owner, TowerBrook Capital Partners LP. The restructuring support agreement provided the framework for a financial restructuring whereby the debtors would look to shed about $350 million in liabilities from their balance sheet.

The debtors' prepetition liabilities included approximately $386 million in first lien debt, $85 million in second lien debt, $12 million liability under an asset-based lending agreement, $5 million in letters of credit under the ABL facility and approximately $8.6 million in trade debt.

The debtors obtained a $60 million DIP financing facility from Citizens Bank NA to fund their operations under Chapter 11, with $35 million available on an interim basis at the outset of the case. A portion of the DIP facility would be used to pay down the $12 million prepetition ABL facility. The official committee of unsecured creditors initially opposed the proposed DIP facility but its objections where resolved with the debtors' agreement to fund a segregated $875,000 account for certain administrative rent obligations and an increase in the budget for committee professionals.

The debtors secured court approval for the disclosure statement accompanying their plan of reorganization on Aug. 23, 2017 paving the way to the ultimate confirmation of their plan on Oct. 5, 2017. Under the confirmed plan, holders of prepetition first-lien debt are set to recover 37.2 to 38.2 percent of their claims while general unsecured creditors will obtain recoveries of 4.1 to 7.7 percent.

Toys "R" Us

On Sept. 18, 2017, iconic toy chain Toys "R" Us and affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District

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of Virginia. *Toys "R" Us* (Bankr. E.D. Va. Case No. 17-34665)

The debtors announced that they sought Chapter 11 protection to address pressing liquidity concerns as well as long-term capital needs and effectuate a comprehensive restructuring aimed at improving the company's worldwide operations. The debtors stated that they engaged in discussions with their term loan lenders in late August to seek additional financing to address liquidity concerns. However, news reports of a potential Chapter 11 filing quickly emerged and reportedly resulted in almost 40 percent of the company's vendors refusing to ship goods and tightening credit terms. Through Chapter 11, the company will seek to restructure its nearly $5.3 billion in funded debt obligations, some of which are due to mature in 2019.

The debtors entered bankruptcy with a significant $3.1 billion DIP financing package from JP Morgan intended to ensure that the debtors are prepared for the holiday shopping season. Indeed, the debtors reported that they plan to invest $1.1 billion on improvements to marketing, technology, in-store experience and inventory flow as they strive to compete in a changing market.

On Nov. 16, 2017, the debtors filed a motion seeking authority to establish an employee incentive program to encourage high performance during the critical holiday season. The debtors proposed to pay up to $32 million to 17 top executives and up to $69 million to 64,000 lower-ranking employees if certain earnings targets are met. The proposed incentive program was initially opposed by both the official committee of unsecured creditors and the Office of the United States Trustee; however, the committee's objection was resolved by an agreement to cap senior executive compensation at a maximum of $21 million, with only $16.2 million eligible for immediate payment and the remainder tied to emergence from bankruptcy. On Dec. 5, 2017 the court approved the modified incentive plan over the objection of the U.S. Trustee.

While the debtors work to stabilize their operations, they have sought a six-month extension of their exclusive period for filing a Chapter 11 plan. The debtors intend to use this additional time to work with their various stakeholders to formulate a plan of reorganization with the goal of emerging from bankruptcy protection before the 2018 holiday season. On Dec. 19, 2017, the court granted the debtors' motion to extend their exclusive period to file a plan through July 15, 2018.

> In 'True Religion Apparel', under the confirmed plan, holders of prepetition first-lien debt are set to recover 37.2 to 38.2 percent of their claims while general unsecured creditors will obtain recoveries of 4.1 to 7.7 percent.

Charming Charlie Holdings

On Dec. 13, 2017, women's accessories retailer Charming Charlie Holdings and affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. *Charming Charlie Holdings* (Bankr. D. Del. Case No. 17-12906).

Founded in 2004, the company is a specialty retailer focused on fashion jewelry, handbags, apparel, gifts, and beauty products with 390 locations across the United States, Canada, the Middle East and Philippines. The debtors attribute their Chapter 11 filing to a shifting marketplace which, together with merchandising miscalculations and an inventory shortage, resulted in a 22 percent decrease in consolidated net revenues over the last several fiscal years.

The debtors commenced their Chapter 11 cases after reaching a plan support agreement with more than 80 percent of their prepetition term loan lenders and their majority equity owners. The proposed restructuring envisions a deleveraging of more than $100 million from the company's balance sheet through the issuance of new loan facilities and a conversion of prepetition term loan debt into equity in the reorganized debtors.

To fund operations under Chapter 11, the debtors are seeking authority to enter into two DIP financing facilities—a $35 million ABL DIP facility and a $60 million term loan DIP Facility—that will include access to $20 million in new capital. The debtors obtained interim access to the DIP facilities and $10 million in new money at the first day hearing on Dec. 13, 2017. With access to funding, the debtors indicated that they will work to streamline their vendor and inventory practices by consolidating suppliers into core areas and close an estimated 97 underperforming stores.