

CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec.

1501.

Purpose and scope of application.

SUBCHAPTER I—GENERAL PROVISIONS

1502.

Definitions.

1503.

International obligations of the United States.

1504.

Commencement of ancillary case.

1505.

Authorization to act in a foreign country.

1506.

Public policy exception.

1507.

Additional assistance.

1508.

Interpretation.

SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

1509.

Right of direct access.

1510.

Limited jurisdiction.

1511.

Commencement of case under section 301 or 303.¹

1512.

Participation of a foreign representative in a case under this title.

1513.

Access of foreign creditors to a case under this title.

1514.

Notification to foreign creditors concerning a case under this title.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

- 1515.
Application for recognition.
- 1516.
Presumptions concerning recognition.
- 1517.
Order granting recognition.
- 1518.
Subsequent information.
- 1519.
Relief that may be granted upon filing petition for recognition.
- 1520.
Effects of recognition of a foreign main proceeding.
- 1521.
Relief that may be granted upon recognition.
- 1522.
Protection of creditors and other interested persons.
- 1523.
Actions to avoid acts detrimental to creditors.
- 1524.
Intervention by a foreign representative.

SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

- 1525.
Cooperation and direct communication between the court and foreign courts or foreign representatives.
- 1526.
Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- 1527.
Forms of cooperation.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

- 1528.
Commencement of a case under this title after recognition of a foreign main proceeding.
- 1529.
Coordination of a case under this title and a foreign proceeding.
- 1530.
Coordination of more than 1 foreign proceeding.
- 1531.
Presumption of insolvency based on recognition of a foreign main proceeding.
- 1532.
Rule of payment in concurrent proceedings.

Editorial Notes

Prior Provisions

A prior chapter 15, consisting of sections 1501 to 151326, related to a pilot program for a United States trustee system, prior to repeal by Pub. L. 99-554, title II, §231, Oct. 27, 1986, 100 Stat. 3103.

[1 So in original. Section catchline amended by Pub. L. 111-327 without corresponding amendment of chapter analysis.](#)

§1501. Purpose and scope of application

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(b) This chapter applies where—

(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

(2) assistance is sought in a foreign country in connection with a case under this title;

(3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or

(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

(c) This chapter does not apply to—

(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker⁷ subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 135.)

Editorial Notes

References in Text

The Securities Investor Protection Act of 1970, referred to in subsec. (c)(3), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B–1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

Prior Provisions

A prior section 1501, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to applicability of chapter which provided a pilot program for a United States trustee system, prior to repeal by Pub. L. 99–554, title II, §231, Oct. 27, 1986, 100 Stat. 3103.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§1502. Definitions

For the purposes of this chapter, the term—

- (1) "debtor" means an entity that is the subject of a foreign proceeding;
- (2) "establishment" means any place of operations where the debtor carries out a nontransitory economic activity;
- (3) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

- (4) "foreign main proceeding" means a foreign proceeding pending in the country where the debtor has the center of its main interests;
- (5) "foreign nonmain proceeding" means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment;
- (6) "trustee" includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;
- (7) "recognition" means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and
- (8) "within the territorial jurisdiction of the United States", when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 135.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1503. International obligations of the United States

To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 136.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1504. Commencement of ancillary case

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 136.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1505. Authorization to act in a foreign country

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 136.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1506. Public policy exception

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 136.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1507. Additional assistance

(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

- (1) just treatment of all holders of claims against or interests in the debtor's property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of the debtor;
- (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
- (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 136.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1508. Interpretation

In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 137.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

§1509. Right of direct access

(a) A foreign representative may commence a case under section 1504 by filing directly with the court petition for recognition of a foreign proceeding under section 1515.

(b) If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter—

(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

(3) a court in the United States shall grant comity or cooperation to the foreign representative.

(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 137.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1510. Limited jurisdiction

The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 138.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1511. Commencement of case under section 301, 302, or 303

(a) Upon recognition, a foreign representative may commence—

(1) an involuntary case under section 303; or

(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 138; amended Pub. L. 111–327, §2(a)(45), Dec. 22, 2010, 124 Stat. 3562.)

Editorial Notes

Amendments

2010—Pub. L. 111–327 inserted ", 302," after "301" in section catchline.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1512. Participation of a foreign representative in a case under this title

Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 138.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1513. Access of foreign creditors to a case under this title

- (a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.
- (b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.
- (2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.
- (B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 138.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1514. Notification to foreign creditors concerning a case under this title

- (a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.
- (c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—
- (1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;
 - (2) indicate whether secured creditors need to file proofs of claim; and
 - (3) contain any other information required to be included in such notification to creditors under this title and the orders of the court.

(d) Any rule of procedure or order of the court as to notice or the filing of a proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 138.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§1515. Application for recognition

(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 139.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1516. Presumptions concerning recognition

- (a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.
- (b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.
- (c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 139.)

Statutory Notes and Related Subsidiaries**Effective Date**

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1517. Order granting recognition

- (a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
- (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;
 - (2) the foreign representative applying for recognition is a person or body; and
 - (3) the petition meets the requirements of section 1515.
- (b) Such foreign proceeding shall be recognized—
- (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or
 - (2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.
- (c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.
- (d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter may be closed in the manner prescribed under section 350.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 139.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1518. Subsequent information

From the time of filing the petition for recognition of a foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

- (1) any substantial change in the status of such foreign proceeding or the status of the foreign representative's appointment; and
- (2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 140.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1519. Relief that may be granted upon filing petition for recognition

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

- (1) staying execution against the debtor's assets;
- (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

- (c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.
- (d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.
- (e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.
- (f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(o) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 140; amended Pub. L. 111–327, §2(a)(46), Dec. 22, 2010, 124 Stat. 3562.)

Editorial Notes

Amendments

2010—Subsec. (f). Pub. L. 111–327 substituted "362(o)" for "362(n)".

