decision

AMSTERDAM COURT OF APPEAL

civil law and tax law division

case number : 200.209.198/01

suspension of payments number Amsterdam district court : C/l 3/16/43 S

decision of the three-judge section dated 19 April 2017

in the case of:
CITICORP TRUSTEE COMPANY LTD.,
with its official seat in London, United Kingdom,
appellant,
counsel: B.W.G. van der Velden, S.J. van Calker and W.H.J. van den Wildenberg of Amsterdam,

versus

PORTUGAL TELECOM INTERNATIONAL FINANCE B.V.,
with its official seat in
Amsterdam, respondent,
counsel: R.D. Vriesendorp, R. van den Sigtenhorst and K.M. Sixma of Amsterdam.

1. The proceedings on appeal

The Appellant is hereinafter referred to as Citicorp, the respondent is referred to as PTIF.

By notice of appeal received by the court registry on 10 February 2017, Citicorp appealed against the 2 February 2017 decision of the district court of Amsterdam with the moratorium number listed above, rejecting Citicorp's application, as well as the application of the administrator, seeking the withdrawal of the provisionally granted suspension of payments and simultaneous declaration of bankruptcy of PTIF.

The appeal was handled in the court session of 29 March 2017.
In the session there appeared for Citicorp the lawyers listed above: Van der Velden, Van Calker and Van den Wildenberg. Van der Velden explained the notice of appeal in further detail on the basis of the plea notes submitted to the court of appeal. For PTIF appeared the aforesaid lawyers Vriesendorp, Van den Sigtenhorst and Sixma, as well as three other lawyers, R. van Haeringen, M. Malycha and B. Hoffschulte. Vriesendorp and Van den Sigtenhorst explained the statement of defense to be referred to below in further detail, based on plea notes submitted to the court. Also appearing were the administrator J.L.M. Groenewegen, accompanied by colleagues D.J. Bos and K. van Zwieten, lawyers in Amsterdam, who further explained the administrator's position based on the documents to be referred to hereinafter and by answering the court's questions. For Oi Brasil Holdings Coöperatief U.A. (hereinafter "Oi Coop") in its capacity of debtor of PTIF there appeared V.G.M. Leferink, lawyer in Amsterdam. Further, for Capricorn Capital Ltd., Trinity Investments Designated Activity Company and York Global Finance Fund (hereinafter: Capricorn et al.), who as holder of exchange-listed bond notes issued by PTIF (hereinafter: notes) and also, as members of the International Bondholder Committee, interested parties in the present proceedings, there appeared F. Verhoeven, G.H. Gispen and D.G.J. Heems, lawyers in Amsterdam. The aforesaid lawyers Verhoeven and Gispen also appeared on behalf of Monarch Master Funding 2 (Luxembourg) S.a.r.1. (hereinafter: Monarch) and Citadel Equity Fund Ltd. (hereinafter: Citadel) who, as holders of notes, are interested parties in the present proceedings.

Also appearing was S. van Noorden, a lawyer in Amsterdam, for Golden Tree Asset Management LLP (hereinafter: Golden Tree). There also appeared for Pedro da Cavea Co Ltd.
(hereinafter: Pedro da Cavea) L. Simsom, assisted by P.A. Josephus Jitta, lawyer in Amsterdam.
As attendee for Citco Netherlands in its capacity as creditor of PTIF, there appeared A. Rosielle, a lawyer in Amsterdam.
Finally, for the administrator of Oi Coop there appeared E.J. Schuurs and Y.S. Beerepoot, both lawyers in Amsterdam.

