State of Rio de Janeiro Judicial Branch
Court of Justice
Capital District
Office of the 7th Business Court
Av. Erasmo Braga, 115 Lna Central 706CEP: 20020-903 - Centro - Rio de Janeiro - RJ Tel.: 3133 2185 e-mail: cap07vemp@tjrj.jus.br

Pages
Case: 0203711-65.2016.8.19.0001

Electronic Processing

Class/Re: Judicial Recovery - Judicial Recovery

Claimant: OI S.A.
Claimant: TELEMAR NORTE LESTE S.A.
Claimant: OI MÓVEL S.A.
Claimant: COPART 4 PARTICIPAÇÕES S.A.
Claimant: COPART 5 PARTICIPAÇÕES S.A.
Claimant: PORTUGAL TELECOM INTERNATIONAL FINANCE B.V.
Claimant: OI BRASIL HOLDINGS COÖPERATIEF U.A.
Interested Party: FEDERAL ATTORNEY FOR ANATEL
Interested Party: BANCO DO NORDESTE DO BRASIL S.A.
Judicial Administrator: ARNOLDO WALD LAW FIRM
Interested Party: CHINA DEVELOPMENT BANK COORPORATION
Interested Party: GLOBNET CABOS SUBMARINOS S.A.
Interested Party: PRICEWATERHOUSE COOPERS ASSESSORIA EMPRESARIAL
Registered Agent: JOSE MAURO FERNANDES BRAGA JÚNIOR
Interested Party: GOLDENTREE DISTRESSED FUND 2014 LP ET. AL.
Interested Party: PTLS SERVIÇOS DE TECNOLOGIA E ASSESSORIA TÉCNICA LTDA
Interested Party: MAZZINI ADMINISTRAÇÃO LTDA
Interested Party: TIM CELULAR S.A ET. AL.
Interested Party: JEAN LEON MARCEL GRONEWEGEN
Interested Party: THE BANK OF NEW YORK MELLON S.A

On this date, I present the concluded records to the Honourable Judge Juiz Fernando Cesar Ferreira Viana

On January 8, 2018

Decision

This action covers the judicial recovery of the following companies: OI S.A., TELEMAR NORTE LESTE S.A., OI MÓVEL S.A., COPART 4 PARTICIPAÇÕES S.A., COPART 5 PARTICIPAÇÕES S.A., PORTUGAL TELECOM INTERNATIONAL FINANCE B.V. and OI BRASIL HOLDINGS COOPERATIEF U.A OI GROUP.

The companies in recovery require the granting of judicial recovery in the form of the plan approved at the General Meeting of Creditors, with the waiver of the presentation of the certificates referred to in Art. 57 of Law 11.101/2005.

The documents were submitted to the Public Prosecutor's Office, which provided an opinion where, in summary, they stated that the evolution of the wording of the plan, as per approved terms, squanders a series of perplexities previously envisaged in the proposal sent on December 19. In their view, there is no such additional provision of different treatment of creditors, without reasonable criteria and objectives.

However, the Public Prosecutor's Office points out some clauses that should be revised, in their opinion, by the Judicial Branch. More specifically, the Public Prosecutor's Office requires:

- The removal of Clause 4.3.4 of the plan, which provides for the payment terms of non-tax credits held by the National Telecommunications Agency (ANATEL, for the Portuguese original), on the understanding that credits can only be paid under current legislation (Laws 10.522/2002 and 13.494/2017) and the General Meeting of Creditors only "opts for one or more forms of payment already established by law, never innovates in relation to its provisions to benefit the debtor with more lenient conditions;"

- - That the companies under recovery be prohibited from reimbursing expenses incurred by creditors as to receive their credits in the recovery process, by declaring the invalidity the provisions in Section 11 of the attached "Subscription and Commitment Agreement" of the Judicial Recovery Plan, for violating Art. 5, paragraph II, of the Fiscal Responsibility Act;

- That the payment of the fees provided for in the same Annex to all Class III creditors with the same profile (value, origin of credit and efficacy of the investment guarantees), be extended, and that such creditors commit to invest new resources in the company through the subscription of those shares under the same conditions;

- That the governing bodies of the Companies under Recovery that convene a General Meeting of Companies with the purpose of adjusting the by-laws of the companies to the decisions taken in the General Meeting of Creditors, as well as to formally implement the capital increase and the issuance of the relevant common shares.

