

Citing Doubts, China Fishery Judge Appoints Ch. 11 Trustee

By **Jeff Montgomery**

Law360, Wilmington (October 31, 2016, 8:16 PM EDT) -- Citing disabling conflicts on the part of bankrupt China Fishery Group Ltd. and a profound, global lack of trust among creditors, a New York bankruptcy judge on Friday ordered the appointment of a trustee to oversee and manage the group's sale or reorganization.

U.S. Bankruptcy Judge James Garrity acknowledged that creditors seeking the trustee action "have lost all confidence in the debtors' management for a number of good reasons," including billions in unexplained intercompany transfers, deliberate and premeditated agreement breaches, insider investments and "hopelessly" conflicted investigation advisers.

A subset of lenders who are owed more than \$700 million asked the court to **appoint a trustee** on Aug. 9, saying that the court could otherwise only enforce a stay of action in the U.S. case while waiting for the international debtors to complete an insider-controlled restructuring in a foreign jurisdiction.

China Fishery, a subsidiary Pacific Andes Group, has as its lone assets direct and indirect interests in Peru-based companies that work some of the world's richest fishing grounds. Those assets were allegedly tipped into bankruptcy in that country to head off a contractually obligated sale of the Peru holdings.

"The debtors should not be forced into a 'fire sale' of the Peruvian business to satisfy the interests of a few creditors," Judge Garrity wrote in a 51-page memorandum decision and order. "However, a debtor that is committed to pursuing restructuring plans or sales processes that could yield direct or indirect benefits to its managers, at the expense of its creditors, runs afoul of its fiduciary responsibilities."

Creditors include Rabobank Hong Kong, DBS Bank Ltd, HSBC, China CITIC Bank International, Malayan Banking Berhad and Bank of America.

Caught in the Chapter 11 storm is Pacific Andes, the world's 12th largest seafood and fishing company, controlled by Swee Hong Ng, his descendants and relatives through a 150-company global web led by N.S. Hong, one of 16 debtors in the New York Chapter. 11.

Those seeking the trustee appointment, Judge Garrity said, believe Pacific Andes and the Ng family consider preservation of the Peruvian fishing assets an essential cog in the family business, and have already actively misled lenders about their Peruvian insolvency plans.

Hearing testimony and court filings, Judge Garrity said in his opinion, provided "clear and convincing evidence" supporting the trustee action.

China Fishery filed for Chapter 11 on June 30. Ng family members make up China Fishery's largest equity holders, Judge Garrity wrote, with about \$2.8 billion needed in order to create a return for equity in the group. The best offer for the Peruvian assets, however, leaves equity at least \$1 billion short of any return.

Given the conflicts, the judge wrote, the Ng family, as managers of the debtors, is "plainly disincentivized" from selling China Fishery even at its current valuation, because the result would "gut" Pacific Andes and potentially impact family financial accommodations.

Since most of the debtors in the Chapter 11 are dormant or holding companies, Judge Garrity said, a trustee appointment to CFG Peru Singapore, the 100 percent direct and indirect owner of the Peruvian "Opcos," is the most efficient solution.

The judge cautioned, however, that he rejected creditor claims that the Peruvian assets should be promptly sold for their benefit. Instead, he said, the trustee should assess the highest and best use of the assets with an aim of resolving the Chapter 11 and providing maximum return for the debtors.

Earlier this month, the court granted an extension of China Fishery's exclusive control over the Chapter 11 cases, in a ruling issued before his opinion on the trustee appointment.

China Fishery has been listed on the Singapore Exchange since 2006.

China Fishery is represented by Howard B. Kleinberg, Edward LoBello and Jil Mazer-Marino of Meyer Suozzi English & Klein P.C. and Tracy L. Klestadt of Klestadt Winters Jureller Southard & Stevens LLP.

Lenders Rabobank, Standard Chartered Bank and DBS are represented by John Lyons of DLA Piper.

The case is In re: China Fishery Group Ltd. (Cayman) et al., case number 16-11895, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Catherine Sum.