The Court of Appeal has received and read the following documents:
- the notice of appeal, with documents (exhibits 13 to 16)
- the documents from the proceedings in the first instance, including the official report of the session of 12 January 2017
- the administrator's letters of 17 March 2017, with annex, and 27 March 2017, with annex
- PTIF's 24 March 2017 statement of defense with documents (exhibits 1 to 35)
- Capricorn et al.'s 22 March 2017 letter
- PTIF's letters of 17 March, 24 March and 27 March 2017
- position of the administrator, dated 27 March 2017, with documents (exhibits 1 to 12)
- further documents of Citicorp (exhibits 17 to 23, plus exhibits 24 to 26) submitted with letters of 27 and 28 March 2017
- the letter from the administrator of Oi Coop of 28 March 2017;
- Citadel and Monarch's 28 March 2017 letter
- further documents of PTIF (exhibits 36 to 39, plus exhibits 40 to 42) submitted with letters of 28 and 29 March 2017

The lawyers declared that they had reviewed all the aforesaid documents.

2. The oral hearing on appeal

2.1. Prior to the session, the court of appeal ruled on the requests of the parties as set out in the letters from the administrator (17 March 2017), PTIF (17 March 2017) and Capricorn et al. (22 March 2017) on the open or closed nature of the session. These rulings were notified to the interested parties by email of 23 March 2017 and by letter of 24 March 2017, and are as follows. Applying the analogy of Section 220 of the Dutch Bankruptcy Act ("DBA"), the present appeal was handled in chambers. Any party able to demonstrate its status as a creditor may attend the treatment of the appeal. The administrator of Oi Coop may also be present. Finally, basing itself on article 29 of the Dutch Code of Civil Procedure, the court of appeal prohibited any party from making any disclosures concerning anything discussed in chambers or the content of the procedural documents.

2.2. For Capricorn et al., Golden Tree and Pedro da Cavea, documents were submitted that sufficiently demonstrated the capacity entitling them to be present in the handling of the appeal in chambers and that they, each individually, were entitled to be present. In consideration thereof, the court of appeal determined that Capricorn et al., Golden Tree and Pedro da Cavea may be present. The aforesaid lawyer Ms Rosielle may also be present, being that it has been asserted without dispute that her client (Citco) is an interested party.

3. The established facts

3.1. On 30 September 2016, PTIF applied to the district court of Amsterdam with its request for (provisional) suspension of payments. Appended to the application was a draft composition. By decision of 3 October 2016, the district court granted PTIF provisional suspension of payments, appointing the aforesaid J.L.M. Groenewegen as administrator and M.J.E. Geradts as supervisory judge. The district court further ordered that the hearing referred to in Section 218 DBA (meeting of creditors) would not be held and that the consultation of voting on the composition offered would be held on 18 May 2017 at 10:20 AM, in the presence of the supervisory judge.

3.2. PTIF was incorporated on 26 November 1998 as a group company of Portugal Telecom, a Portuguese telecom provider. In mid-2014, Portugal Telecom, including PTIF, was taken over by the Oi Group, the parent company of which is Oi S.A. in Brazil. The companies of the Oi Group make up

one of Brazil's biggest telecom providers. The Oi Group sold Portugal Telecom to Altice Portugal S.A. at the end of 2014. PTIF remained a member of the Oi Group. The shares in Oi S.A. were traded on the São Paulo stock exchange and on the NYSE. The Oi Group is financed largely with loan capital issued on the international capital markets, and comprises two Dutch financing companies: PTIF and Oi Coop. Oi Coop was granted provisional suspension of payments on 9 August 2016, in which J.R. Berkenbosch was appointed administrator and W.F. Korthals Altes was appointed supervisory judge.

3.3. The operational activities of the Oi Group take place in Brazil primarily, but the Oi Group is - or has been - active in Portugal and various African countries as well. The Brazilian Agência Nacional de Telecomunicações (ANATEL) is the regulatory agency for the telecom activities in Brazil (hereinafter ANATEL).

