

Disruption of film company avoided with restructuring plan

Prof. Dr. Torsten Martini explains how a German film licence trader was given a new start



PROF. TORSTEN MARTINI
Managing Partner
Leonhardt Rattunde, Berlin



One of the leading companies in the film licence trade in Eastern Europe, Berlin based A-Company, left insolvency proceedings after one year in March 2016 with a film library of more than 440 films.

A-Company's portfolio includes Oscar-winning titles such as *The King's Speech*, *Hurt Locker* and *The Reader*, alongside commercial highlights as *Cloud Atlas*, *Shutter Island* and the *Saw* franchise. With a balance sheet total of €42 million in 2014 the company had one of its focal points of distribution in Russia.

In the course of the proceedings accompanied by diverse international aspects and complex licensing issues the company was maintained by means of an insolvency plan presented by the debtor. In addition to the restructuring of

the company, the plan unites the company from its international group of companies. The shares of the prior shareholder were reduced and new shares were issued to an investor company.

International operations

The internationally operating trader in film licences under the roof of A-Company Filmed Entertainment AG as a holding company had eight sister companies, seven of them being abroad and insolvent, too.

The author was appointed as insolvency administrator over the assets of A-Company Film Licensing International GmbH (A-Company), its former shareholder, A-Company Filmed Entertainment AG, as well as the affiliate A-Company Filmproduktionsgesellschaft mbH.

Due to illiquidity, A-Company, founded in 2001, filed for insolvency proceedings at the

local court of Berlin-Charlottenburg on February 18, 2015 and the author was appointed as provisional administrator following the debtor's proposal. Proceedings were instituted on May 1. The insolvency plan, submitted on November 2, 2015, had been prepared by attorneys-at-law Dr. Oliver Damerius and Dr. Christoph Weber of the Berlin law office of BBL in close coordination with the author's office.

Political crisis

A-Company's liabilities amounted to €30 million at the time of the filing, compared to €80,000 of actual cash liquidity. With the political crisis in the Ukraine and the Russian occupation of the Crimea, the company got into difficulties as the TV market in Russia and the Ukraine broke down. The collapse of the

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Russian currency and the high inflation also led to a serious loss in sales.

According to A-Company's managing director, Alexander van Dülmen, "TV stations stopped buying our programme. From one day to another we lost our main market, Russia, which made up 65% of our sales". Russian costumers were no longer able to pay the license fees for the US-American movies payable in US-Dollars due to the enormous currency devaluation, revenues were cut by 40%. Following US-sanctions, a potential US investor withdrew from re-financing negotiations.

Licence agreements

The most important challenge of the insolvency proceedings resulted from the demanding situation of the licence agreements as A-Company is licensee and licensor at the same time and its business is focussed on the international market.

In consideration of the German Insolvency Statute, the continuance of licence agreements is already extremely problematic on a national level. In the present insolvency proceedings what made matters worse was that the major part of licensors was domiciled in the U.S.A. and the agreements were subject to U.S. legislation, while the majority of licensees, as contracting parties, came from Eastern Europe and Russia.

The formalities of licensing law and the international context considerably affected, *inter alia*, two aspects of the proceedings: the mediating task, with regard to colliding claims, and the task of upholding the existing license stock.

For one thing, licensors from the US asserted claims against the debtor, who had already purportedly assigned its claims deriving from sublicense agreements to, *inter alia*, Russian banks. The estate was not entitled to the proceeds (other than the contribution to costs) however, and it was also uncertain and subject to international colliding

regimes, whether the banks or the Hollywood studios were entitled to them. By way of stop-order the proceeds had been collected during the provisional proceedings already, but issues of multiple assignments, foreign law, recognition outside of Germany and contribution to costs came next.

And for another thing, the essential economic value of the enterprise was contained in the film licences. From the beginning, the parties involved had to discard the option of restructuring via asset deal: the manifold license packages would have required individual agreements for every single license, which would have been hardly possible to achieve.

A transfer would have been possible with the consent of all licensors only. Yet, obtaining the consent in each and every case would have brought about major coordinating difficulties and the success would not have been certain. The licensors are predominantly film producers in Hollywood. The licensees are mainly cinema operators and TV broadcasting stations in Russia, Poland, Czech Republic and Hungary and other Eastern Europe states.

Film stock

In order to assess if the utilisation of the licence stock for the remaining licence periods was a feasible alternative solution to the insolvency plan, the author's team invited a German licence agent to review the film stock and to provide an offer to utilise the stock while the proceedings would have continued under the author's administration until the end of the individual licence period.

Therefore, either way, the preservation of the entity and maintaining of the licences issued to this entity was the most promising way forward. Agreements with the main stakeholders were pre-negotiated and various disputing claims were settled unanimously. The intense dialogue between creditors, the author's office, the management and the BBL team, successfully

preserved the international licensors' trust and prevented the termination of licenses in most cases. Business continued without limitations all along.

Insolvency plan

In the end, the debtor and its advisors convinced the creditors of the efficiency of the insolvency plan by precisely explaining why it was the most sensible way forward economically, not only in comparison to the alternative utilisation offer, but also with regard to the liability and contestation claims.

The insolvency plan was accepted by the creditors and confirmed by the court on 3 December 2015. Finally, the insolvency court closed the insolvency proceedings on 25 January 2016. In addition to the restructuring of A-Company Film Licensing International GmbH, the insolvency plan unties the company from the A-Company group, by reducing the shares of the prior owner, A-Company Filmed Entertainment AG, and by issuing new shares in favour of the investor company, Colchis GmbH. Without this measure under company law, the restructuring would have been impeded considerably.

Colchis intends to continue exploiting the existing film stock. The short-time closing of the insolvency proceedings was a mandatory precondition for the further utilisation of the existing film library. Managing Director of A-Company remains Alexander van Dülmen, who maintains close business relations in Eastern Europe with his team. In spite of the insolvency proceedings, key employees could be kept in the company. For Russia, the management expects the recovery of the market. According to Alexander van Dülmen, the company shall save future overhead costs by outsourcing the distribution to A-Company Hungary and the management intends to buy new films with the support of a sister company. ■



FROM THE BEGINNING, THE PARTIES INVOLVED HAD TO DISCARD THE OPTION OF RESTRUCTURING VIA ASSET DEAL