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1520. Effects of recognition of a foreign main proceeding

- (a) Upon recognition of a foreign proceeding that is a foreign main proceeding—
- (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
 - (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
 - (3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
 - (4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.
- (b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition for commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 141.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1521. Relief that may be granted upon recognition

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

- (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);
- (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(o) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 141; amended Pub. L. 111–327, §2(a)(47), Dec. 22, 2010, 124 Stat. 3562.)

Editorial Notes

Amendments

2010—Subsec. (f). Pub. L. 111–327 substituted "362(o)" for "362(n)".

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1522. Protection of creditors and other interested persons

(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, including the giving of security or the filing of a bond.

(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 142.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1523. Actions to avoid acts detrimental to creditors

(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 142.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1524. Intervention by a foreign representative

Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 142.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

§1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.

(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 143.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 143.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1527. Forms of cooperation

Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

- (1) appointment of a person or body, including an examiner, to act at the direction of the court;
- (2) communication of information by any means considered appropriate by the court;
- (3) coordination of the administration and supervision of the debtor's assets and affairs;
- (4) approval or implementation of agreements concerning the coordination of proceedings; and
- (5) coordination of concurrent proceedings regarding the same debtor.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 143.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

§1528. Commencement of a case under this title after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 143.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1529. Coordination of a case under this title and a foreign proceeding

If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

(1) If the case in the United States is pending at the time the petition for recognition of such foreign proceeding is filed—

(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 144; amended Pub. L. 111–327, §2(a)(48), Dec. 22, 2010, 124 Stat. 3562.)

Editorial Notes

Amendments

2010—Par. (1). Pub. L. 111–327, which directed amendment of par. (1) by inserting "is" after "States", was executed by making the insertion only in introductory provisions to reflect the probable intent of Congress.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1530. Coordination of more than 1 foreign proceeding

In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

- (1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.
- (2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.
- (3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 144.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1531. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 144.)

Statutory Notes and Related Subsidiaries

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§1532. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.

(Added Pub. L. 109–8, title VIII, §801(a), Apr. 20, 2005, 119 Stat. 145.)

Editorial Notes

Prior Provisions

Sections 15101 to 151326 of prior chapter 15 were repealed by Pub. L. 99–554, title II, §231, Oct. 27, 1986, 100 Stat. 3103.

Section 15101, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to definitions.

Section 15102, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to a rule of construction.

Section 15103, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652; Pub. L. 98–353, title III, §§311(b)(2, 3, 4), July 10, 1984, 98 Stat. 355, 357, related to applicability of subchapters and sections.

Section 15303, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to involuntary cases.

Section 15321, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to eligibility to serve as trustee.

Section 15322, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to qualification of trustee.

Section 15324, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to removal of trustee or examiner.

Section 15326, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to limitation on compensation of trustee.

Section 15330, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to compensation of officers.

Section 15343, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to examination of debtor.

Section 15345, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654; Pub. L. 97–258, §3(c), Sept. 13, 1982, 96 Stat. 1064, related to money of estates.

Section 15701, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654, related to interim trustee.

Section 15703, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654, related to successor trustee.

Section 15704, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to duties of trustee.

Section 15727, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to discharge.

Section 151102, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to creditors' and equity security holders' committees.

Section 151104, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to appointment of trustee or examiner.

Section 151105, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656, related to termination of trustee's appointment.

Section 151163, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656, related to appointment of trustee.

Section 151302, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656; Pub. L. 98–353, title III, §§311(b)(4), 534, July 10, 1984, 98 Stat. 355, 390, related to trustees.

Section 151326, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2657, related to payments.

Statutory Notes and Related Subsidiaries

Effective date and applicability of repeal by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out in an Effective Date of 1986 Amendment; Transition and Administrative Provisions note under section 581 of Title 28, Judiciary and Judicial Procedure.

Pub. L. 95–598, title IV, §408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98–166, title II, §200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98–353, title III, §323, July 10, 1984, 98 Stat. 358; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99–500, §101(b) [title II, §200], Oct. 18, 1986, 100 Stat. 1783–39, 1783–45, and Pub. L. 99–591, §101(b) [title II, §200], Oct. 30, 1986, 100 Stat. 3341–39, 3341–45; Pub. L. 99–554, title III,

§307(a), Oct. 27, 1986, 100 Stat. 3125, provided for the repeal of prior chapter 15 at a prospective date prior to repeal by Pub. L. 99-554, title III, §307(b), Oct. 27, 1986, 100 Stat. 3125.

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

ANNEXURE 2

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:)	
)	
SEL MANUFACTURING CO., LTD,)	Chapter 15
)	
Debtor in a Foreign Proceeding.)	Case No. 19-10988 (MFW)
)	
_____)	Related D.I.: 1, 3, & 9, 40

ORDER RECOGNIZING INDIAN PROCEEDING AS A FOREIGN MAIN PROCEEDING AND GRANTING RELIEF IN AID THEREOF

Upon consideration of the Official Form 401 [D.I. 1] and *Verified Petition Under Chapter 15 for Order and Final Decree Granting Recognition of Foreign Main Proceeding and Other Related Relief* [D.I. 3] (together, the “**Chapter 15 Petition**”) and the *Motion of the Foreign Representative for Chapter 15 Recognition and Final Relief* [D.I. 9] (the “**Motion**”) filed by SEL Manufacturing Co., Ltd. (“**SEL Manufacturing**”), in its capacity as the duly authorized foreign representative (the “**Foreign Representative**”) with respect to the foreign proceeding, Case CP (IB) No. 114/Chd/Pb/2017 (the “**Indian Proceeding**”), commenced against SEL Manufacturing (the “**Foreign Debtor**”), by the State Bank of India under Section 7 of the Indian Insolvency and Bankruptcy Code, 2016 and pending in India before the National Company Law Tribunal, Chandigarh Bench (the “**Indian Court**”), as well as upon consideration of the *Memorandum of Law in Support of Motion of the Foreign Representative for Chapter 15 Recognition and Final Relief* [D.I. 10] (the “**Memorandum of Law**”), the *Declaration of R. Craig Martin Regarding Determination of Foreign Law* [D.I. 4] (“**Martin Declaration**”), the *Declaration of Mr. Vivek Sibal in Support of Verified Petition Under Chapter 15 for Order and Final Decree Granting Recognition of Foreign Main Proceeding and Other Related Relief* [D.I. 5] (the “**Sibal Declaration**”), *Foreign Representative’s Reply (A) to the Response Filed by Navneet Kumar Gupta to the Notice of (I) Filing of Chapter 15 Petition and Related Chapter 15 Documents Seeking*

