



INSIDE STORY – AUGUST 2016

Schoeller Electronics GmbH, Germany

Schoeller Electronics GmbH, the printed conductor boards manufacture located in Hesse has been sold to a new owner under the supervision of Rechtsanwalt Alexander Reus and his team from anchor and Dr. Jan Markus Plathner from Brinkmann & Partner as custodian. The insolvency ended in a so-called dual track procedure in which Schoeller was acquired by the American investor AIAC. The insolvency procedure was used to refocus the company for the future.

Starting point

Schoeller Electronic GmbH manufactures flexible and rigid multi-layer conductor boards in small and medium sized lots in Wetter close to the city of Marburg. The high-tech products are mainly used in the healthcare industry, aviation and defense. In 2008, shortly before the Lehmann crisis the company had been bought by a private equity investor by way of a carve-out. During the financial crisis and in the following years the company lost considerable turn-over because of changes in the market especially the industrialization and the mass production of conductor boards for the telecommunication and automotive industry. Moreover, Schoeller suffered from the necessity to finance a high purchase price. In the years following the financial crisis the number of employees had been reduced from 700 to 250, however, the realignment was not entirely successful.

Goals of management

In the middle of 2015 Mr. Michael Keuthen was appointed as managing director. His goal was to refocus the company on the production of flexible small and mid-size lots especially of flexible and rigid-flexible conductor boards. He also intended to give the company as well as the employees a more international focus. The investor was prepared to transfer its shares. It became clear that another restructuring of staff was unavoidable which would have been extremely expensive outside of insolvency proceedings because of the age and service periods of the employees. The intention was to put together a younger team while at the same time retaining key-employees.

Negotiations in this regard with the trade unions and the investors failed in the middle of February 2016. As a consequence, management made the decision to file for a so-called protective screen procedure under the German insolvency code. This procedure allows the debtor to stay in possession of the assets, to administer the insolvency with the current management under the supervision of a court-appointed custodian. The exit from such a procedure can either be an insolvency plan prepared by management and adopted by the creditors which usually proposes a debt-restructuring or a sale of the assets to a new entity, similar to a so-called 363-sale under the US bankruptcy code. In this case management decided to follow a dual-track strategy and to prepare an insolvency plan and negotiate an asset deal in parallel. The petition prepared by Alexander Reus from anchor was filed on February 24, 2016 with the insolvency court in Marburg and upon suggestion by management the court appointed the renown insolvency expert Dr. Jan Markus Plathner as custodian. On the same day Alexander Reus joined the management team as managing director to take care of the insolvency-specific tasks during the dual track procedure.

First measures

Firstly, the contracts with customers and vendors were renegotiated and the financing of the insolvency procedure was secured by negotiations with the secured banks. In addition, within the first days payment of the wages could be secured by the so-called insolvency money from the unemployment insurance. The cooperation of several partners from anchor together with several lawyers gave confidence to the employees that the procedure was under control and the same impression was made towards vendors and customers. The operations of the company could continue in an orderly fashion under the insolvency regime which gave the necessary breathing space to negotiate and file an insolvency-plan with the court and to negotiate the asset sale in parallel.

Regarding the asset sale, a lean M&A process was started with Deloitte acting for the Seller and more than 150 possible investors were approached. About 20 NDAs were signed and simultaneously a data room was established and possible investors were introduced to the company and the management team. Six investors made non-binding offers after the opening of the insolvency proceedings on May 1, 2016.

Swift Exit

Because of the production processes at Schoeller Electronics as well as the employment market in Germany a timely solution was crucial. The orders for Schoeller are usually given by multinational customers on a long term basis. The development of the product is conducted in close cooperation between the customers and Schoeller Electronics. For this reason, it was clear that a long process would lead to gaps regarding new orders. On the other hand, it was practically impossible for the customers to withdraw orders on short notice and transfer these to other suppliers. As a consequence, all parties involved hoped that initially there would be no considerable reduction in the day-to-day business. However, competitors were extremely keen to lure qualified employees and to induce costumers to switch from Schoeller.

All parties agreed that after the opening of the proceedings there would only be a time-frame of one to two months to find a solution for the employees, the company and the creditors.

As a consequence, the court agreed to set very short deadlines for the filing of claims and for the necessary court hearings. The creditors were asked to file their claims within three weeks after the opening of the procedure and three weeks later the hearing to report to the creditors and to verify the claims was set for June 17, 2016. The court ordered in addition that the same hearing would serve for the creditors to vote on the insolvency plan. This support from the court and the cooperation of management and the custodian was probably the most important factor for the swift process. There were only three weeks between the filing of the plan and the court hearing, in which the requirements of German insolvency law had to be met. All stakeholders were aware that the court hearing on June 17 would determine if the insolvency plan or the asset deal would go through.

The Exit

During the course of the M&A process two possible investors were identified. Negotiations were let in parallel and were compared to the insolvency plan. Both investors negotiated employee related measures with the works counsel and reached tentative agreements. Finally, the insolvency plan was withdrawn since AIAC, one of the investors for the asset-deal, presented a concept which was better for the company and promised a more sustainable solution. AIAC wants to pursue a buy-and-built strategy which aims to consolidate the high-tech conductor board industry in Germany and Europe by buying more manufacturers - with Schoeller Electronics as the basis for this new group. The asset deal was signed shortly after the creditors meeting and closed in the meantime. The management team will continue to work with the investor in implementing the new strategy. Alexander Reus together with the team from anchor will continue the self-administration after the transfer of the assets and will liquidate the remaining shell of Schoeller Electronics. They will also be in charge of managing the distribution to the secured and unsecured creditors in the shortest time possible in cooperation with the custodian Dr. Jan Markus Plathner.

Conclusion

The procedure shows that insolvency proceedings in Germany under the protective screen and in self administration can be brought to a success in a short period of time for the benefit of creditors and customers. The petition was filed on February 24, 2016 and the exit was achieved on June 16, 2016 in less than four months. Preparation and the cooperation of all stake-holders including the court are crucial, however. Moreover, the German labor law regarding employee participation turned out to be a positive factor because it allowed the negotiation of the employee related measures in cooperation with the works counsel. The well prepared start of the procedure led to a controlled onset and reduced the imponderabilities for staff, customers and suppliers. It shows that a procedure in self administration under the so-called protective screen can, if carried through in the interest of creditors and other stakeholders, be more efficient, faster and more cost effective and predictable than normal insolvency procedures.

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