3.4. PTIF is a Dutch financing vehicle within the Oi Group. PTIF's activities consist of (i) the issue and repayment of debts in the international capital markets, primarily in the form of notes and (ii) the relending of funds received via the notes to the Oi Group. No security interests are related to the notes. The notes are also guaranteed by Oi S.A. PTIF itself does not have any operational activities and the noteholders can be paid exclusively out of the income and proceeds generated by the operational companies of the Oi Group. PTIF Coop had issued notes on 20 June 2016 for a total of approximately €3.9 billion. Mid-2015 PTIF relent an amount of approximately €3.8 billion to Oi Coop. Oi Coop, in turn, had relent an amount of approximately €4 billion to Oi S.A. and had relent an amount of approximately €1.6 billion to group company Oi Móvel S.A. (hereinafter Oi Móvel).

3.5. Oi Coop issued two series of bonds, as of 20 June 2016, for a total of €1.9 billion. Under the PTIF loan, it owes a debt to PTIF of approximately €3.8 billion. Oi Coop loaned a total of approximately €5.6 billion to Oi S.A. and Oi Móvel, approximately €4 billion to Oi S.A. in the period of June 2015 through March 2016 and approximately €1.6 billion to Oi Móvel (hereinafter: Oi Móvel) in March 2016 (hereinafter to be referred to collectively as: the Oi Coop transactions).

3.6. On 20 June 2016, PTIF, together with Oi S.A. and five other group companies (Oi Coop, Oi Móvel, TelemarNorte Leste S.A., Copart 4 Participações and Copart 5 Participações S.A., hereinafter referred to collectively as the "RJ Debtors") submitted a request for the opening of a consolidated legal restructuring procedure in Brazil (*recuperação judicial*, hereinafter: the RJ Proceedings). The Brazilian court granted this request on 29 June 2016. The object of the RJ Proceedings is to restructure the Oi Group going concern by means of a plan negotiated with the creditors and approved by said creditors and the court (hereinafter: the RJ Plan), to avoid liquidation. On 5 September 2016 a consolidated (draft) RJ Plan was filed with the district court in Rio de Janeiro in Brazil. By press release of 22 March 2017, Oi S.A. announced that the (draft) RJ Plan would be revised. The changes are indicated in the document attached to that press release. It follows from the original (draft) RJ Plan and the amended (draft) RJ Plan that Oi Coop/PTIF will not receive any payment on their claims against Oi S.A. and Oi Móvel (Oi Coop) and Oi Coop (PTIF).

3.7. Citicorp is a member of the Citibank Group and serves as trustee in a variety of international financing structures, including a €4.4 billion Note Program of PTIF.

3.8. In a letter of 14 March 2017 to the executive board of PTF, the administrator of PTIF wrote the following (insofar as relevant):

"(...) 5. TOPICS TO BE RESOLVED INRELATION TO THE DUTCH SOP During the limited timeframe PTIF - in joint cooperation with me as Administrator - should in any event adequately address and reach consensus on the following topics:
(i) Filing of claims by creditors of PTIF;
(ii) Voting procedure (including - to the extent applicable - request pursuant to art. 225 of the Dutch Bankruptcy Act ("DBA ");
(iii) Finalization of the composition plan to the creditors of PTIF and amendment of Brazilian RJ Plan;
(iv) Independent valuation of the assets of PTIF;
(v) Status of and payment of intercompany claim of PTIF against Coop;

(vi) Report of Administrator to the creditors (pursuant to art. 265 DBA);
(vii) Withdrawal of the filing of 28 November 2016.
Please note that this list is not intended as an exhaustive list of topics and that other topics may need to be addressed as well. (...) "

3.9. The board of PTIF answered the administrator as follows (to the extent relevant) by letter of 17 March 2017:

"(...)We believe that these video conferences are the proper forum for discussing many of the questions that you have posed in your Letter. As discussed during the last video conference on 7 March, our advisors informed you that our advisors intended to address your questions during these future scheduled conferences and any number of additional, appropriate informal discussions with us and/or our advisors as the restructuring process further develops and the Information you require as the Administrator becomes available. (...) "