Recognition of Indian Proceeding As the Foreign Main Proceeding and (II) Recognition Hearing and (B) in Further Support of the Motion of the Foreign Representative for Chapter 15 Recognition and Final Relief [D.I. 34] (the “**Reply**”), and all documents attached to the Sibal Declaration and the Martin Declaration (together with the Chapter 15 Petition, Motion, Memorandum of Law, Martin Declaration, Sibal Declaration, and Reply, the “**Petition and Relief Documents**”), and upon consideration of any responses or oppositions to the Motion or Chapter 15 Petition, including *the Response Filed by Navneet Kumar Gupta to the Notice of (I) Filing of Chapter 15 Petition and Related Chapter 15 Documents Seeking Recognition of Indian Proceeding As the Foreign Main Proceeding and (II) Recognition Hearing* [D.I. 26], and after due and sufficient notice of and hearing on the Motion,

THE COURT FINDS AND CONCLUDES AS FOLLOWS:

- a. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334;
- b. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P);
- c. Venue is proper in this district under 28 U.S.C. § 1410;
- d. Notice of the hearing on the Motion was sufficient under the circumstances and no further or other notice of or hearing on the Motion is necessary or required;
- e. This chapter 15 case was properly commenced and in accordance with 11 U.S.C. § 1504;
- f. The Chapter 15 Petition meets all requirements of 11 U.S.C. § 1515;
- g. The Foreign Representative is a “person” within the meaning of 11 U.S.C. § 101(41) and is the duly appointed foreign representative of the Foreign Debtor within the meaning of 11 U.S.C. §§ 101(24) and 1517(a)(2), not in derogation of the order issued by the Indian Court on April 11, 2018 (referred to in the Petition and Relief Documents as the “Admittance Order”) or

the order issued by the High Court of Punjab and Haryana at Chandigarh on June 22, 2018 (referred to in the Petition and Relief Documents as the “Abeyance Order”);

- h. The Indian Proceeding is a foreign proceeding under 11 U.S.C. § 101(23);
- i. The Indian Proceeding is pending in India, which is the location of the Foreign Debtor’s center of main interests, and, therefore, the Indian Proceeding is a foreign main proceeding within the meaning of 11 U.S.C. § 1502(4);
- j. The Indian Proceeding is entitled to recognition as a foreign main proceeding because it meets the requirements of 11 U.S.C. § 1517;
- k. Recognition of the Indian Proceeding as a foreign main proceeding is not contrary to the public policy of the United States;
- l. The Foreign Representative and the Foreign Debtor are automatically entitled to all of the relief available under 11 U.S.C. § 1520, without limitation;
- m. All relief granted in this Order is necessary to effectuate the purpose of chapter 15 of title 11 of the United States Code and to protect the assets of the Foreign Debtor and the interests of its creditors; and
- n. All creditors and other parties in interest, including the Foreign Debtor, are sufficiently protected in the grant of the relief ordered hereby in compliance with 11 U.S.C. § 1522(a).
- o. The Order Granting Provisional Relief in this case [D.I. 14] did not authorize or permit any release or disposition of garnished funds presently held by Sam’s East, Inc. (the “**Garnished Funds**”) that are the subject of a garnishment action filed by Revman International, Inc. (“**Revman**”) in the Delaware Superior Court, Docket No. N18J-01382. The Provisional Relief Order did permit the parties to file papers in the appeal filed by SEL

Manufacturing against Revman, No. 19-1443 (7:17-cv-01944-BHH) in the Court of Appeals for the Fourth Circuit, which resulted in a mediated resolution in which the Foreign Representative and SEL Manufacturing agreed that under section 1522(c) of the Bankruptcy Code that this Court could modify the relief granted in this Order under section 1521. Accordingly, the Court finds that the Stipulation (attached hereto as **Exhibit 1**) between SEL Manufacturing and Revman that SEL Manufacturing entered into in the course of and in the interest of SEL Manufacturing's business, provides sufficient protection to Revman under these provisions of chapter 15.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All objections to the relief requested in the Motion are overruled.
2. The Motion is GRANTED as provided in this Order.
3. The Indian Proceeding is hereby recognized as a foreign main proceeding in accordance with 11 U.S.C. § 1517 and is given its full force and effect.
4. All relief authorized by 11 U.S.C. § 1520 shall apply throughout the duration of this proceeding or until otherwise ordered by this Court, including, without limitation, the automatic stay authorized by 11 U.S.C. § 362.
5. The relief granted in the prior paragraph shall specifically include, but not be limited to, the following provisions:
 - i. No person or entity may (a) commence or continue any legal proceeding (including, without limitation, any judicial, quasi-judicial, administrative, or regulatory proceeding or arbitration) or action against the Foreign Debtor, its assets located in the United States, or the proceeds thereof; (b) enforce any judicial, quasi-judicial, administrative or regulatory judgment,

assessment or order or arbitration award against the Foreign Debtor; (c) commence or continue any legal proceeding or action to create, perfect, or enforce any lien, setoff, or other claim against the Foreign Debtor or against any of its assets located in the United States or the proceeds thereof; and (d) exercise any control over the Foreign Debtor's assets located in the United States except as authorized by the Foreign Debtor in writing.

