

## BANKRUPTCY UPDATE

## Expert Analysis

# Food for Thought: Supermarket, Grocer And Distributor Chapter 11 Filings

This issue of the Bankruptcy Update focuses on filings in the grocery and food distribution sector as companies struggle in the face of pricing fluctuations and increasing online competition. The column delves into the bankruptcy proceedings of Central Grocers, Rupari Food Services and Marsh Supermarkets.

### **Central Grocers Inc. (Bankr. N.D. Ill. Case No. 17-13886)**

On May 4, 2017, Midwestern grocery supplier Central Grocers and affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. The filing followed the commencement of involuntary liquidation proceedings by certain of Central Grocers' creditors in the Northern District of Illinois two days earlier.

Formed a century ago, Central Grocers grew to become the largest grocery cooperative and retail supplier in the greater Chicago area with 550 employees and over \$1.8 billion in

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sales for 2016. The debtors also held a significant stake in the Strack and Van Til Super Market chain. As of the petition date, the debtors reported

In 'Rupari Holding,' facing a liquidity crisis exacerbated by fluctuating pork prices, the debtors entered bankruptcy seeking to effectuate a going concern sale of substantially all of their assets.

that they had approximately \$230 million in secured debt and \$43 million in trade debt.

The debtors' financial condition deteriorated as consumer preferences for gourmet and specialized products evolved and increased online competition led to shrinking market share. Facing a liquidity crisis and tightening

supplier terms, the debtors embarked on an out of court sale process in December 2016. The debtors received several bids prepetition but had not yet selected a stalking horse bidder when the involuntary filings forced them to file their Chapter 11 petitions.

At the outset of their bankruptcy proceedings the debtors relied on their lenders' cash collateral to fund operations; securing two short-term interim orders authorizing such use. Subsequently, on May 13, 2017, the debtors sought authority to enter into a \$205 million debtor in possession financing facility with PNC Bank NA. The proposed DIP financing was initially opposed by the official committee of unsecured creditors who argued, among other things, that the financing required the debtors to run an unreasonably short sale process and included exorbitant fees, oppressive provisions for payment of the DIP lenders' prepetition debt, and liens on otherwise unencumbered property including litigation claims. The creditors' committee and the debtors ultimately reached a consensual resolution of the objection whereby the debtors agreed to modify certain sale

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milestones and provide for potential creditor recoveries through litigation. An order approving the DIP financing was entered on June 8, 2017.

Contemporaneously, the debtors sought approval of bidding procedures in connection with the sale of substantially all of their assets. The proposed bid procedures included bid protections for Jewel Food Stores who was selected as a stalking horse bidder with respect assets including 19 Strack and Van Til store locations as well as the inventory contained at the stores. The debtors would also seek to sell their warehouse facility and other assets. An order approving the bidding procedures was entered on June 2, 2017.

In the interim, several of the debtors' creditors sought to transfer the debtors' cases to the U.S. Bankruptcy Court for the Northern District of Illinois on the basis that the debtors had no connections to Delaware beyond incorporating there. As a result, on June 13, 2017, the cases were transferred to the Northern District of Illinois.

Following the transfer, the debtors conducted several auctions for their assets, whereby Indiana Grocery Group emerged as the winning bidder for the assets included in the stalking horse package and SUPERVALU Holdings submitted the winning bid for the distribution center and certain related assets. Orders approving the sales were entered on July 18 and July 26, 2017, respectively.

***Rupari Holding Corp. (Bankr. D. Del. Case No. 17-10793)***

On April 10, 2017, meat products distributor Rupari Food Services 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.

The debtors, headquartered in Illinois, provide meat products to retail and food service markets in the United States, Canada, Colombia, Hong Kong, Mexico, Panama, Singapore and South Korea. Since 2007, the debtors sold a line of barbecue products associated with Tony Roma's steakhouse chain via a licensing agreement with Roma Dining and Romacorp. The licensing agreement governing the relationship was allegedly terminated by the licensors for failure to pay an estimated \$3.5 million in royalty payments and interest.

Facing a liquidity crisis exacerbated by fluctuating pork prices, the debtors entered bankruptcy seeking to effectuate a going concern sale of substantially all of their assets. To that end, the debtors sought approval of bidding procedures in connection with the sale of their assets, with competitor Carl Buddig and Co. selected to act as the stalking horse bidder with a stalking horse bid valued at \$26 million.