4. The administrator's opinion

4.1. In the appeal, the administrator presented his perspective on these proceedings and explained it further in the appeal session. In short, the administrator stated as follows. Even after the disputed decision, PTIF continued its conduct in Brazil with respect to the procedural acts (hereinafter also: filings), and on multiple occasions filed procedural documents without the cooperation of the administrator and without giving him sufficient opportunity to present his opinion on the procedural documents to be filed. Because PTIF wanted to adhere to its own, internal deadlines for the filing of procedural documents, the administrator was denied an input on the procedural acts. Despite this, thereafter PTIF filed the procedural documents with the Brazilian court. This conduct is inconsistent with the "working procedure" proposed by PTIF itself and referred to in the disputed decision (paragraph 8.16), which is based on the premise that the administrator must be given sufficient time to form an opinion in regard to the intended filings. As it stands, the administrator must perform his own investigation of what documents were filed in Brazil and whether such filings violated any interests of the creditors of PTIF. PTIF notified the administrator that serious discussions and negotiations were being held with the creditors. These included talks and negotiations with representatives of the International Bondholder Committee (IBC). However, on 15 March 2017, IBC sent a letter to the executive boards of Oi S.A., PTIF and Oi Coop (with copy to the administrator as well as the administrator of Oi Coop) indicating that any such negotiations were in no way constructive. On 24 March 2017 the revised (draft) RJ Plan announced by the Oi Group just two days earlier was rejected as unacceptable by three groups of creditors representing a total of €6 billion in claims. This was announced in the 24 March 2017 press release by the creditors in question (schedule 12 to the written opinion). After waiting too long to make preparations for the vote on the Dutch composition on 18 May 2017, that vote was now at risk of devolving into chaos or simply being cancelled. With all this, PTIF seems to have been deliberately creating a situation that would require an extension of the (provisional) suspension of payments, thereby gaining time in Brazil. The creditors have serious objections to such an extension. By so doing, PTIF is ignoring what in the opinion of the administrator has to happen in the interest of the estate and the creditors of PTIF. If the Oi Group were to succeed in Brazil in getting a majority behind the RJ Plan, then PTIF would receive nothing on its intercompany claim, and this would prejudice the creditors. Since the rendering of the disputed decision, it has become all the more clear that PTIF will do nothing in respect of the intercompany claim and that it intends to ignore the requests of the administrator and his instructions to act otherwise in the interests of the estate. Even now, as time begins to run out for submitting claims and for voting on the Dutch composition, the administrator is still being denied information that he requires.

4.2. All in all, the administrator believes that there are sufficient facts and circumstances known that justify the withdrawal of the (provisional) suspension of payments. Against this background, the administrator therefore supports Citicorp's request on appeal seeking the withdrawal of the suspension of payments and the declaration of bankruptcy of PTIF.

5. The assessment

5.1. In the first instance, both Citicorp and the administrator of PTIF applied to the district court

to withdraw the provisional suspension of payments and, at the same time, declare the bankruptcy of PTIF. The district court rejected the application of the administrator in the same decision being appealed, considering (in essence) that it had been neither asserted nor demonstrated that the creditors would be better off in a situation in which the suspension of payments was withdrawn and PTIF was declared bankrupt, and that there were no grounds for the withdrawal of the suspension of payments (Section 242(1) DBA). Finally, the district court instructed the parties to consider consulting with each other in an effort to coordinate (again) the expectations and to enable the administrator to appropriately discharge his task. Citicorp's application was likewise rejected, because according to the district court that application contained no grounds different to those raised in the administrator's application. Citicorp is appealing this decision and the argumentation on which it is based with its grounds for appeal.

5.2. In the appeal session, Citicorp objected to the admission of PTIF's Exhibit 42, containing its oral argument notes for the oral treatment before the district court in the proceedings against PTIF brought by the administrator. Specifically, Citicorp asserts that these notes were not a part of the proceedings in the first instance against Citicorp and PTIF, and that it only received them on the day of the session so had no opportunity to review them. Be that as it may, in view of the decision to be rendered below Citicorp has no interest in this opposition, so this need not be addressed. PTIF objected to Mr Verhoeven's introduction in the session of the 27 March 2017 letter from Allan S. Briljant, a lawyer practicing in New York. This objection was sustained, and consequently this letter will not be included in the file.