Finally, the Public Prosecutor's Office considered that the requirement set forth in Art. 57 of the Fiscal Responsibility Act, in view of the settled precedent formed and consecrated on the subject, including in the Superior Court of Justice, can be disregarded.

ANATEL also filed a petition in the case, alleging that "the provisions contained in the Oi Judicial Recovery Plan, especially the claim of instalment payment with the use of judicial deposits as first payment, and discounts on interest and default (Clause 4.3.4)" have no effect on the ANATEL as they are illegal. ANATEL pointed out that the hypotheses of instalment payment of its credits violate Law 10.522/2002 and Public Prosecutor's Office's Decree 780/2017 and the decisions handed down by the Court of Justice, which determined the participation of ANATEL in the General Meeting of Creditors once the legislation related to ANATEL were respected.

My decision is as follows.

I - PLAN FROM NEGOTIATING WITH CREDITORS

For introduction purposes, it is worth remembering that the main objective of a judicial recovery plan is to convince all creditors to adopt certain measures that allow the reorganization of the business activities, with a view to the continuity of the business developed.

Considering that the judicial recovery plan is the key to the success of the judicial recovery, I allowed, at the beginning of the process, the debtors to present the plan to the creditors in the form that best suited them, within the economic and financial reality that only they knew quite well.

However, knowing that negotiating with creditors, especially with those who hold relevant credits, is a necessary measure for a successful judicial recovery (successful in the sense of maximum satisfaction of the creditors as to the receipt of their credits, linked to the uplift of the company itself), I understood that it was necessary for the Judicial Branch to act decisively in the troubled moment through which the Companies under Recovery went.

It is important to recall that the focus of the recovery process should be on the company rather than on the entrepreneur, especially when it comes to companies that carry out essential activities through public concession. In addition, an environment of harmony and independence between creditors and debtors is crucial for performing these negotiations. After several attempts at negotiation and requests for adjournment of the meeting, far beyond the deadline set by the court, I appointed the current Chairman of the OI Group, Mr. Eurico Teles, elected by Oi Group's Executive Board and confirmed by the Board of Directors, as the person responsible to conduct and complete negotiations with the creditors of this recovery.

Mr. Eurico Teles was given the task of submitting the recovery plan by December 12, 2017 regardless of approval by the Board of Directors, which was fulfilled after lengthy negotiations.

The aforementioned decision of the Court was challenged by an interlocutory appeal and by a new petition in the case, in which the shareholder Société Mondiale even requested the postponement of the General Meeting of Creditors scheduled for the 19th. In both first and second instances, the decision was upheld. In accordance with the decision issued by Appellate Judge Monica Maria Costa in the Interlocutory Appeal No. 0072315-31.2017.8.19.0000:

"One cannot fail to recognize that, in the context of a judicial recovery, the principle of the social function of property, as well as that of the company, should be based on the exercise of shareholders' rights, notably provided for in Articles 116 and 154, both under Law of Corporations, which are no longer bound to the interest of the entrepreneur but rather to the company and the social interest inseparable from the uplifting of the viable company, so as to preserve the source of production and the generation of jobs, goods and services, so that their social function and economic activity stimulation may be promoted. (...) The causes listed by the first instance judge for the adoption of measures determined in the conduct of judicial recovery, namely, the existence of evidence of abuse of power, possible interference of potentially conflicted third parties, possible resistance to decisions already taken in the judicial recovery and independent performance of the Directors appointed both in relation to the controlling shareholders and to the creditors, demand a minimum delay of probationary period, which goes beyond the court of solid cognition. On the other hand, there is no evidence that the former Executive Board, which has been responsible for the operational direction of the company throughout this recovery process, is acting in detriment and disruption to the company's social interests. In addition, as mentioned by the aforementioned court, the dilution of the powers of the current Executive Board would not be advisable, and is in accordance with the guidance given by ANATEL. The autonomy and independence of the Executive Board of the debtors should be preserved, even prior to the establishment of the current conflict between creditors and debtors responsible for the operational conduct of the company throughout this recovery process, being able to preserve the public service provision satisfactorily. (...) However, in fact, the divergence among shareholders about the recovery plan being presented at the meeting has caused a notorious riot in the company's management, having prevented the meeting from taking place three times, leading to an unsustainable prolongation of the stay period, in addition to causing widespread dissatisfaction among creditors and increased instability within this recovery."