- ii. The Foreign Representative is hereby granted the rights, powers, protections, privileges, and immunities of a trustee in a bankruptcy in the United States during this chapter 15 case. No action taken during such period by the Foreign Representative, or its agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Indian Proceeding, this Order, this chapter 15 case, any adversary proceeding, or any further proceeding commenced in this chapter 15 case shall be deemed to constitute a waiver of the immunity afforded such person under 11 U.S.C. §§ 306 or 1510.

6. The provisions of 11 U.S.C. §§ 363, 549, and 552 apply to a transfer of an interest of the Foreign Debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of the estate.

7. The right to transfer, encumber, or otherwise dispose of the Foreign Debtor's assets absent the express written consent of the Foreign Representative is hereby suspended except as is set forth in this Order.

8. The Foreign Representative is entrusted with the Garnished Funds with the exception of the confidential settlement amount agreed to between Revman and SEL Manufacturing, which amount will be transferred directly by Sam's East, Inc. to Revman in accordance with the Stipulation, with the remainder of the Garnished Funds to be deposited into the Trust and Retention Account in compliance with the Abeyance Order.

9. The Foreign Representative is entrusted with the right to operate the Foreign Debtor's business, exercise the rights and power of a trustee, and is entitled to administer and realize all or part of the Foreign Debtor's assets within the territorial jurisdiction of the United States. Customers of SEL Manufacturing in the United States may continue to do business with SEL Manufacturing and pay it for goods purchased in the ordinary course of business without further order of this Court and notwithstanding any contrary state law related to any pending garnishment proceeding, any of whom are authorized to pay SEL Manufacturing amounts due and owing, including, but not limited to, Avanti Linens Inc., the garnishee in a garnishment proceeding pending in New Jersey, which garnishee shall pay SEL Manufacturing \$284,777 within five (5) days after the entry of this Order, and thereafter Avanti Linens Inc. shall be deemed to have satisfied all of its obligations as garnishee and shall have no liability for its compliance with this Order.

10. Notwithstanding any provision of applicable law, including, but not limited to, any provisions that require a garnishee, like Sam's East, Inc. to deliver property to the sheriff that may subject Sam's East, Inc. to any penalty for not doing so such as those contained in 10 *Del. C.* §§ 5041, 5045, 3509 or any other applicable Rule or provision of law, Sam's East, Inc. and its affiliates and subsidiaries, including Walmart, Inc., is discharged to the fullest extent permitted by 10 *Del. C.* § 3512 and Rule 5(aa)(2) of the Rules of Civil Procedure for the Superior Court of

Delaware as if such payments were made in the Delaware Garnishment Action. Sam's East, Inc. will make the payments referenced in the Stipulation within ten (10) business days of receiving payment instructions.

11. Nothing in this Order shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

12. Notice of this Order shall be served in accordance with this Court's *Order Specifying Form and Manner of Service of Notice of Hearing on Chapter 15 Petition and Recognition and for Related Relief* [D.I. 16] on or before July 18, 2019. Service in accordance with this Order constitutes adequate and sufficient service and notice for all purposes.

13. The Petition and Relief Documents shall be made available by the Foreign Representative upon request in writing to its counsel, DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: R. Craig Martin, Esq. and 444 West Lake Street, Suite 900, Chicago, Illinois 60606, Attn: Oksana Koltko Rosaluk, Esq.

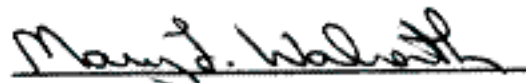
14. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") to the contrary including, but not limited to Bankruptcy Rules 7062 and 1018, (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative or the Foreign Debtor is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

15. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the Motion, the Chapter 15 Petition, or the implementation of this Order.

16. The service of this Order in accordance with paragraph 12 of this Order shall satisfy the requirement in Bankruptcy Rule 5009(c) and Local Rule 5009-2 of a final report as the relief granted herein sets out the results of the representative's activities in this Court and results in the completion of the purpose of the Foreign Representative's activities in the Court. Accordingly, if no objection is filed with this Court by the United States trustee or a party in interest within thirty (30) days after the entry of this Order, counsel to the Foreign Representative is authorized, but not directed, to file a certificate of no objection which shall state that the case has been fully administered and that the case will be closed.

Dated: November 4th, 2019
Wilmington, Delaware

8


MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 707 of 2019

IN THE MATTER OF:

Jet Airways (India) Ltd.
(Offshore Regional Hub/Offices
Through its Administrator Mr. Rocco Mulder) ...Appellant

Versus

State Bank of India & Anr. ...Respondents

Present:

For Appellant : Mr. Sumant Batra, Ms. Priyanka Anand and
Ms. Srishti Kapoor, Advocates

For 1st Respondent: Ms. Gauri Rasgotra, Mr. Karan Khanna and Ms. Ritu
Anand, Advocates

For 2nd Respondent : Mr. Krishnendu Datta, Ms. Anindita Roy
Chowdhury, Mr. Aditya Chatterjee and Ms. Mehak
Khurana, Advocates

O R D E R

26.09.2019 Pursuant to our directions, the Administrator of 'Jet Airways (India) Limited' (Offshore Regional Hub) and the 'Resolution Professional' of 'Jet Airways (India) Limited' have filed their 'Terms & Conditions' of agreement termed as "**Cross Border Insolvency Protocol**'. All the clauses have been accepted by each party except 'Clause No. 6.1.2' which relates to participation of the 'Dutch Trustee' (Administrator) in the meeting of the 'Committee of Creditors'. The agreed 'Terms & Conditions' of 'Cross Border Insolvency Protocol', as excluding clause 6.1.2 reads as follows:

“CROSS-BORDER INSOLVENCY PROTOCOL***THIS PROTOCOL IS DATED [●] AND ENTERED INTO BETWEEN:***

- (1) *Ashish Chhawchharia, in his capacity as the Resolution Professional of **Jet Airways (India) Limited**, a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at Siroya Centre Sahar Airport Road, Andheri (East) Mumbai 400099, India (the “**Company**”), appointed by the order of the National Company Law Tribunal, Mumbai Bench, India, (“**NCLT**”) dated 20 June 2019 (the “**RP**”);*

and

- (2) *Rocco Mulder, in his capacity as the administrator in bankruptcy of the Company appointed by Noord-Holland District Court, Trade, Sub-district and Insolvency in the Netherlands (“**Dutch Bankruptcy Court**”) by its order dated 21 May 2019 (the “**Dutch Trustee**”),*

*each a “**Party**” and together the “**Parties**”.*

BACKGROUND:

- (A) *The Company is subject to parallel insolvency proceedings in India and in the Netherlands.*
- (B) *In India, the Company has been admitted into a corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (the “**Indian Proceedings**”). Pursuant to the order of the NCLT and resolutions duly passed at the meeting of the committee of creditors of the Company (“**CoC**”) dated 16 July 2019, the RP has been*

appointed, resulting in the powers of the board of directors of the Company being vested with the RP.

- (C) In the Netherlands, the Company has been declared bankrupt and the Dutch Trustee has been appointed to manage the estate of the Company (the "**Dutch Proceedings**"). The Dutch Proceedings together with the "**Indian Proceedings**": the "**Proceedings**".
- (D) On an application made by the Dutch Trustee, appealing the 20 June 2019 order of the NCLT before the Hon'ble National Company Law Appellate Tribunal, New Delhi ("**NCLAT**"), the NCLAT, by its orders dated 12 July 2019 and 21 August 2019 ("**NCLAT Order**"), inter alia, directed the RP, in consultation with the CoC, to consider the prospect of co-operating with the Dutch Trustee so as to have joint "corporate insolvency resolution process of the Company" and further vide its order dated 04 September 2019 directed the RP under the Indian Proceedings to reach an arrangement/agreement with the Dutch Trustee to extend such cooperation to each other, further allowing the CoC to guide the RP to enable him to prepare an agreement in reaching the terms of arrangement of cooperation with the Dutch Trustee in the best interest of the Company and all its stakeholders ("**Proposed Cooperation**").
- (E) The Parties wish to facilitate and formulate the Proposed Cooperation with this Protocol.

THE PARTIES AGREE AS FOLLOWS:

1 CONSTRUCTION

1.1.1 In this Protocol, unless a contrary indication appears:

- (a) any reference to this "**Protocol**" or any other document also refers to any amendment or supplement to it and any restatement or novation of it;

- (b) any reference to a "**Party**" also refers to its successors in title, permitted assigns and permitted transferees;
- (c) "**the Netherlands**" refers to the part of the Kingdom of the Netherlands located in Europe (and all derivative terms, including "**Dutch**", are to be construed accordingly).

1.1.2 Headings do not affect the interpretation of this Protocol.

2 PURPOSE

2.1.1 The Parties acknowledge that while the Indian Proceedings is one that is focused on the revival/resolution of insolvency of the Company and the maximization of the value of its assets for the benefit of all its stakeholders, the main objective of the Dutch Proceedings is to deal with the liquidation of the assets of the Company located in the Netherlands and therefore, agree:

- (a) this Protocol represents a statement of intentions and guidelines designed to minimize the costs and maximize value of assets/recoveries for all creditors of the Proceedings, by promoting the sharing of relevant information among the Parties and the international coordination of related activities in the Proceedings, while respecting the separate interests of creditors and other interested parties to the Proceeding, and the independence, sovereignty, and authority of the NCLT/NCLAT and Dutch Bankruptcy Court.
- (c) in recognition of the substantive differences among the Proceedings in both jurisdictions, this Protocol shall not impose on the RP or the Dutch Trustee any duties or obligations (i) that may be inconsistent with or that may conflict with the duties or obligations to which the Parties are subject under applicable law, or (ii) that are not in the interests of the Company's estate represented by the Parties and/or its creditors. Furthermore, nothing in this Protocol

should be interpreted in any way so as to interfere with (i) the proper discharge of any duty, obligation or function of the Parties, or (ii) the exercise of statutory or other powers otherwise available to a Party under applicable law.

- (d)** *the Parties should coordinate with each other and cooperate in all aspects of the Proceedings in terms of this Protocol. In doing so, the Parties acknowledge and agree that the Parties shall deal in good faith with each other in the interests of maximizing value of assets/recovery for all of the Company's creditors.*

3 AIMS OF THE PROTOCOL

The Parties recognise that the Company being an Indian company with its centre of main interest in India, the Indian Proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings:

- (a)** *Coordination – To promote international cooperation and the coordination of activities in the Proceedings; and to provide for the orderly, effective, efficient, and timely administration of the Proceedings in order to reduce their cost and maximize recovery for creditors.*
- (e)** *Communication – To promote communication among the Parties and the CoC; and to provide, wherever possible, for direct communication among NCLT, NCLAT and Dutch Bankruptcy Court.*
- (f)** *Information and Data Sharing – To provide for the sharing of relevant information and data among the Parties in order to promote effective, efficient, and fair Proceedings, and to avoid duplication of effort and activities by the parties.*
- (g)** *Preservation – To identify, preserve, and maximize the value of the Company's worldwide assets for the*

collective benefit of all creditors and other interested parties.

