

THE JUDICIAL REORGANIZATION OF LUPATECH AND THE IMPORTANCE OF INTERNATIONAL COOPERATION

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Lupatech Group filed for its judicial reorganization in Brazil on May 25, 2015, before the 1st Bankruptcy Court of São Paulo/SP¹, and commenced its judicial reorganization proceeding on June 22nd, 2015, a time when the Brazilian Bankruptcy Law (“BBL”) had not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency. The Lupatech Group had foreign creditors (noteholders) as a result of the issuance, in the past, of bonds (later converted to notes) governed by the laws of the State of New York, meaning that they would need other jurisdictions to recognize the Brazilian judicial reorganization proceeding in order to restructure such debt².

With that in mind, the Lupatech Group worked on its judicial reorganization plan in Brazil, which was presented by the company, approved by its creditors, and confirmed by the Brazilian Bankruptcy Court on December 1st, 2016. Following the judicial confirmation of its reorganization plan, the Lupatech Group sought to obtain the recognition of the plan (and of the Brazilian reorganization proceeding) before other jurisdictions, especially to restructure the debt originated from the notes.

With that in mind, the Lupatech Group sought recognition of its plan before the United States Bankruptcy Court Southern District of New York (“New York Bankruptcy Court”), through the filing of a Chapter 15 proceeding – a procedure that, it should be noted, does not require the country in which the main procedure was commenced to have adopted the UNCITRAL Model Law, which, at that point, was exactly the case of Brazil³.

The Chapter 15 case was opened on January 12th, 2018 and was approved by the New York Bankruptcy Court on March 26th, 2018, which recognized Lupatech’s judicial reorganization procedure in Brazil as a valid main

¹ Case files n. 1050924-67.2015.8.26.0100

² On a sidenote, a few years earlier Lupatech had already restructured such bonds in an extrajudicial reorganization proceeding (akin to a pre-packaged reorganization proceeding) which was approved in Brazil and recognized on a Chapter 15 proceeding in New York. The extrajudicial reorganization proceeding (and the subsequent Chapter 15), however, was restricted to the bondholders.

³ It is important to highlight that, since the BBL was modified by the Law n.14.112/21, Brazil incorporated UNCITRAL Model Law almost in its integrity.

proceeding, and authorized its judicial reorganization plan to be enforced in North American territory – which, practically speaking, meant that the noteholders could have their debts restructured in the way that was foreseen in Lupatech’s judicial reorganization plan (approved by its creditors and confirmed before the Brazilian court). It should be noted that, during the Brazilian reorganization procedure, measures were taken to ensure the individualization, participation and voting of those noteholders who wished to do so.

In 2018, the Lupatech Group needed to present an amendment to the reorganization plan that had been approved in Brazil (and recognized in the Chapter 15), whose goal was to change the form of payment of the noteholders. This first amendment to the plan was approved by the creditors and confirmed by the Bankruptcy Court on December 7th, 2018, leading to a new request for recognition and enforceability of such amendment in the United States jurisdiction.

The request was made through the same Chapter 15 procedure that had been previously opened for the recognition of the original judicial reorganization plan, and the first amendment was also approved by the New York Court on January 10th, 2020, recognizing the validity and enforceability of the first amendment in North American territory.

Sometime later, the Lupatech Group presented a second amendment to the previously approved amended judicial reorganization plan, due to new economic difficulties that the Company went through, caused by the COVID Pandemic. This second amendment, amongst other changes, again sought to modify the payment conditions foreseen for the noteholders. The second amendment was also approved and confirmed by the Brazilian Bankruptcy Court, on November 26th, 2020.

Taking into account that the second amendment again changed the payment conditions for the noteholders, the Lupatech Group once again resorted to its Chapter 15 proceeding to obtain the recognition necessary for the second amendment to be considered valid and enforceable in the United States territory. On August 13th, 2021, the recognition was again granted by the New York Bankruptcy Court.

The company is now doing well and ready to close its judicial reorganization in Brazil. Taking into account that all the steps necessary to enforce the restructuring of the notes were taken, on August 16, 2021, the New York Bankruptcy Court issued an order closing Lupatech’s Chapter 15 case due to the conclusion of the issuance of the New Notes and Subscription Warrants.

The Lupatech Group case is considered one of the most successful reorganization cases in Brazil, with the company successfully restructuring its debts and uplifting its business. A big part in that was played by its Chapter 15 procedure and the many decisions granting recognition of the judicial reorganization proceeding, the plan and its amendments. Without such international cooperation, Lupatech would have not been able to restructure its notes (a significant part of its debt), and its successful story could have had another end.

This case also is a great representation of how international cooperation should work – and possibly what the legislator had in mind when designed the concept of international cooperation. Without the cooperation between Lupatech, the Brazilian Bankruptcy Court and the New York Bankruptcy Court, it would have been impossible to help Lupatech, preserve its activities and repay its creditors.

After the latest legislative reform on the end of 2020, Brazil finally incorporated the UNCITRAL Model Law on Cross-Border Insolvency as a chapter in the BBL, thus increasing the possibility of more successful cases of international cooperation between the Brazilian jurisdiction and other countries. We hope this will bring benefits to all the Companies that are under, or eventually will go through, an insolvency proceeding.