The General Meeting of Creditors was then held on December 19, 2017 and a proof that a quiet environment was essential for the Executive Board to negotiate with creditors was the suspension requests formulated in the course of the General Meeting of Creditors by relevant creditors of companies under recovery, such as bondholders, public banks and foreign development banks, so that the last negotiations and adjustments were made to the plan.

As highlighted by the opinion of the Public Prosecutor's Office, which expressed their opinion on the rejection of General Meeting of Creditors' request for postponement by the aforementioned shareholder, the improvement of the plan and the dissipation of the impasses in the negotiation can and should be carried out in the course of the General Meeting of Creditors:

"It turns out, however, that its improvement is possible even during the upcoming meeting, and it is the responsibility of all those involved in producing something that can be approved by the court. SUCH INCOMPLETENESS SHOULD NOT BE AN OBSTACLE TO HOLD THE MEETING OF THE ASSEMBLY, BUT IT IS MORE A REASON FOR IT TO INSTALL AND DISSIPATE A SERIES OF TRADING IMPASSES THAT HAVE BEEN EVIDENT OVER THOSE LAST MONTHS. In addition, as is common in processes of this magnitude, there is nothing to prevent, once it has been established, advancement in points of consensus with the suspension for further discussions on the obstacles."

Said and done, as predicted by the Public Prosecutor's Office. Negotiations during the General Meeting of Creditors squandered several deadlocks, and after the suspensions held during the meeting, which lasted about 20 hours (the registration of creditors began at 8:30 am on December 19, and the minutes were signed at 4:45 pm on December 20, as informed by the Trustee), the plan was approved by the overwhelming majority of creditors.

Therefore, the decision that gave the Chairman of the Oi Group the prerogative and the responsibility to negotiate with the creditors a plan that would serve the interests of the community appears to be accurate.

II – MASSIVE ATTENDANCE AND APPROVAL

This recovery, as already pointed out in the case file, brings numbers never before seen in a judicial recovery process. And this gigantism is obviously a reflection of the size of the Companies under Recovery. It is easy to remember that Oi Group is one of the largest business conglomerates in Brazil, with a strong impact on the Brazilian economy and a collector of billionaire securities to the public treasury in taxes.

The Companies under Recovery have more than 70 million users, generate more than 140,000 jobs, and are responsible for telecommunications systems that enable basic activities in the country, such as state elections. In addition, nearly 3,000 municipalities rely exclusively on their network and they are present in nearly the entire national territory. Therefore, due to these constraints, the uplifting of the Group has special relevance in the social, political and economic context of the country.

Therefore, gathering the numerous creditors of the Group spread all over Brazil, and also abroad, in a General Meeting of Creditors was a challenging task that demanded an exquisite performance by the Judicial Administrator, who designed and arranged an event that was fit to receive all interested parties.

As can be seen from the summary of the attendance list attached to the minutes of the General Meeting of Creditors, pasted below for ease of visualization, the Meeting had the massive participation of the creditors of the Companies under Recovery:

CLASS I – LABOUR CREDITORS
Total Creditors: 4,075 / Total attendance: 3,383
83.02% of attending creditors
Total value of creditors: 883,824,793.07 / Total value of attending creditors: 815,561,515.41
92.28% of attending values

CLASS II – SECURITY INTEREST CREDITORS
Total Creditors: 1 / Total attendance: 1
100% of attending creditors
Total value of creditors: 3,326,951,525.30 / Total value of attending creditors: 3,326,951,525.30
100% of attending values

CLASS III – UNSECURED CREDITORS
Total Creditors: 53365 / Total attendance: 31993
59.95% of attending creditors
Total value of creditors: 59,185,781,003.19 / Total value of attending creditors: 58,339,009,803.27
98.57% of attending values

CLASS IV – SMALL BUSINESS
Total Creditors: 1,927 / Total attendance: 994
51.58% Total attendance
Total value of creditors: 50,704,412.75 / Total value of attending creditors: 29,934,973.26 59.04% of attending values

