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ChinaCast Reaches Deal To Advance Ch. 11 Plan Confirmation

By **Ryan Boysen**

Law360, New York (November 22, 2017, 3:04 PM EST) -- ChinaCast Education Corp. and a private equity firm sitting on a \$66 million judgment against the defunct company asked a New York bankruptcy court Tuesday for a second chance at approval of a settlement, which would see them team up to pursue \$30 million worth of the debtor's insurance policies.

Chinese online education provider ChinaCast fell into financial ruin after its former CEO and several accomplices looted the company's coffers. While ChinaCast was suing the top brass responsible for the debacle, plaintiffs in a securities class action led by Jayhawk Private Equity Fund II LP secured a default judgment of \$65.8 million against the company, forcing it into bankruptcy **last year**.

The pair have reached a deal to set aside their differences and work together to sue ChinaCast's insurers, which have issued \$30 million worth of coverage under two different policy towers. That settlement is the linchpin of ChinaCast's proposed Chapter 11 plan, but when the two sides unveiled it at a confirmation hearing **earlier this month**, U.S. Bankruptcy Judge Mary Kay Vyskocil promptly adjourned it, saying she couldn't possibly approve the settlement without giving interested parties time to review it.

On Tuesday, ChinaCast and Jayhawk filed a more fleshed-out description of the settlement and on the same day, Judge Vyskocil entered an order setting an expedited hearing date for Dec. 6.

"As the court knows, the debtor, [its] lenders and Jayhawk have been at odds since the petition date and each has vigorously disputed the other's position throughout the Chapter 11 case," ChinaCast wrote in its motion for approval of the settlement. "The settlement agreement ends those continuous disputes and resolves all issues between the parties.

"The cessation of hostilities will inure to the benefit of the debtor's estate by reducing costs associated therewith and will also permit confirmation of the plan on an uncontested basis," ChinaCast said.

Under the terms of the proposed settlement, Jayhawk's counsel will work on a contingency fee that entitles them to one third of the total proceeds from the insurance suit, Jayhawk will receive 90 percent of what's left and the debtor's estate will receive the remaining 10 percent.

At the hearing on Nov. 16, ChinaCast also asked for approval of an additional \$500,000 in debtor-in-possession financing, on top of the \$324,000 already extended to it by a group of lenders that started out as litigation funders before the debtor was forced to file for bankruptcy.

ChinaCast presented that proposal for the first time at that hearing and Judge Vyskocil again said she couldn't approve it without proper notice. Along with its motion for settlement approval, ChinaCast also filed a more detailed motion asking for approval of the new DIP loan.

"Although I did not canvas the market for alternative sources of financing, based on the facts herein and the debtor's history in raising funds, it is my belief that no alternative source of financing on superior terms exists," Douglas Woodrum, the debtor's chief financial officer, said in a declaration filed with the motion.

That group of prepetition litigation funders turned DIP lenders includes Fir Tree Partners, Ashford Capital Management and Columbia Pacific Advisors.

ChinaCast has filed three suits against executives accused of being part of the "massive looting" carried out by former CEO Ron Chan, who allegedly made off with \$120 million from the company's accounts in 2012.

The company lost one of those suits and has appealed, another has been paused pending the outcome of the bankruptcy and the status of a third, filed in Delaware's Chancery Court, was not immediately clear on Tuesday.

Neither the settlement nor the DIP motion discusses what will become of those suits if the settlement is approved and ChinaCast teams up with Jayhawk to sue its insurers.

None of the parties involved immediately responded to requests for comment on Wednesday.

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 Alex Wolf, Cara Salvatore and Rick Archer. Editing by Stephen Berg.

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