Congress Acts to Preserve the Increased Debt Eligibility Threshold of the Small Business Reorganization Act of 2019

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(Updated June 28, 2022)

On February 19, 2020, the Small Business Reorganization Act of 2019 ("*SBRA*") came into effect and Debtors with aggregate liabilities that do not exceed $2,566,050 were provided an opportunity to resolve their outstanding liabilities through a newly streamlined and cost-effective Chapter 11 bankruptcy proceeding. But even before the SBRA could see its first successes (or failures), the Coronavirus Aid, Relieve and Economic Security Act of 2020 ("CARES Act") increased a small business's debt threshold to $7.5 million. This increase expired in March of 2022. With an eye toward the increased headwinds small businesses will be facing in the coming months and years, Congress passed the Bankruptcy Threshold Adjustment and Technical Corrections Act (the "*Corrections Act*") on June 7, 2022.[1] The Act reinstated the $7.5 million debt threshold, which will remain in place for the next two years.

As previously reported, with only 27% of small business debtors that filed Chapter 11 from 2008-2015 successfully confirming a plan of reorganization, the SBRA is a means to provide small businesses with a chance to avoid liquidation. Some of the key provisions of the SBRA are:

- Only the debtor may file a Chapter 11 plan, and no disclosure statement is required (but the SBRA requires that the debtor file its plan within 90 days of the date it files its bankruptcy petition; which may be extended under limited circumstances);
- Initial status conference within 60 days of filing of petition;
- A standing trustee similar to those appointed in Chapter 13 cases will be appointed to oversee each small business case;
- A creditors committee will not be formed (unless the court orders otherwise);
- The Chapter 11 plan can modify the rights of a creditor secured by a security interest in the debtor's principal residence if the loan secured by the residence was not used to acquire the residence but was used in connection with the debtor's business;
- The Court can confirm a debtor's plan without the support of any class of claims as long as the plan does not discriminate unfairly and is deemed to be fair and equitable with respect to each class of claims;
- To be fair and equitable, the Chapter 11 plan must provide that all of the debtor's projected disposable income to be received during the length of the plan will be applied to make payments under the plan for a period of 3 to 5 years;
- Changes the preference law: raises the threshold for non-insider defendants from $13,650 to $25,000. In addition, SBRA adds as a requirement that, before filing the lawsuit to recover a preference, the trustee or debtor in possession must exercise reasonable due diligence and must ". . . take into account a party's known or reasonably knowable affirmative defenses . . . ." (likely resulting in far fewer preference claims).

Bankruptcy filings were up before the CARES Act debt limit increase expired in March. Predictably, in April and May, 2022 filings decreased significantly. The Corrections Act again provides a large number of "small" businesses eligibility to attempt to reorganize under the SBRA; especially those that delayed filing while the Corrections Act maneuvered through Congress.[2]

For More Information

If you would like further information concerning the matters discussed in this article, please contact the Chapman attorney with whom you regularly work.

1 The Act was presented to President Biden on June 9, 2022 for signature.

2 The Corrections Act will would apply retroactively to all cases commenced under Chapter 11 on or after March 27, 2022 that remain pending as of the date of enactment.