- (h) Claims Reconciliation – To coordinate an efficient and transparent claims process.*
- (i) Maximize value of assets/recoveries – To cooperate in marshalling the assets of the Company in order to maximize value of assets/recovery for all of the Company’s creditors.*
- (j) Comity – To maintain the independent jurisdiction, sovereignty, and authority of NCLT, NCLAT and Dutch Bankruptcy Court.*

4 EFFECTIVENESS

- 4.1.1 The terms of this Protocol shall come into effect upon receiving an approval on its terms from (i) NCLT/NCLAT; and (ii) the Dutch Bankruptcy Court or other appropriate adjudicating authority in Netherlands responsible for overseeing the Dutch Proceedings.*

5 COMMUNICATION AND INFORMATION

- 5.1.1 The Parties undertake to liaise with each other on matters related to the Company in which they have a material interest.*
- 5.1.2 Each Party shall keep the other Party adequately informed as far in advance as possible of any relevant information and material developments in matters in which the other Party has a material interest, (and may require preparation and/or travel by the Parties or the authorized representative of the CoC) including but not limited to any creditors' or shareholders' meetings, statutory or administrative deadlines or court hearings. The Dutch Trustee acknowledges that the RP may be required to and may disclose all information received by it from the Dutch*

Trustee to the CoC, under and in accordance with the Insolvency and Bankruptcy Code 2016.

- 5.1.3 *Each Party shall share such information and data regarding the Company and its assets and liabilities, that is publicly available, and may, where permitted under applicable laws, share non-public information with the other Party, as reasonably requested by the other Party, and subject at any time to applicable law and the Non-disclosure Agreement dated [●] entered into between the Parties (the "NDA"). In this regard, the Parties agree that each shall not (and shall direct their respective agents and representatives not to) provide any non-public information received from each other to any third party, unless such information is (i) agreed to be disseminated/shared by the other Party, (ii) required by applicable law, or (iii) required by order of any Court.*
- 5.1.4 *Further, each Party shall co-ordinate in good faith the investigations of any avoidance transactions with the other Party so as to maximise recoveries to the estate of the Company.*
- 5.1.5 *No Party shall have or obtain a right of automatic access to any information from the other Party.*

6 RIGHTS TO APPEAR AND ATTEND

- 6.1.1 *Subject to the applicable laws of each jurisdiction and Clause 7 (Indian Proceedings), the Parties shall have the right to appear, either in person or duly represented, in the Proceedings.*
- 6.1.2 xxx xxx xxx
- 6.1.3 *No Party shall be deemed to have submitted to any other than his own jurisdiction by virtue of being Party to this Protocol or having appeared in any Proceeding.*

7 INDIAN PROCEEDINGS

7.1.1 The Dutch Trustee in the Indian Proceedings:

- (a) In the spirit of cooperation, the Dutch Trustee aims to not take any decision under the Dutch Proceedings that would adversely impact the interests of the Company or the creditors. In the event it becomes necessary for the Dutch Trustee in compliance of the Dutch Bankruptcy Court or any other court, or under any applicable law, to take any decision that might adversely impact the interests of the Company or the creditors, the Dutch Trustee shall give advance intimation of such decision to the RP.*

- (k) In the event a resolution plan for the Company is submitted to the NCLT, the Dutch Trustee shall facilitate the submission (by the Company) of a consistent reorganization plan in the Dutch Proceedings (“schuldeisersakkoord”) in order to implement the resolution plan in the Dutch jurisdiction incorporating the payout mechanism that is included in such resolution plan so submitted to the NCLT for distribution of various amounts to various stakeholders including the creditors of the Company, in accordance with applicable Dutch laws.*

7.1.2 The Dutch Trustee shall seek inputs, notify the RP and consult the RP, and will be mindful of the Indian Proceedings prior to any material decision being taken in the Dutch Proceedings, which may, inter alia, include:

- (a) matters relating to any proposal or approval of a plan of reorganization or a resolution plan or plan of compromise or any other similar arrangement in the Dutch Proceedings;*

- (l) matters relating to assuming, ratifying, rejecting, repudiating, modifying or assigning executory*

contracts having a material impact on the assets, operations, obligations, rights, property or business of the Company; and

- (m) matters which are otherwise prohibited under Section 14 of the Indian Insolvency and Bankruptcy Code, 2016, as further specified in Clause 11 below, if it were to apply in Netherlands.*

8 ASSETS

8.1.1 *Each Party shall do everything reasonable in its power and capacity, and the Parties shall co-operate, to maintain and preserve the value of the assets of the Company which are located in the Netherlands including, without limitation:*

- (a) the economic interest in the aircraft situated on the date of this Protocol at Schiphol International Airport (BOEING 777-35RER, VT-JEW, S/N 35164) (the "**Aircraft**") or its residual value after enforcement by or on behalf of US Exim Bank ("**US Exim Bank**");*
- (n) the spare parts situated on the date of this Protocol being stored on the premises of Koninklijke Luchtvaart Maatschappij N.V. or any of its (in)direct subsidiaries or otherwise related entities (collectively "**KLM**") at Schiphol International Airport;*
- (o) the office inventory, at the date of this Protocol being stored on the premises of "KLM" at Schiphol International Airport; and*
- (p) the value of the flight slots at Schiphol International Airport which the Company was entitled to use immediately prior to 21 May 2019 in connection with all activities required to maintain such value,*

*collectively referred to as the "**Dutch Assets**".*

- 8.1.2 *In the interest of having a joint insolvency Proceeding for the administration, preservation and enhancement of the estate of the Company, and in the spirit of Clause 2 and 3, and the Proposed Cooperation, the Dutch Trustee and the RP shall cooperate to preserve and enhance the value of assets of the Company wherever located in the Netherlands, subject to Dutch Law.*
- 8.1.3 *In the spirit of Clause 2 and 3, and the Proposed Cooperation, the Dutch Trustee shall not, without consulting the RP:*
- (a) sell, transfer, encumber, alienate, abandon or dispose of any asset of the Company in or outside the Netherlands or any legal right or beneficial interest therein and make all reasonable attempts and efforts, at all times, in preventing any third party/creditor from undertaking any such action anywhere during the course of the Proceedings; or*
 - (q) commence any judicial or non-judicial proceedings affecting any asset of the Company in or outside the Netherlands.*
- 8.1.4 *In the event, the Dutch Trustee conducts a sale of any of the assets of the Company, subject to Dutch Law, the Dutch Trustee shall hold the sale proceeds of the sale of any assets of the Company in a Bankruptcy Account: IBAN NL76KASA0222622202 "Ten name van Mr R Mulder qq curator in het faillissement van Jet Airways (India) Limited". The distribution of such sale proceeds shall be made in consultation with the RP.*
- 8.1.5 *If in the course of the Proceedings, the Dutch Trustee learns or believes that a creditor or a third party having material interest in a particular asset whose value and/or recovery is at risk, is intending to sell, dispose off or foreclose a particular asset of or belonging to the Company or its beneficial interest therein in Netherlands, then the Dutch Trustee shall immediately make all reasonable attempts to*

