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Online discount retailer Choxi.com surrenders to Chapter 11

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New York City discount online retailer Choxi.com Inc. filed for Chapter 11 protection after being forced to shut down its business in October, pressured by declining revenues and "pre-petition fraudulent activity."

The company petitioned in the U.S. Bankruptcy Court for the Southern District of New York in Manhattan with \$1.5 million in assets and \$33.9 million in liabilities. Judge Shelley C. Chapman was assigned to the case.

Choxi commenced its case because of poor management, depleted revenues and the fraudulent transfer of certain shares of the company stock by its largest investor, Chief Restructuring Officer Eddy Friedfeld said in a declaration.

Oak Investment Partners invested \$25 million in Choxi on an unspecified date. At the time of the investment, Oak said it could not purchase a stake in the company unless Choxi repurchased its Series A stock, which was owned by an Asian e-commerce company, unidentified in court papers.

"Upon information and belief, the repurchase funds (nearly \$11 million) were not received by the Asian e-commerce entity but rather diverted by Mr. (Iftikhar) Ahmed (Oak general partner) into an account he personally owned," Friedfeld said in his filing.

A preliminary investigation turned up that there may have been other fraudulent transfers related to Choxi's outsourced customer service function in the Philippines, according to Friedfeld's declaration.

Choxi, an online retailer of discounted brand name and non-brand name merchandise, began operating in April of 2012 but was forced to shut down its business in October.

Prior to shuttering, the company sold bed-and-bath goods, home décor, kitchenware, furniture, watches, jewelry, apparel, electronics, computers, sporting goods and designer accessories, according to court papers.

Every year since Choxi commenced operations, it reported net losses ranging from \$7.4 million to as high as \$21 million, court papers said.

"The debtor's management team, led by Deepak Agarwal, co-founder and CEO, and his now wife and Chief Merchandising Officer Co-Founder Melina Ash, ran the business with a major focus on generating top-line gross revenue, with a lesser regard to the underlying profitability of the debtor," Friedfeld said in his declaration.

The debtor's Chapter 11 petition comes in response to a Nov. 10 Chapter 7 involuntary case that was initially brought by certain of the company's creditors.

Choxi entered Chapter 11 with a credit bid from two of its creditors, N.D. Gems Inc., which holds \$1.3 million in claims, and 9th LLC, which holds \$35,000 in claims. The two are acting as Choxi's stalking-horse bidder, collectively referred to in court papers as Savalia Lender Group.

The two creditors are wholly owned by Harry Savalia, who also owns a 1% equity interest in Choxi.

Under the terms of the stalking-horse agreement, Savalia will pay Choxi a one-time administration fee of \$120,000, which includes \$60,000 in cash and assumes no liabilities, plus a five-year monthly royalty payment plan.

The stalking horse will pay Choxi 8%, equal to \$15,000, of its own net revenue each month for the first year of the royalty agreement. Savalia will gradually reduce the royalty payment to 5% of its revenues, or \$5,000, by year four.

The stalking horse agreement "guarantees the debtor and its estate income from the license agreement of at least \$35,000, regardless of the revenue actually generated, which is particularly advantageous to the debtor during the early stages of the license when revenues are uncertain," Choxi said in court papers.

Under proposed bidding procedures, Choxi suggested that competing parties must submit bids of at least \$125,000 by Feb. 1, 2017, to qualify for an auction. Bids must increase by increments of \$25,000 at the auction. A date for the auction was not proposed.

Savalia will be entitled to a \$75,000 breakup fee and up to \$25,000 in expense reimbursement if it is outbid by a competing party.

Choxi leases one office in New York City but must surrender the space by Dec. 31. It is unclear how many workers the company employs.

The company's largest unsecured creditors include CMIDEV Inc. owed a total of about \$1.1 million, Center Link Media LLC (\$722,991), Yahoo.com (\$630,753), AOL Advertising Inc. (\$581,402) and Bespolitan (\$481,797).

Tracy L. Klestadt and Stephanie R. Sweeney of Klestadt Winters Jureller Southard & Stevens LLP are debtor counsel.

<http://pipeline.thedeal.com/tdd/ViewArticle.dl?id=13918438>

---- **Index References** ----

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