5.3. As its most far-reaching defense on appeal, PTIF argues that Citicorp was not authorized to submit the application and, *a fortiori*, the appeal, because it cannot be considered to be a creditor, in which regard PTIF asserts that Citicorp is not acting in accordance with the valid instructions of the note holders. The Court of Appeal nonetheless observes that according to its own assertions, PTIF acknowledges that it is clear from a 7 November 2016 letter from Citicorp that it is acting in its capacity of trustee in regard to one specific series of bonds issued, while that letter also entails that the instruction to Citicorp originated from note holders holding at least 25% of that series in accordance with the minimum requirement in the Trust Deeds. The Court of Appeal is of the opinion that Citicorp must be considered in that capacity as a creditor competent to file the present application. The scope of the claims of the note holders in question is not otherwise relevant.

5.4. PTIF further argues that PTIF's right to due process and the procedural guarantees as established in the DBA and Article 6 of the European Convention on Human Rights were repeatedly violated by the district court. In substantiation, it puts forward that, in essence, the applications of the administrators with respect to PTIF and Oi Coop should have been (administratively) handled separately, the session should have been held not in the presence of creditors and other third parties (not involved in the application), or at least that either administrator for Oi Coop, or the administrator for Citicorp/the note holders should have been admitted to the session but not both, or at least she should have had to verify the claims of the note holders present, and not all note holders had the same opportunity to be heard, PTIF was not properly called to the session and Citicorp's application should have been handled separately at a later moment. This defense likewise fails. Pursuant to the standing case law of the European Court of Human Rights (ECtHR), the process of the dispensation of justice as a whole must be considered (see, inter alia, ECtHR, 27 October 1993, NJ 1994/534, paragraph 31, and ECtHR, 18 March 1997, NJ 1998/278, paragraph 34). Insofar as there were any violations of Article 6 ECHR, these have meanwhile been remedied. Applying Section 220 DBA by analogy, the Court of Appeal handled the matter in chambers and admitted the creditors that were able to adequately demonstrate their capacity as such. Further, the administrator of Oi Coop was also admitted to the session in chambers in view of the interests he argued and which were deemed relevant. Contrary to what PTIF asserts, all creditors have the opportunity to be present in the session in chambers. It was not disputed that the administrator informed the creditors on 24 March 2017 by means of the Notice to Creditors no. 5, about the Court of Appeal's decision in regard to their attendance of the session.

5.5. Ground for Appeal 1 entails that the disputed decision, insofar as rendered in the proceedings between it and PTIF, is insufficiently reasoned. This ground for appeal fails. In its

decision, the district court considered that Citicorp argued no grounds other than what the administrator based his application on, and that its request can "likewise" not lead to the withdrawal of the provisional suspension of payments. As the Court of Appeal understands it, by this the district court means that its argumentation of the rejection of the grounds raised by the administrator also apply to the identical grounds raised by Citicorp. The fact that Citicorp claims that it "never saw" PTIF's statement of defense does not detract from this.

5.6. The Court of Appeal reads grounds for appeal 2 and 3 in light of the assertions of chapter 2 of the notice of appeal as follows. The proposed RJ Plan, to which PTIF consented, offers Oi S.A. and Oi Móvel the advantage of no longer having to pay Oi Coop, and Oi Coop the advantage of no longer having to pay PTIF. This represents an advantage to group companies Oi S.A. and Oi Móvel. This advantage is to the detriment of Citicorp and other creditors, who will no longer be paid from the revenues of the payments of Oi S.A. and Oi Móvel to Oi Coop, and subsequently of Oi Coop to PTIF. PTIF should not have summarily consented to the proposal to waive its claim against Oi Coop.

