

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Case No. 15bk13819
)	
Ace Track Co., Ltd.,)	Chapter 15
)	
Debtor in a Foreign Proceeding.)	Judge Timothy A. Barnes

ORDER:

- (I) CLOSING CHAPTER 15 CASE;
(II) RELIEVING COUNSEL FROM REPRESENTATION; AND
(III) CONDITIONING FOREIGN REPRESENTATIVE SOOAN CHO'S ABILITY TO APPEAR IN FUTURE MATTERS BEFORE THIS COURT

This matter comes for consideration on the Order To Appear and Show Cause Why Chapter 15 Case Should Not Be Closed [Dkt. No. 100] (the "Show Cause Order"). The Show Cause Order was heard on January 25, 2023 (the "Show Cause Hearing"), at which hearing Brian L. Shaw and Mark L. Radtke (together, "Counsel"), counsel to Sooan Cho¹ the foreign representative in this matter (the "Foreign Representative"), appeared.

The Show Cause Order required any interested party to appear and to show cause why:

1. The above-captioned proceedings should not be closed;
2. Counsel should not be relieved from their representation; and
3. Mr. Cho should not be barred from acting as a foreign representative in matters before this court without express prior authorization from the undersigned.

At the Show Cause Hearing, while Counsel both appeared, the Foreign Representative did not. The court discussed with Counsel the context of this case and the Show Cause Order and concluded that the each of the provisions of the Show Cause Order set forth above should be ordered by the court. This order is the result of those conclusions. The history set forth in the Show Cause Order is helpful in understanding the reasons for what the court orders today.

The Show Cause Order observed that, following the commencement of certain litigation in the United States against it, Ace Track Co., Ltd. (the "Debtor") sought rehabilitation in Korea under the Rehabilitation and Bankruptcy Act, Case No. 2014hoihap1063 Rehabilitation (the "Korean Proceeding") before the Republic of Korea Changwon District Court bankruptcy division (the "Korean Court"). The Korean Proceeding was commenced at some point in 2014.

¹ The court is aware that some of the foregoing names are outlined in an Anglicized order of surname and given name, and some are not. However, they are as outlined in the filings before the court.

On September 30, 2014, the Korean Court, through Presiding Judge Jeon Dea-Gyu, Judge Kim Seong-Rae and Judge Ji Eun-Hui (collectively, the “Korean Judges”), authorized the Korean Proceeding and authorized Soan Cho to act as the foreign representative for the Debtor in proceedings such as the case at bar.

On April 17, 2015, the Foreign Representative commenced the above-captioned chapter 15 case by filing its Chapter 15 Petition for Recognition of a Foreign Main Proceeding [Dkt. No. 1] (the “Petition”), seeking an order granting recognition of the Korean Proceeding under 11 U.S.C. § 1517. On June 4, 2015, the court conducted a recognition hearing on the Petition and thereafter entered an order recognizing the Korean Proceeding as a foreign main proceeding. Agreed Order Recognizing Foreign Main Proceeding [Dkt. No. 52] (the “Recognition Order”). The court can recall being informed by Counsel at that time that they wished for the case to remain open and available throughout the Korean Proceeding in the event further relief was necessary.

The Show Cause Order further observed that, as is typical of chapter 15 cases, most of the activity in the case here occurred in leading up to and relatively shortly after the entry of the Recognition Order. It noted that a review of the docket in this case revealed nothing of any consequence in the case occurred since 2016. As the Show Cause Order stated, chapter 15 cases have no natural closure point. Therefore, it is up to the petitioner—the Foreign Representative—to request that the case be closed at the appropriate time. No such request has been filed in this case.

What did occur is that on November 1, 2022, more than five years from the entry of the Recognition Order, Counsel sought to withdraw from their representation. Motion to Withdraw Appearances of Brian L. Shaw and Mark L. Radtke [Dkt. No. 96] (the “Motion to Withdraw”). In the Motion to Withdraw, Counsel together state that they have not had “any contact with the Foreign Representative since late 2016 or early 2017,” that neither “has been able to reach the Foreign Representative” and that “they are unaware of any way to contact the Foreign Representative.”

This, of course, is unacceptable.

As the petitioner in this matter, the Foreign Representative bears a responsibility both to his Counsel and to this court. He may not commence an action, obtain what he needs, and leave without caring about his duties in the United States. The Foreign Representative left this court without an active petitioner and Counsel without client direction. Though knowing that the case should be closed, Counsel may not, in the absence of that direction, move to close the case without stepping into an ethical quagmire.

The bankruptcy code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), makes this clear. It states that:

From the time of filing the petition for recognition of a foreign proceeding, the foreign representative shall file with the court *promptly* a notice of change of status concerning—

(1) any substantial change in the status of such foreign proceeding or the status of the foreign representative’s appointment; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

11 U.S.C. § 1518 (emphasis added). The Foreign Representative has failed to fulfill these duties to the court.

As a result of the statements in the Motion to Withdraw and the court's discussion with Mr. Shaw at a hearing on that motion on November 30, 2022, the court therefore deemed it necessary to issue the Show Cause Order.

In preparing the Show Cause Order, the court attempted to locate and communicate directly with the Foreign Representative—as it is permitted to do under section 1525(b) of the Bankruptcy Code—, but was unsuccessful. Pursuant to that same authority, the court also attempted to communicate with the Korean Judges and was equally unsuccessful. With gratitude to Mr. Rim Chiyong of Kim & Chang (an acquaintance of the undersigned through the International Insolvency Institute), the court was successful in contacting Judge Jang Min-seok of the Seoul Bankruptcy Court. Judge Jang, to whom the court is equally grateful, was able to update the court on the status of the Korean Proceeding, as follows:

- The Korean Proceeding commenced on September 30, 2014;
- A rehabilitation plan was approved in the Korean Proceeding on June 1, 2015;
- The Foreign Representative's role as receiver for the Debtor was terminated on December 19, 2016;
- Thereafter the Korean Proceeding was terminated on February 22, 2018; and
- None of the Korean Judges remain actively assigned to the Korean Court.

As a result, the Show Cause Order observed that the above-captioned case has lingered for nearly five years longer than necessary but Counsel, who might in other circumstances be tasked with moving to close the case, were left in the awkward position of having no direction from their client to do so.

The Show Cause Order was entered on December 14, 2022, and the Show Cause Hearing was initially set for January 18, 2023. Due to scheduling issues with the court, that Show Cause Hearing was moved to January 25, 2023. As directed by the court, Counsel noticed the Show Cause Order and the existence of the Show Cause Hearing on January 25, 2023, to all parties in the chapter 15 case including the Foreign Representative at his last known address.

At the Show Cause Hearing, the court discussed with Counsel the court's efforts to communicate with the Foreign Representative and the Korean Court and the results as were set forth in the Show Cause Order. Counsel provided the court with no reason not to enter the relief set forth in the Show Cause Order. No other party appeared.


ACCORDINGLY, THE COURT ORDERS AS FOLLOWS:

1. The Clerk of the Court shall close the above-captioned chapter 15 case;
2. Counsel is relieved from their representation and the Motion to Withdraw shall be granted by separate order concurrent with this order; and
3. Soan Cho is barred from acting as a foreign representative in matters before this court without express prior authorization from the undersigned judge, to be given only after an application for the same from Mr. Cho demonstrating that he understands and will abide by his obligations to this court as petitioner in matters before it.

SO ORDERED.

Dated: January 27, 2023

ENTERED:



Timothy A. Barnes
Judge, United States Bankruptcy Court