The result of the vote reveals that the creditor's support for the plan was also massive. Let us check the voting report attached by the Judicial Administrator:

Do you approve the judicial recovery plan? Recovery plan:
Total YES: 35,779 / 35,421,646,806.61 (74.6%) de 47,482,481,221.92
Total NO: 141 / 12,060,834,415.31 (25.4%) de 47,482,481,221.92

CLASS I – LABOUR CREDITORS

	Total Votes Head	Total Votes Credit
Total YES:	3,104 (100%)	789,681,310.63 (100%)
Total NO:	0 (0%)	0.00 (0%)

CLASS II – SECURITY INTEREST CREDITORS

	Total Votes Head	Total Votes Credit
Total YES:	1 (100%)	3,326,951,525.30 (100%)
Total NO:	0 (0%)	0.00 (0%)

CLASS III – UNSECURED CREDITORS

Total Votes Head		Total Votes Credit
Total YES:	31,682 (99.56%)	31,275,158,047.64(72.17%)
Total NO:	139 (0.44%)	12,060,755,365.09 (27.83%)

CLASS IV – SMALL BUSINESS

Total Votes Head		Total Votes Credit
Total YES:	992 (99.8%)	29,855,923.04 (99.74%)
Total NO:	2 (0.2%)	79,050.22 (026%)

That is, after more than 20 hours of work, the General Meeting of Creditors was concluded with the expressive approval of the plan, in all classes of creditors.

When voting by head, the plan was approved by the totality of both Class I and Class II creditors, by 99.5% of Class III and by 99.8% of Class IV.

When voting by value was recorded, the plan was approved by the totality of both Class I and Class II creditors, by 72.17% of Class III and by 99.7% of Class IV.

Class III (value) only did not reach a percentage close to 100%, as the others, due to the unfavourable vote of ANATEL, which since the beginning of the process opposes (i) the submission of its credit to the recovery process, while there is already a decision of this Court, confirmed by the Court of Justice, stating that its credit is fully subject to judicial recovery and (ii) the instalment payment of the credit of ANATEL.

As ANATEL pointed out in their statement presented to the Trustee (Annex 34 of the minutes), its Attorney General's Office determined that ANATEL representative should vote against any recovery plan of the Oi Group "due to material and formal legal obstacles, since instalment payment of public credit necessarily occurs under the conditions defined by law by the representatives of the people, in a decision of an administrative authority based on an application formulated by the interested party in the scope of the Public Administration, rather than through a decision of private creditors taken in a General Meeting of Creditors." This claim will be dealt with below.

In this regard, in spite of the dissatisfaction of the ANATEL, THE PLAN WAS ADOPTED IN ALL CLASSES NEARLY UNANIMOUSLY, IN A MEETING THAT MAJORLY ACCEPTED ADHESION AND PARTICIPATION OF CREDITORS.

This result shows that the overwhelming majority of creditors believe that the plan presented will override the companies that play a very important role for the economy of our country and, therefore, yearn for the confirmation of the plan by the Judicial Branch.

As it is known, with an innovative purpose, Law 11.101/2005 brought to our legal world an institute that, unlike the old concordat, seeks to satisfy the largest number of creditors of the debtor company; however, on a wider angle, where it is also aimed the legal protection of the market, which should, whenever possible, be developed under healthy conditions for the benefit of society and economic growth, while preserving the company (Art. 47).

According to Manoel Justino Bezerra Filho, "This law seeks to bring a new vision to the institute of bankruptcy and judicial recovery, which no longer considers the right of creditors to be a paramount factor, as was the case with the previous law, dated 1945, which always favoured the interest of creditors, so that a systematic examination of these articles demonstrates the lack of concern about the maintenance of the company as a productive unit, creating jobs and producing goods and services, that is, as an activity of deep social interest, whose maintenance must be sought whenever possible." (Nova Lei de Recuperação e Falência comentada [Comments on the New Recovery and Bankruptcy Law], 3rd edition, Sao Paulo, RT, 2005, page 129).

On the contrary, the new law prioritized, with emphasis in its Art. 47, the basic principle of judicial recovery, which is the preservation of the company, by creating new mechanisms to achieve this goal, where creditors no longer have a passive position, but rather actively participate in this new procedure.