gather information relating to the purported transaction and soon after shall provide/convey any and all such information relating to the transaction in question to the RP. Where practicable and consistent with his duties under applicable laws, the Dutch Trustee shall consult with the RP about possible steps and measures, including obtaining appropriate direction(s)/ a prohibitory injunction from the appropriate court of law, if required, for preventing/prohibiting any such other third party from (i) selling, abandoning, or disposing of such asset; (ii) terminating, suspending, or other transitioning of any employees managing such asset; or (iii) the commencing of any judicial, or non-judicial, proceeding affecting such asset.

9 CLAIMS

- 9.1.1 *In order to ensure a complete and effective overview of claims and to enable each Party to fulfil his obligations, creditor claims should be submitted by the respective creditors in each Proceeding in accordance with the relevant applicable law.*
- 9.1.2 *The Dutch Trustee shall collate all claims received by him and shall forward these claims to the RP, who shall then verify and admit such claims in accordance with the Indian law.*
- 9.1.3 *Also on behalf of the creditors involved, the RP shall forward the list of creditors and details of all admitted claims under the Indian Proceedings to the Dutch Trustee, which claims shall be provisionally recognized and admitted by the Dutch Trustee in accordance with Dutch Law.*
- 9.1.4 *The Parties agree that the RP might be best placed to investigate the admissibility of claims that were first submitted in the Indian Proceedings and the Dutch Trustee might be best placed to investigate the admissibility of claims that were first submitted in the Dutch Proceedings.*

Each Party is authorized to randomly or otherwise, but not unreasonably, verify claims that were admitted by the other Party.

9.1.5 *With regard to each Claim that were first submitted in the Indian Proceedings, the RP shall represent to the Dutch Trustee whether and on which basis, he has admitted or denied the Claim in the Indian Proceedings. Similarly, with regard to each Claim that were first submitted in the Dutch Proceedings, the Dutch Trustee shall represent to the RP whether and on which basis, he has admitted or denied the Claim in the Dutch Proceedings. In this respect, the Dutch Trustee and RP shall verify such claims in accordance with applicable laws.*

10 COSTS

10.1.1 *On behalf of the CoC, the RP represents vis-à-vis the Dutch Trustee that it is the intention of the CoC to include the fees and costs incurred by the Dutch Trustee and any advisor/professional engaged by him for the purposes of the Dutch Proceedings as part of the insolvency resolution process costs (as defined under Section 5(13) of the Indian Insolvency and Bankruptcy Code, 2016) for the same to be paid in accordance with the Indian law, subject to verification by the RP and approval by the CoC, provided that:*

- (a) such fees and costs have not already been recovered by the Dutch Trustee from proceeds of the sale of any assets of the Company in the Netherlands;*
- (r) the claims of the members of the CoC filed in accordance with Clause 9 and admitted by the RP will be provisionally recognized by the Dutch Trustee as being submitted in the Dutch Proceedings.*

- (s) *the amount of any legal and professional fees incurred by the Dutch Trustee has been approved by the Dutch Court;*

10.1.2 *In the spirit of cooperation, the Dutch Trustee and the RP shall be treated equally.*

11 STAYS OF PROCEEDINGS

11.1.1 *The Dutch Trustee takes note of the order passed by the NCLT on 20 June 2019 as detailed out in the Background above, which imposes a moratorium on, inter alia, the following actions under Section 14 of the Indian and Bankruptcy Code, 2016:*

- (a) *the institution of suits or continuation of pending suits or proceedings against the Company, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (t) *transferring, encumbering, alienating or disposing off by the Company of any of its assets, including the Dutch Assets, or any legal right or beneficial interest therein;*
- (u) *any action to foreclose, recover or enforce any security interest created by the Company in respect of its property; and*
- (v) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Company.*

11.1.2 *The Dutch Trustee agrees to make reasonable endeavour to implement the terms of the moratorium imposed by the said order in respect of the Dutch Assets, and to take all reasonable action under applicable Dutch laws to ensure that the order is complied with in this respect, including, without limitation, actions that the Dutch Trustee is bound to undertake under Clause 8.1.5 of this Protocol.*

11.1.3 *The provisions of Clause 11.1.2 shall not preclude the Dutch Trustee from taking such steps as may be required to protect and preserve the value of the assets of the Company in his possession or control to maximise the value of such assets of the Company for the benefit of its creditors, in accordance with Clause 8.1.5.*

12 MISCELLANEOUS

12.1 Signing

12.1.1 *Subject to Clause 4 of this Protocol, this Protocol does not have any legal effect until each Party has validly signed this Protocol.*

12.1.2 *If this Protocol is signed in counterparts, these counterparts will count as one Protocol.*

12.2 Validity

12.2.1 *Unless otherwise agreed this Protocol shall remain valid until:*

- (a) *approval of the resolution plan in accordance with the Insolvency and bankruptcy Code, 2016 in respect of the Company which has become final or approval of the reorganization plan under Dutch law (“schuldeisersakkoord”), which has become final, whichever is later, unless agreed otherwise before such date; or*
- (b) *the passing of a liquidation order against the Company by the NCLT.*

