

Wockhardt CDR plan may set precedent for debt recovery

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MUMBAI: Troubled pharma company Wockhardt's corporate debt restructuring (CDR) plans that led to its overseas unsecured creditors taking the company to court and initiating arbitration proceedings abroad to prevent it from selling its non-core assets could set a legal precedent for the recovery of such debt.

An unsecured loan is not backed by collateral, while secured debt is that which gives a creditor priority on specified assets, which are put on the block by a company that wishes to avoid bankruptcy. The need for CDR arises when a company goes through financial hardship and has difficulty in meeting its obligations.

If the troubles are enough to pose a high risk of the company going under, it can negotiate with its creditors to reduce these burdens and increase its chances of avoiding bankruptcy. But if its creditors are not in favour of restructuring debts and giving the organisation some leeway, they can approach a court seeking liquidation of the company for recovery.

"Any creditor of a company, whether secured or unsecured having a claim exceeding Rs 1 lakh, can file a 'winding up petition' against the company. In such proceedings, the creditors may seek interim reliefs to prevent disposal of the assets by the company," said advocate Ajay Khatlawala, managing partner, Little & Co.

In Wockhardt's case, domestic banks like SBI, HDFC, Punjab National Bank, led by ICICI Bank had approved the CDR scheme in June last year. The scheme involved restructuring of the company's debt, release of working capital and fresh priority debt by banks pending divestment of the troubled firm's non-core assets.

However, its foreign lenders, including Calyon, DBS Bank, Barclays, Deutsche Bank, and FCCB holders like New York-based QVT expressed dissatisfaction over the CDR on the ground that domestic lenders had not kept them in loop, while initiating the CDR process.

"If the foreign unsecured creditors are not covered by the CDR Scheme, they can certainly object to the sale of the assets. The secured creditors, however, have priorities over the unsecured creditors, whether Indian or foreign," said Mr Khatlawala.

Wockhardt, which sold its German subsidiary Esparma and the animal health division last year, is negotiating the sale of its nutrition business to Abbott Laboratories. However, with Barclays Bank, Calyon and the FCCB holders have filed winding-up petitions before the Bombay High Court, Wockhardt has said it will not sell any of its assets until the cases are decided.

Interestingly, Singapore-based DBS Bank, which approached the high court first, has gone for an out-of-court settlement with Wockhardt. Deutsche Bank, on the other hand, initiated arbitration proceedings abroad.

In case, the foreign creditors initiate arbitration, which has to be a part of the agreement with the company, and it goes against Wockhardt, "the foreign banks would need to enforce that award against Wokhardt in India", said Vivek Kathpalia, partner, Nishith Desai Associates.

"As far as any impact of this arbitration on the winding up proceedings and CDR are concerned, these will all be independent proceedings. However, if the company is wound up, the holders of arbitration awards would have to stand in the queue, as unsecured creditors when the official liquidator (who is appointed by the court in a winding up petition) distributes the assets of the company," added Mr Kathpalia.

The foreign unsecured creditors' main grievance was that they were not consulted on the CDR scheme and were given unfair one-sided offers for payment of their dues. As non-members to the scheme, however, the CDR is not binding on them, they claim in their petitions before the court.

However, according to Hitesh Jain, partner, ALMT Legal, the winding up petition filed by Wockhardt's unsecured creditors is only a pressure tactic to get a better deal from the pharmaceutical company. If a company is liquidated, the secured creditors will first get their dues and only then the unsecured creditors will get compensated.

WOCKHARDT FALLOUT

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