5.7. These grounds for appeal succeed. The Court of Appeal is of the opinion that there is an act of management or disposal of PTIF concerning an asset component of the estate, namely PTIF's making of a proposal to waive its claim of €3.8 billion against Oi Coop, for which the consent of the administrator was required (pursuant to Section 228(1) DBA), despite the fact that PTIF never had any substantive discussions on this with the administrator and never requested this consent. This meets the ground for withdrawal of Section 242(1)(3) DBA.

5.8. In ground for appeal 4, Citicorp argues that PTIF actively took steps in Brazil to sideline the administrator in order to prevent him from being able to represent the interests of the creditors of PTIF in the context of the RJ proceedings. It is of course clear that on 28 November 2016 PTIF submitted an application to the Brazilian court seeking (in part) that the Brazilian court declare that the administrator may not intervene in the RJ proceedings without the permission of the Brazilian Superior Court of Justice, and must refrain from any act with the object of impeding steps taken by the executive board of PTIF in regard to the RJ proceedings, upon pain of a penalty of BRL 100,000 (€28,340) per violation. PTIF did not dispute that it submitted such an application to the Brazilian court.

5.9. The Court of Appeal considers this application by PTIF at law not compatible with its obligation to work openly and transparently with the administrator to facilitate adequate administration of the estate. It should be clear that with that application PTIF is attempting to frustrate the authorities of the administrator in regard to the management of the estate, this without consultation with the administrator. As such, over the course of the suspension of payments PTIF engaged in acts in bad faith in the management of the estate, as defined in Section 242(1)(1) DBA.

5.10. The Court of Appeal further observes that the correspondence between the administrator and the executive board of PTIF as presented under 3.8 and 3.9 makes clear that PTIF is not willing to answer the administrator's questions, which the Court of Appeal considers relevant in view of his task of conducting the management of its affairs with the executive board of PTIF (Section 215(2) DBA) and reporting in the meeting on the composition offered (Section 265(1) DBA). While it may be so that the RJ proceedings are a complicated process and that the results cannot be predicted or at least not predicted with any precision, the executive board of PTIF's response (see above under 3.9) gives witness to a lack of real willingness to actually and meaningfully engage with the administrator on the financial implications of the (draft) RJ Plan for the estate. This unwillingness is also evident from the fact that, as has not been disputed, the revised (draft) RJ Plan was submitted in part on the behalf of PTIF, but was not discussed with the administrator. Finally, the response indicating that questions would only be answered *"as the restructuring process further develops and the Information you require as the Administrator becomes available"* gives witness of a passive, wait-and-see approach on the part of the administration of PTIF which was happy to avoid discussing the consequences of the proposed RJ Plan in consultation with the administrator in the interests of the estate, as could have been expected from the executive board, and actively collecting the information necessary to do so and sharing it with the administrator.

5.11. The Court of Appeal recognizes that PTIF, as financing company of the Oi Group, needs to coordinate its acts with the justified interests of the group to which it belongs, but this does not alter the fact that it cannot lose sight of the interests of its own creditors. Consequently, it is not defensible for PTIF (and/or its executive board) to provide the administrator with no information, or at least with insufficient information, leaving him effectively in the dark about the Brazilian composition negotiations and so unable to assess whether accepting the RJ Plan is in the interests of the estate. This entails that the acts and conduct on the part of PTIF/its board described above under 5.8 in contradiction of the instruction of the district court constitute grounds for withdrawal of the suspension of payments under application of Section 242(1)(4) DBA.