According to Lídia Valério Marzagão, "the adhesion of creditors to preventive measures to recover companies is of salutary importance, thus taking on a prominent role, one that is relevant in the procedure of recovery of companies, to the extent that they will give express assent, in meeting of creditors, on the conditions proposed in the payment plan submitted by the debtor. The creditor switches from its passive condition, which was imposed on him in the previous law, to having a voice, participating in the process, agreeing or disapproving the conditions contained in the recovery plan presented by the debtor." (A Recuperação Judicial. Comentários à nova lei de recuperação e falência de empresas: doutrina e prática [The Judicial Recovery, Comments on the New Recovery and Bankruptcy Law of Companies: Doctrine and Practice], Coord. Rubens Approbato Machado, Sao Paulo. Quartier Latin, 2005, page 80).

We then have the innovative active participation of the creditors in the recovery project to be executed, while the legislator did not forget to give enthusiastic attention to the preservation of the company as a source of employment and economic resources and of relevant social function.

In the present case, the interests of creditors are clear in approving the plan presented by the debtors, widely discussed and negotiated, and it is not for the court to interfere in the will manifested in the meeting, which is sovereign.

Although there are decisions in the judicial recovery scope, giving the Judiciary Branch control over the decisions of decisions made in meetings, it is certain that such mitigation of the power of decision of the creditors is restricted to preventing violation of the constitutional guarantees and the approval of measures prohibited by law. As a rule, therefore, the decision taken by the en-banc court shall prevail.

In this regard:
SPECIAL APPEAL No. 1.359.311 - SP (2012 / 0046844-8) RAPPORTEUR: JUDGE LUIS FELIPE SALOMÃO APPELLANT: BRAIDO-LEME INDUSTRIA QUIMICA LTDA ATTORNEY: PAULO HOFFMAN ET. AL. APPELLEE: REI FRANGO ABATEDOURO LTDA. ATTORNEY: JÚLIO KAHAN MANDEL ET. AL. ABSTRACT: BUSINESS LAW. JUDICIAL RECOVERY PLAN. APPROVAL IN ASSEMBLY. CONTROL OF LEGALITY. ECONOMIC-FINANCIAL VIABILITY. JUDICIAL CONTROL. IMPRACTICABILITY. 1. Once the legal requirements have been met, the court must grant judicial recovery of the debtor whose plan was approved at the meeting (main section of Article 58 of Law 11.101/2005), and is not allowed to interfere in the aspect of the economic viability of the company, since such an issue is of exclusive appreciation of the meeting. 2. The judge must exercise control of the legality of the recovery plan - which includes the repudiation of fraud and abuse of rights - but not control of its economic viability. In this sense, Statements 44 and 46 of the First Conference on Commercial Law of the Federal Counsel of Justice and the Superior Court of Justice. 3. Special appeal rejected."

The personal dissatisfaction of some creditors is part of the process, but must be subjected to the interest of the en-banc court decision, especially the overwhelming majority who voted to approve the

plan in question. In the present case, even in the face of the magnitude of creditors and interests involved, the plan was able to please nearly everyone, which is rare and must be taken into account by the fact-finder.

III - O CONTROL OF LEGALITY

As I have pointed out in the decision on pages 250.141/250.147, the opinion of jurists and precedents are to the effect that the General Meeting of Creditors is sovereign as regards the content of the judicial recovery plan, while it is incumbent upon the Judicial Branch to control the legality of the creditors' decision, as in any act of expression of the will. At that time, I compared various decisions made by the Superior Court of Justice and by this Court of Justice of the State of Rio de Janeiro about the topic.

Statement 44 of the Council of Federal Justice states precisely that: "Confirmation of the judicial recovery plan approved by the creditors is subject to control of legality by the court."

The Public Prosecutor's Office, acting within its scope of authority, presented an opinion in favour of the confirmation of the approved plan, granting the Judicial Recovery pursuant to the main section of Article 58, nonetheless considering illegal some clauses of the plan, as reported above. Therefore, each of the points raised by the Public Prosecutor's Office should be analysed in detail.

a) ANATEL's credit

As reported, the Public Prosecutor's Office's representative has requested that Clause 4.3.4 of the Judicial Recovery Plan be declared invalid, as it included a form of payment of ANATEL's non-tax credits that was different from the provisions under Law 13.494/2017, which governs this matter.