Contemporaneously with the bankruptcy filing, the debtors also filed an adversary proceeding seeking a declaratory judgment that the Tony Roma's license was not properly terminated pre-petition and could be assumed and assigned to the purchaser of their assets.

Romacorp objected to the proposed bid procedures arguing that the licensing agreement was no longer valid and could not be included in the stalking horse package. It further argued that even if the licensing agreement did not terminate prepetition, it

cannot be assigned without the licensor's consent. The debtors also faced objections to the proposed stalking horse bid protections by the official committee of unsecured creditors and the U.S. Trustee who argued that a proposed 4 percent break-up fee was excessive in light of the exigencies surrounding the Tony Roma's license. The debtors were able to reach a compromise with the creditors' committee and the U.S. Trustee by agreeing to a reduced break-up fee of 3 percent. The court approved the revised bid procedures overruling Romacorp's objections as premature and more appropriate for the sale approval hearing.

Following the approval of the bid procedures, the debtors concluded that a decision on the validity of the licensing agreement was not necessary to move forward with the stalking horse package since assumption of the agreement was removed as a closing condition to the proposed sale. Nevertheless, upon learning that Romacorp entered into a new licensing agreement with Ruprecht Co. to sell Tony Roma's branded meat, the debtors commenced another action against Romacorp alleging a violation of the automatic stay.

On May 30, 2017, the debtors announced that they received no additional qualified bids for their assets and intended to move forward with the stalking horse bid. In the interim, Romacorp filed a motion seeking a determination that the licensing agreement was terminated for cause prior to the bankruptcy filing and could not be assumed by the debtors and assigned to the purchaser.

On June 6, 2017, the court approved the sale to the stalking horse bidder. The sale provided for a \$2 million escrow reserve for Tony Roma's merchandise to enable closing to proceed prior to the resolution of the licensing dispute. The court further directed the parties to participate in mediation on the licensing dispute and set a briefing and hearing schedule should the matter not be resolved consensually.

On Aug. 18, 2017, the court issued its opinion finding that the licensing agreement could not be assumed and assigned to the purchaser. The court found that the agreement provided limited circumstances where consent to an assignment could not be unreasonably withheld and those circumstances were not present in light of the prior closing of the sale of substantially all of the debtors' assets. The court also granted Romacorp retroactive relief from the automatic stay to May 22, the date when assumption and assignment of the licensing agreement was eliminated as a condition to closing.

***Marsh Supermarkets Holding LLC (Bankr. D. Del. Case No. 17-11066)***

On May 11, 2017, supermarket chain Marsh Supermarkets Holding and affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

Founded in 1931, Marsh Supermarkets operates supermarkets in Indiana and Ohio. Prior to the bankruptcy filing, the company conducted an internal assessment of profitability by location which led to a shutdown of 11 Marsh stores in late 2016 and

a decision to close and liquidate 19 more stores. In addition, Marsh sold the pharmacy and prescription assets of its 38 in-store pharmacies to an affiliate of CVS Pharmacy for \$38 million. The proceeds were used to pay down a portion of the debtors' secured debt. As a result, as of the petition date, the debtors' primary debt obligations included \$11 million in lease related expenses; approximately \$5.2 million obligation to Wells Fargo Bank NA under a senior lien facility, approximately \$25.7 million

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obligation to Marsh Group Finance under a promissory note, \$6.2 million in additional junior secured debt and approximately \$30 million in trade debt.

The debtors commenced their Chapter 11 cases with the goal of effectuating an expedited marketing and sale process to sell their 40 core operating stores. They sought approval of bid procedures that would culminate in a June 12 auction and a hearing to approve the sale by June 15, 2017. The debtors advocated for the compressed timeline as it would allow the sale to close prior to a June 25 due date for July rent at the stores.

The official committee of unsecured creditors objected to the expedited process but the parties were able to

resolve the objection by extending the deadline to select a potential stalking horse bidder by a week to June 5, 2017.

Following a robust auction, on June 14, 2017, the debtors sought and obtained court approval to move forward with two sale transactions involving 26 core stores. TopValco, an affiliate of grocery chain Kroger, would purchase 11 Marsh locations and the equipment held at those stores for a \$16 million purchase price. Inventory located at these stores was excluded from the purchased assets and expected to generate approximately \$5.8 million for the estate through a separate ongoing liquidation process. Generative Growth II would purchase 15 store leases for \$1.5 million and inventory contained at the stores for an additional \$6.3 million. Subsequently, on July 20, 2017, the court authorized the sale of an additional location to Triangle Pointe Properties for \$150,000.