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## ChinaCast Ch. 11 Confirmation Delayed Over Filing Issues

By **Alex Wolf**

Law360, New York (November 16, 2017, 9:08 PM EST) -- The judge presiding over the bankruptcy case of ChinaCast Education Corp. abruptly adjourned the company's Chapter 11 plan confirmation hearing on Thursday, finding the debtor's last-minute request for approval of a shareholder settlement and a post-petition financing adjustment troubling.

Defunct college-level e-learning services provider ChinaCast, which says it fell into financial ruin after its former CEO looted the company's coffers, failed to take a few crucial steps before appearing in a New York bankruptcy courtroom to confirm its pending Chapter 11 wind-down plan.

The former Chinese university operator apparently reached terms to settle a plan objection with a private equity fund sitting on a \$66 million class action judgment against the company, but failed to provide sufficient notice ahead of confirmation about the agreement. It also did not give adequate notice regarding a \$500,000 arrangement for additional financing from its debtor-in-possession lenders, according to U.S. Bankruptcy Judge Mary Kay Vyskocil.

The judge said the procedural missteps and failure to give the court and stakeholders a chance to review and approve late changes made it impossible for her to confirm a plan on Thursday.

"I commend you all for getting to here, but we can't trample on the rules," she said. "The rules are there for the protection of people."

Debtor's attorney Joseph Corneau of Klestadt Winters Jureller Southard & Stevens LLP said he thought the company would be able to proceed through confirmation under the idea that the adjustments were consensual, but Judge Vyskocil said she could not allow the hearing to move forward without adequate notice.

ChinaCast **filed for bankruptcy** in November 2016, a day after a California federal court awarded a default judgment of \$65.8 million to Jayhawk Private Equity Fund II LP and other plaintiffs in a securities class action over former CEO Ron Chan's withdrawal of \$120 million from the company's accounts.

Though initially dismissed, the case was revived in October 2015 by the Ninth Circuit, which found that fraud perpetrated by a CEO can be blamed on the corporation, even if the actions were against the company's interests. The appeals court ruled that Chan's fraud could be imputed to ChinaCast.

For a year, ChinaCast has been working to figure out a workable course to exit Chapter 11 and has filed three different versions of a restructuring plan. It faced plan opposition from Jayhawk and the certified class of shareholders, who had been **fighting to lift ChinaCast's automatic litigation stay** to pursue a case to collect from its insurers under two different policy towers, each worth \$15 million.

ChinaCast and its senior lenders had **called on the judge** to reject Jayhawk's request, saying any directors and officers insurance proceeds are property of the estate and, if made available, must be used in accordance with creditor priority rules. ChinaCast also noted that some of the proceeds

may be needed to pay the \$6 million in legal fees it incurred defending against the class action.

**Jayhawk contended** that neither ChinaCast nor other creditors have a property interest in the insurance policy proceeds because only the certified class has claims against the policies.

After being **encouraged to settle the dispute**, Jayhawk and ChinaCast reached an apparent agreement to jointly prosecute a complaint against the insurers and allow the shareholders to take home 90 percent of any net recovery. According to settling papers sent to Judge Vyskocil for approval on Wednesday, Jayhawk would drop its objection to the restructuring plan if the deal is approved.

Also on Wednesday, Judge Vyskocil received a letter sent by an attorney for the DIP lenders, saying they are prepared to provide an additional \$500,000 on top of the \$324,000 they have already loaned to ChinaCast "to enable the debtor to emerge from Chapter 11."

As both notices appeared on the case docket just a day before the confirmation hearing, Judge Vyskocil found it too problematic to rule on plan approval Thursday.

"You're ready, but you haven't given notice to parties entitled to notice," she said.

Jayhawk and the class are represented by Laurence Rosen of Rosen Law Firm PA.

ChinaCast is represented in the bankruptcy by Tracy Klestadt and Joseph Corneau of Klestadt Winters Jureller Southard & Stevens LLP.

The lenders are represented by Michael Cook of Schulte Roth & Zabel LLP.

The case is In re: ChinaCast Education Corp., case number 1:16-bk-13121, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Cara Salvatore and Rick Archer. Editing by Alanna Weissman.