I, however, understand that such legislation does not make the plan's clause invalid, as the law only establishes an option for the debtor, of either submitting to a program that establishes payment of its debt in instalments or not. It does not create, therefore, a limit on the public credit for the instalment payments to be observed in cases of judicial recovery.

Therefore, this is not in opposition to Law 13.494/17, since the Agency's credit does not override the interest of all creditors, as the credit is subject to a recovery regime set forth in the special law (Judicial Recovery Law). ANATEL must abide by the sovereign decision of the Meeting of Creditors.

The submission of ANATEL's credits to judicial recovery has been exhaustively addressed by this court, which has decided repeatedly that the nature of the Agency's credit does not put it as a priority in relation to the other creditors. Only those creditors expressly set forth in the governing law are to receive privileged and specific treatment.

Therefore, there is no need to revalidate the matter, already decided by this court, which has not been reversed by the superior court.

b) Reimbursement of creditors' expenses

The Public Prosecutor's Office is right to deem invalid the clauses in Section 11 of the Annex entitled Subscription and Commitment Agreement of the Judicial Recovery Plan, which grant the Companies under Recovery the option of reimbursing expenses incurred by creditors seeking to satisfy their credits in the recovery process, as said clauses clearly violate Art. 5, paragraph II, of the Fiscal Responsibility Act.

c) Extension of payment of fees

Likewise, the Public Prosecutor's Office is correct in seeing an unjustified unequal treatment in the payment of fees set forth in the same Annex. As I have previously decided, pursuant to Art. 5, paragraph II, of the Fiscal Responsibility Act, all creditors that are part of Class III and have the same profile (amount, origin of the credit and enforceability of contribution guarantees), which commit to invest new resources in the company by subscribing to those shares under the same conditions, must be guaranteed the payment set forth therein.

d) Calling of the General Meeting of Companies to decide on governance matters and capital increase

Finally, although it is acknowledged that the company's shareholders must duly comply with the measures approved by the General Meeting of Creditors, on pain of being subject to the provisions under Art. 64 of the Fiscal Responsibility Act; and being liable for the losses thus caused to the companies, their creditors and other shareholders, the Public Prosecutor's Office understands that the General Meeting of Companies must be called in order to dully formalize and realise the decisions made by the creditors as regards governance and capital increase.

However, I consider that the pertinent changes, including the company's articles of incorporation, approved under the Judicial Recovery Plan, dispense with the General Meeting of Companies and can be made by the company's directive bodies, based on the authorization granted by the meeting of creditors, as provided for in the Fiscal Responsibility Act, which is a special law as compared to the Law of Corporations on the matter.

Considering the appellate decision transcribed above, in a judicial recovery scenario, the principle of the property's and the company's social function must guide the exercise of shareholders' rights. Such rights are no longer limited to the interest of the entrepreneur, but on the contrary, are subject to the interest of the company and to the social interest. This cannot be severed from the uplifting of the company in a viable manner, so as to preserve it as a productive source of jobs, property and services, furthering its social function and stimulating its economic activity.

To submit the effectiveness of the General Meeting of Creditors' decisions to a General Meeting of Companies in which - it can be sensed - the plan will be breached, such possible breach giving rise to imposition of sanctions to the shareholders and compensation for damages, would be, as we see it, contrary to the principle of preservation of the company, pursuant to Articles 35, paragraph I, 50, paragraphs III and IV, and 64, paragraph VI, of the Fiscal Responsibility Act;

Article 50 of the Judicial Recovery Law contains a special rule regarding the Law of Corporations. Said rule sets forth legitimate legal instruments that aim at restructuring and economically uplifting the company under recovery.

The plan clause addressing governance during the transition phase is in accordance with the abovementioned Article 50 of the Judicial Recovery Law and does not violate the Law of Corporations, as it aims at granting institutional stability to the corporate bodies and managers of the companies under recovery for the purpose of keeping to the judicial recovery plan approved by the creditors' sovereign will.

