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AHMSA Successfully Completes Protracted Cross-Border Restructuring

By Marc Abrams, Ji Hun Kim, and Christopher S. Koenig*

The authors of this article discuss the restructuring of one of Mexico's largest integrated steel producers and the U.S. Bankruptcy Court for the District of Delaware's "recognition order," which is the final chapter in the company's 17-year restructuring.

Altos Hornos de México, S.A.B. de C.V. ("AHMSA"), one of Mexico's largest integrated steel producers, manufactures and distributes a variety of steel, steam coal, plate, and tin products. The company is headquartered in Monclova, Coahuila, Mexico and owns valuable operating and financial assets situated throughout Mexico and the United States.

In the late 1990s, AHMSA suffered financial distress primarily due to a decline in steel prices, and it filed for protection under the SP Law on May 24, 1999 (the "SP Proceeding"). AHMSA's restructuring, which entailed $1.7 billion in unsecured debt (principally financial debt), has been one of the largest and most complicated in Mexican history.

On May 16, 2016, AHMSA received approval of its reorganization plan (the "SP Plan") from the Mexican Court (the "SP Court") overseeing its restructuring. AHMSA subsequently filed for protection under Chapter 15 of the United States Bankruptcy Code (the "Code"). On September 30, 2016, Judge Kevin Gross of the U.S. Bankruptcy Court for the District of Delaware (the "U.S. Court") entered an order (a) recognizing AHMSA's Mexican reorganization case as a "foreign main proceeding," (b) enforcing the terms of the SP Plan and the SP Court's order approving the SP Plan (the "Lifting Order") in the United States, and (c) granting related relief.

The U.S. Court's "recognition order" is the final chapter in AHMSA's extraordinary 17-year restructuring.

OVERVIEW OF AHMSA'S RESTRUCTURING PROCESS

As an initial matter, a significant amount of AHMSA's debt was held by

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creditors that are organized or domiciled in, or a citizen of, the United States under U.S.-issued indentures and syndicated loans, that, pursuant to the SP Law, are not entitled to post-petition interest during the SP Proceeding. As a result of this dynamic, while not required to do so under the SP Law, AHMSA took actions to ensure that U.S. creditors received adequate information about AHMSA's restructuring so that those creditors could participate in such a process.

Specifically, AHMSA prepared an English language disclosure statement, which provided all required information about the SP Plan, AHMSA's business, notice of significant dates and deadlines in the SP Proceeding, and a plan support agreement AHMSA reached with major creditor constituents who, among other things, agreed to support the SP Plan (the "Conditional Agreement"). AHMSA also convinced the SP Court to modify standard procedures under the SP Law to facilitate U.S.-based creditors' participation in the SP Proceeding, such as implementing special procedures enabling beneficial holders of debt to vote on the SP Plan and to make certain equity elections and by enhancing creditors' procedural and substantive due process protections. In addition, AHMSA caused the parties to the Conditional Agreement to fully disclose such agreement to the SP Court and to creditors generally. These actions were taken in order to replicate a process that one would expect in a U.S.-based Chapter 11 restructuring process.

The 17-year duration of the SP Proceeding, while not unique, only added to the complexity of the Chapter 15 case. One of the primary reasons for the lengthy case was that over 900 creditors sought to be "recognized creditors," requiring substantial litigation over numerous claims. Under the SP Law, all claims must be fully resolved before a plan can be proposed. Additionally, under the SP Law, if a debtor company proposes a plan, but fails to achieve the requisite voting threshold, the reorganization case is immediately converted to a liquidation. Accordingly, AHMSA carefully negotiated with its creditors over a long period of time in order to ensure that the SP Plan would be feasible and well supported by its multilateral diverse creditor body. Additionally, AHMSA's restructuring efforts were often met with significant opposition. For example, creditors filed numerous unsuccessful motions to convert the case to a liquidation.

Furthermore, the SP Law was replaced by the *Ley de Concurso Mercantiles* (the "Concurso") in 2000, but reorganization cases commenced under the SP Law were continued under the SP Law notwithstanding the enactment of the Concurso because retroactive application of a law is forbidden by Mexico's Federal Constitution. This required a careful navigation of the SP Proceeding so that it complied with all requirements of the repealed SP Law, while

implementing measures to promote transparency and active participation of all creditors so that the SP Proceeding and SP Plan would earn recognition in the U.S. bankruptcy court.

For example, AHMSA requested a "supplemental order" from the SP Court appointing the SP Court-appointed trustee as a "foreign representative" to commence the Chapter 15 proceeding in the United States, and also worked with the trustee to ensure that he understood the requirements of being a foreign representative. AHMSA also provided substantial information to the SP Court to properly explain the purpose of a Chapter 15 process in the United States and to ensure that the SP Court and the U.S. Court could work together to effectuate the SP Plan and the Lifting Order in the United States. Lastly, in order to familiarize the U.S. Court with the intricacies of the SP Law, an expert declaration was submitted with the more traditional "first-day" pleadings.[1]

The primary terms of AHMSA's SP Plan include:

(a) AHMSA's paying all its "recognized" claims in full in cash within three years pursuant to non-interest bearing payment rights distributed to creditors (the "SP Payment Rights");

(b) each creditor entitled to receive the SP Payment Rights receiving the option to exchange 69.15 percent of its SP Payment Rights for stock in reorganized AHMSA; and

(c) the SP Court's issuing an injunction preventing creditors from attempting to collect on their claims unless AHMSA failed to make the cash payments under the SP Plan.

KEY OBSERVATIONS

Despite significant differences between the SP Law and Chapter 11 of the Code, the U.S. Court granted recognition of the SP Proceeding as a "foreign main proceeding pursuant to chapter 15." Major differences between the SP Law and Chapter 11 included:

(a) under the SP Law, no interest is paid on claims where the debtor is solvent;

(b) the SP Law does not have its version of the "absolute priority rule"; equity is allowed to retain an interest even though unsecured creditors may not be paid in full; and

[1] The expert declaration is viewable at https://cases.primeclerk.com/ahmsa15/Home-DownloadPDF?id1=NDE5MzE2&id2=0.

(c) the valuation of the debtor company under the SP Law is to ensure that it is likely to be able to make payments under the plan (no formal enterprise valuation is conducted).

Pursuant to Chapter 15, orders from foreign courts can be approved even if the foreign law differs materially from Chapter 11, so long as approval of such foreign orders would not be "manifestly contrary to the public policy of the United States." An exacting comparative law analysis is not required or warranted. AHMSA's restructuring is another instance of the "public policy" exception of Chapter 15 being construed very narrowly; even when there are material differences, a foreign court's order may be recognized as long as it furthers the objectives of international cooperation and assistance and does not contravene the core principles of U.S. restructuring law.

In order to help U.S. bankruptcy courts gain comfort with a foreign restructuring law, counsel for foreign debtors would be well served to make the foreign process as transparent, streamlined, and equitable as possible, including by taking necessary steps to disseminate adequate information to and to otherwise facilitate participation by all creditors.