# La Seda de Barcelona

***J. Vicente Estrada, Senior Partner at Forest Partners (Spain) writes on the sale of a supranational business unit from insolvency proceedings in different European countries under the common jurisdiction of a Barcelona Commercial Court***

La Seda de Barcelona, S.A. (LSB), a company listed on the Madrid and Barcelona Stock Exchanges, was the parent of a multinational plastic packaging group integrating the whole value chain from the industrial production of PET right through to manufacturing of the preforms used by customers to hold their products, whether soft drinks, water, yoghourt, cleaning products or any other of countless possibilities. LSB's Packaging Division (known as Artenius PET Packaging Europe or APPE) operated 14 plants in Europe, Turkey and North Africa.

LSB was, however, saddled with debts of €476 million to financial creditors under a Senior Facility Agreement (SFA) and a PIK Loan, both of which were guaranteed by its affiliates.

Despite the dependable earnings of the Packaging Division on annual revenues of some €600 million and Ebitda of around €50 million, LSB began to experience serious cash flow problems in 2012 given the negative margins of the PET business and the continuous outgoings needed to service its debt.

Recognizing that it would not be able to stave off default on the SFA loan, LSB sought unsuccessfully to renegotiate and refinance its debt with the lenders –being most of them, special situation funds-, who demanded capitalization of a part of the loans made.

In these circumstances, LSB filed for voluntary insolvency in the commercial courts of Barcelona on 17 June 2013 together with twelve of its affiliates, seven of them established in other member states of the European Union.

On 4 July 2013, Barcelona Commercial Court No. 1 declared LSB and its twelve affiliates insolvent, at the same time confirming the international jurisdiction of the Barcelona courts under article 3.1 of Council Regulation (EC) No. 1346/2000, of 29 May 2000, on insolvency proceedings, insofar as the centre of the LSB Group's main interests was situated in Barcelona.

After failing in its endeavour to reach an arrangement with creditors, LSB entered liquidation on 29 January 2014.

The court-appointed Insolvency Administrator, Forest Partners, designed a liquidation plan based on the sale of the APPE Packaging Division as the principal avenue to maximize recovery for the Group's creditors.

The sale was never going to be easy for three reasons. To begin with, the shares of the affiliates could not be sold without first obtaining a waiver from the lenders under the SFA and PIK loans, because the debt was secured against guarantees extended by these companies. This proved impossible, however. Meanwhile, LSB was already in liquidation, but its affiliates were still at an earlier stage in the insolvency process. Finally, the Packaging Division's assets were spread among numerous companies located in different countries.

In these circumstances, Forest Partners requested the Court to approve the public, open and competitive sale of the Business Unit formed by the Supranational APPE Packaging Division, comprising a) the industrial property used by APPE in its manufacturing process, an asset owned by LSB; b) the business units owned by the affiliates APPE UK, APPE Iberia, APPE France, APPE Benelux and APPE Deutschland; and c) the shares of APPE Polska, APPE Turkpack and APPE Maroc.

The Court finally approved the sale process for the Supranational APPE Business Unit on 29 July 2014, and Forest Partners proceeded to set up a Virtual Data Room and contact leading industrial and financial players worldwide in order to initiate an M&A process consisting of a first round of indicative bids followed by two further rounds for binding offers.

A key differentiating factor compared to other sales of business units in Spain was the application for the first time of the urgent insolvency measures enshrined in Royal Decree 11/2004, which allows the acquirer of a business unit to assume certain liabilities of the debtor and claims against the insolvency estate. In the case of the Packaging Division, the acquirer would take on debts with employees, trade payables and borrowings arranged to finance working capital, thereby ensuring the continuity of the businesses transferred by allowing the creditors concerned to recover their claims, which would otherwise have been diluted with those of LSB's financial creditors, whose claims were secured against the guarantees issued by the APPE Division affiliates.

The sale process was swiftly concluded, and on 5 November 2014 Forest Partners was able to announce the selection of the bid made by the US concern Plastipak Holdings Inc., which consisted of a price of €360 million for the Supranational Packaging Unit's assets payable net of the liabilities assumed by the acquirer at the completion date. The Court authorized the sale under the agreed terms on 26 January 2015.

Meanwhile, Forest Partners was able to obtain waivers for the guarantees granted by APPE Turkpack and APPE Maroc allowing the sale of these companies, and a Master Agreement was made with Plastipak on 31 March 2015, subject to approval by the European competition authorities, which gave the green light. The transaction was finally completed on 1 July 2015.

Given its characteristics, this whole operation sets a pattern for both Spain and Europe as a whole, not only for the complexity of its structure, which involved assets, shares, properties and rights situated in various different countries, but also for the way in which the sale process was handled and the first-time application of new legislation, enabling the seller to fetch a higher price than it otherwise could have for the APPE Business Unit to the benefit of the Group's creditors.

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