12.2.2 *In this respect, it should be noted that in the event of the liquidation of the Company, the liquidators appointed for the Company both in India and in the Netherlands may enter into a similar arrangement as this Protocol, for purposes of coordinating the liquidation of the Company in both jurisdictions.*

12.3 **Rights cumulative**

12.3.1 *The rights and remedies of each Party provided in this Protocol are cumulative and not exclusive of any rights or remedies provided by law.*

12.4 **Amendments and waivers**

12.4.1 *The terms of this Protocol shall not be waived, amended, terminated orally or in any other manner (including, without limitation, pursuant to a resolution plan) except by a written agreement signed by each Party, and such waiver, amendment or termination shall not come into effect unless approved, where applicable, by both the NCLT/NCLAT and the Dutch Courts after notice and a hearing.*

12.5 **No deemed waivers**

12.5.1 *No failure to exercise, nor any delay in exercising, by a Party, any right or remedy under this Protocol will operate as a waiver. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy.*

12.6 **Third party rights**

12.6.1 *Except where this Protocol expressly provides otherwise:*

- (a) it contains no stipulations for the benefit of a third party (derdenbedingen) which may be invoked by a third party against a Party; and*
- (w) where this Protocol contains a stipulation for the benefit of a third party, this Protocol (including the relevant third party's rights under this Protocol) may be terminated, amended, supplemented or waived (in each case either in its entirety or in part) without that third party's consent.*

12.7 **No rescission; errors**

12.7.1 *No Party may fully or partly rescind (ontbinden) this Protocol.*

12.7.2 *If a Party has made an error (heeft gedwaald) in relation to this Protocol, it shall bear the risk of that error.*

12.8 **No suspension**

12.8.1 *No Party may suspend (opschorten) performance of its obligations under or in connection with this Protocol on any ground whatsoever.*

12.9 **No assignment**

12.9.1 *No Party may fully or partly assign or encumber rights and obligations under this Protocol without the other Party's prior written consent. Without this consent, no assignment or encumbrance is effected.*

12.10 **Communications in writing**

12.10.1 *Any communication to be made under or in connection with this Protocol must be made in writing and sent by regular mail or e-mail.*

12.11 **Addresses**

12.11.1 *The address and e-mail addresses of each Party for any communication to be made under or in connection with this Protocol are:*

- (a) those identified with its name in Schedule 1; or*
- (x) any substitute address or officer as the Party may notify to the other Party by not less than five days' notice.*

13 COMITY

13.1.1 *The parties hereto agree that each Court is an independent, sovereign Court, entitled to preserve its independent jurisdiction and authority with respect to matters before it and the conduct of the RP and the Dutch Trustee.*

13.1.2 *Each Court shall have sole jurisdiction and power over the conduct of the Proceeding in that forum; the appointment of the RP and the Dutch Trustee and their professionals, their retention, tenure in office, and compensation; and the hearing and determination of matters arising in that forum.*

13.1.3 *Nothing in this Protocol is intended to interfere with the exercise of jurisdiction by each of the Courts in the Proceedings, or to interfere with the natural rules or ethical principles by which the RP of the Dutch Trustee is bound according to applicable national law and professional rules.”*

2. Clause 6.1.2 of the aforesaid Agreement (Cross Border Insolvency Protocol) suggested by the Administrator reads as follows :

“6.1.2 [The Dutch Trustee shall be invited to participate in the meetings of the CoC as an observer but shall not have a right to vote in such meetings.]”

3. The said clause 6.1.2 as suggested by the ‘Resolution Professional’ at the instance of the ‘Committee of Creditors’ reads as follows:

“6.1.2 The Dutch Trustee shall not entitled to participate in the meetings of the CoC”

4. In the present case, we make it clear that the ‘Committee of Creditors’ have no role to play as the agreement reached between the ‘Dutch Administrator’ and the ‘Resolution Professional’ of India is on the basis of the direction of this Appellate Tribunal. In spite of the same, unfortunately the ‘Committee of Creditors’ interfered with the matter and put its view to the ‘Resolution Professional’ resulting into difference of the suggestions.

5. ‘The Dutch Trustee’ is equivalent to the ‘Resolution Professional’ of India, therefore, as per law he has a right to attend the meeting of the ‘Committee of Creditors’. However, as we do not want to overlap the power between one and other, we are of the view that the suggestion given by the ‘Dutch Trustee’ (Administrator) as shown in its ‘Clause 6.1.2’ should be part of the Agreement – ‘Cross Border Insolvency Protocol’. Therefore, we direct to insert ‘Clause 6.1.2, as suggested by the ‘Dutch Trustees’, which reads as follows:

“6.1.2 *[The Dutch Trustee shall be invited to participate in the meetings of the CoC as an observer but shall not have a right to vote in such meetings.]”*

6. We make it clear that the ‘Dutch Trustee (Administrator) will work in co-operation with the ‘Resolution Professional of India’ and, if any, suggestion is required to be given, he may give it to the ‘Resolution Professional’. The draft of ‘Cross Border Insolvency Protocol’ clause is made final as above. It should be treated as a direction of this Appellate Tribunal and it would be mandatory to

comply with the order of this Appellate Tribunal subject to the other procedures which are to be followed in terms of the 'Insolvency and Bankruptcy Code, 2016'.

7. In view of the aforesaid observations, we set aside part of the impugned order dated 20th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in so far it relates to the observations that the 'Dutch Court' has no jurisdiction in the matter of 'corporate insolvency resolution process' of 'Jet Airways (India) Limited, (Offshore Regional Hub) and the consequential directions as given to the 'Resolution Professional' in respect of 'Offshore proceedings.

8. However, it is made clear that we have not interfered with the order of admission of application under Section 7 of the I&B Code filed by the 'State Bank of India' against 'Jet Airways (India) Limited', therefore, joint 'Corporate Insolvency Resolution Process' will continue in accordance with 'Insolvency and Bankruptcy Code, 2016.

The appeal stands disposed of with aforesaid observations and directions.

No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/sk