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Higher court acknowledges BAMC's warnings regarding inappropriateness of Gorenjska banka acting as the initiator of compulsory settlement against Sava

On 30 July 2015, the BAMC received the ruling of the Higher Court in Ljubljana (document no. Cst 450/2015 in the matter St 2868/2015), granting BAMC's appeal. Namely, BAMC lodged an appeal against the decision initiating compulsory settlement against Sava d.d., where BAMC was bestowed the status of initiator together with a group of proposers, coordinated by Gorenjska banka d.d. At the same time, the Higher Court separated the motion for compulsory settlement of Gorenjska banka and a group of initiators, and the motion for compulsory settlement lodged by the BAMC.

The Higher Court returned the matter to the court of first-instance for a new ruling, however providing the District Court of Ljubljana with clear guidelines – especially with regard to the key facts which must be examined before a final ruling is made. Thus, the court must:

1. determine if the initiator Gorenjska banka and the debtor Sava d.d. are related parties. Namely, this fact was not known to the court when it was adopting its original decision on approving the compulsory settlement filed by initiator Gorenjska banka joined by a group of other initiators. Thus, the court could not take this fact into account when making the initial ruling. If the court of first-instance should establish the existence of such a relation, it is obligated to consider the justified warning of BAMC that bestowing initiator status on Gorenjska banka as a related party to the debtor Sava d.d. would constitute an abuse of process;
2. check which of the two financial restructuring plans would have significantly higher chance of success, regardless of which of the proposing parties (i.e. Gorenjska banka with its group of initiators or BAMC) lodged the motion for compulsory settlement first. When making a new ruling the court of the first-instance should not be guided by legal formalism but rather by the substantive aim of the compulsory settlement – i.e. which of the two initiators has the ability to carry out the financial restructuring of the debtor, whilst ensuring a maximum repayment of creditors and the debtor's solvency.

Throughout the entire process, BAMC has been stating that for business and ethical reasons alone, it opposes any actions whereby the subsidiary Gorenjska banka, and through it the debtor Sava as its single largest shareholder with 44.07% equity stake whereby exercising control over Gorenjska banka, would be in charge of the creditors compulsory settlement against its parent company, Sava. This compulsory settlement would also entail the restructuring of the claims of Gorenjska banka against its parent company Sava, as well as the sale of Gorenjska banka shares as the shares of the subsidiary company of Sava. It would be unacceptable and improper that, Gorenjska banka (and through it the debtor Sava) would be put in charge of setting out the terms and coordinating the process of looking for its own new owner, especially since this is a commercial bank. In this context, it is particularly important that Sava's controlling interest in Gorenjska banka will be put up for sale in the restructuring process. BAMC cannot support such conduct.

BAMC as the largest individual creditor is the only one having the capacity to lead the financial restructuring of the debtor Sava d.d. Any kind of financial restructuring of Sava d.d. is not possible without BAMC participation, and any attempts by other debtors to exclude BAMC from the this insolvency process would be harmful for all the debtors involved, as well as Slovenian taxpayers.

BAMC's goal in the compulsory settlement of Sava d.d. is to prepare a professional well advised restructuring plan, based on which the debtor's assets which will be sold in a transparent and professionally coordinated manner within a reasonable timeframe, whereby the proceeds from the sale are fairly distributed among the creditors based on the principle of equal treatment. Before the sale, the value of the assets will be improved accordingly with the aim to achieve maximum repayment. With this aim in mind, BAMC will ensure Sava d.d.'s short-term and long-term solvency. BAMC's crucial goal is to ensure the Slovenian taxpayers get maximum repayment.