5.12. It follows from the foregoing that the requirements for withdrawal given under 1, 3 and 4 of Section 242(1)DBA, are met. PTIF currently argues, in short, the following in an effort to justify the suspension of payments not being withdrawn and the bankruptcy not being declared. The bankruptcy of PTIF offers no advantages to the creditors (no higher repayment) and has disadvantages (disruption of the RJ Plan, bankruptcy of PTIF could have negative tax consequences, and ANATEL might be able to inject itself into the RJ Plan).
The Court of Appeal's consideration of the interests involved leads to the determination that the suspension of payments must be withdrawn and the bankruptcy must be declared. In view of the revised (draft) RJ Plan it is now sufficiently plausible (unlike at the time of the disputed decision; see paragraph 8.7 of that decision) that there will be no payment on PTIF's claim against Oi Coop. Further, the district court's recommendation to PTIF to work with the administrator and provide him with the information necessary to properly perform his task (see paragraph 8.20 of the judgment) has not led to the desired result, at least not adequately, as is evident from the correspondence presented in paragraphs 3.8 and 3.9. The Court of Appeal does not follow PTIF's arguments in this regard. It is not clear on the face of it, without further explanation (which is absent) that a bankruptcy trustee to be appointed will not, on balance, be able to arrange for higher payments to the creditors than what is currently provided for in the (draft) RJ Plan. The alleged negative tax consequences have been disputed in a reasoned manner, and lack specific and transparent substantiation. The assertions that the bankruptcy of PTIF could disrupt the RJ Plan and would enable ANATEL to inject itself into the restructuring process are similarly not substantiated. The fact that according to PTIF, Citicorp only represents a relatively small group of note holders (regardless of whether that is actually true) is not of decisive importance, being that any creditor is entitled to request the withdrawal of the suspension of payments and PTIF has not substantiated why the fact that Citicorp represents a small group of creditors must entail that, contrary to the foregoing considerations, the suspension of payments must not be withdrawn and the bankruptcy must not be declared (for example, if a majority of the creditors (not belonging to the Oi Group) were proponents of maintaining the suspension of payments).

5.13. The final conclusion must be that grounds for appeal 2, 3 and 4 succeed, and the disputed decision will be overturned insofar as pertaining to Citicorp. PTIF's suspension of payments will be withdrawn and PTIF will be declared bankrupt. It further follows from the foregoing that the declaration of bankruptcy shall be main proceedings within the definition of Council Regulation (EC) 1346/2000. In consideration of the provisions of Article 3(1) of that Regulation, the Court of Appeal will open these main proceedings, being that in the court's opinion, failing indications to the contrary, the center of the primary interests of PTIF is located in the Netherlands. Ground for appeal 5 needs no discussion. As the party ruled against, PTIF will be ordered to pay the costs of the proceedings in both instances. The administrator's salary and the other costs incurred in the suspension of payments shall be determined in a decision to be rendered separately by the district court.

6. The decision

The Court:

- overturns the decision of 2 February 2017 of the district court of Amsterdam insofar as pertaining to the application filed by Citicorp and, adjudicating anew:

- withdraws the provisional suspension of payments granted to PTIF

- declares PTIF to be in a state of bankruptcy

- appoints as supervisory judge M.J.E. Geradts, Judge of the district court of Amsterdam, and appoints as bankruptcy trustee J.L.M. Groenewegen, lawyer affiliated with the firm of CMS Derks Star Busmann N.V., Amstelplein 8a, 1096 BC Amsterdam;

- instructs the bankruptcy trustee to open the letters and telegrams addressed to PTIF;

- orders PTIF to pay the cost of the proceedings in both instances, assessed on the part of Citicorp in the first instance at €619 in expenses and €904 in lawyers' fees, and on appeal up to this judgment on the part of Citicorp at €6716 in expenses and €1788 in lawyers' fees;

- understands that the administrator's salary and the other costs incurred in the suspension of payments may be determined in a decision to be rendered separately by the district court;

- declares this decision provisionally enforceable.

This decision is rendered by the three-judge panel of M.L.D. Akkaya, D.J. Oranje and J.W.M. Tromp, and pronounced in open court on 19 April 2017 in the presence of the clerk of court.

[signature] [signature]

Issued as a true copy
Clerk of the Amsterdam Court of Appeal
[signature]

An appeal in cassation may be lodged against this decision within eight days after the day of the judgment by means of an application to be submitted with the court registry of the Supreme Court.