Therefore, calling a General Meeting of Companies is absolutely unnecessary to make the sovereign decision of the creditors effective. On the contrary, calling a shareholders' meeting, in this case, would reinstall the instability strongly rejected by the Judicial Branch during the entire judicial recovery process.

The will of the creditors must be respected, and the practice of any act - whether by shareholder, member of the board or manager of the company - that aims at impairing the compliance with the recovery plan approved pursuant to the law must be prohibited. It is incumbent upon the Chairman of the Board of Directors, moreover, to immediately and effectively comply with the approved plan, as soon as it is confirmed, ensuring, among others, the provisional conditions of corporate governance and the conversion of the debt into shares, according to the sovereign decision of the creditors.

Apart from that, there is no other clause in the plan that should be questioned. As taught by Luiz Roberto Ayoub and Cássio Cavalli, "as stated regarding the sovereignty of the meeting of creditors, once the plan is approved at the meeting, the judge must grant the recovery, without reserving a great margin for discretion" (in A construção jurisprudencial da recuperação judicial de empresas. Rio de Janeiro. Forense, 2016, page 296).

Thus, I understand that the Judicial Recovery Plan must be confirmed, with the following exceptions:

a) Section 11 of the Annex entitled Subscription and Commitment Agreement of the Judicial Recovery Plan, which grants the Companies under Recovery the option to reimburse expenses incurred by creditors seeking to satisfy their credits in the recovery process must be deemed invalid, as it clearly violates Art. 5, paragraph II, of the Fiscal Responsibility Act;

b) the conditions set forth in Item 5 of the same Annex, which provide for the payment of commitment fee, must be extended to all creditors under the same conditions.

IV - CERTIFICATES UNDER ART. 57 OF THE FISCAL RESPONSIBILITY ACT

As regards the request made by the Companies under Recovery to be granted regardless of the submission of the certificates under Art. 57 of the Fiscal Responsibility Act, some considerations must be made regarding such standard.

Article 57 of the Judicial Recovery Law sets forth: "after the plan approved by the meeting of creditors is inserted in the record or the time set forth in Art. 55 expires without any objection by the creditors, the debtor shall submit tax debt clearance certificates pursuant to Articles 151, 205, 206 of Law 5.172, of October 25, 1966 - Brazilian Tax Code."

On this matter, both the Superior Court of Justice's and the Courts' precedents have confirmed the initial position to the effect that, in view of the lack of public policies granting companies under judicial recovery the possibility of payment of tax liabilities in instalments, in accordance with Art. 68 of Law 11.101/2005, there would be no need to comply with the rule imposed by Art. 57.

However, such precedents have lost their strength with the enactment of Law 13.043/2014, which has regulated the special programme of payment in instalments of tax debts to the Federal Government by companies under judicial recovery. From then on, some decisions were to the effect that the previous positioning should only be observed when the judicial recovery has been filed before the enactment of such law, which was published on November 14, 2014, when it became effective.

In this regard:

"INTERLOCUTORY APPEAL No. 0032818-78.2015.8.19.0000 APPELLANT: PUBLIC PROSECUTOR'S OFFICE APPELLEE: AMIR ENGENHARIA E AUTOMAÇAO LTDA. RAPPORTEUR: APPELLATE JUDGE PLÍNIO PINTO COELHO FILHO INTERLOCUTORY APPEAL. CONFIRMATION OF PLAN OF COMPANY UNDER JUDICIAL RECOVERY. PRECEDENTS THAT HAD BEEN ADMITTING THE CONFIRMATION OF JUDICIAL RECOVERY PLAN WITHOUT SUBMISSION OF THE TAX DEBT CLEARANCE CERTIFICATES DUE TO INEXISTENCE OF SPECIFIC LAW. RECENT ENACTMENT OF LAW 13.043/2014, WHICH PROVIDES FOR A PROGRAMME OF SPECIAL TAX PAYMENT IN INSTALMENTS FOR COMPANIES UNDER JUDICIAL RECOVERY, SO THAT THERE IS NO LONGER ANY REASON FOR DISPENSING WITH THE SUBMISSION OF CLEARANCE CERTIFICATES AS A REQUIREMENT FOR CONFIRMATION OF THE PLAN. THE FEDERAL SUPREME COURT AND THE SUPERIOR COURT OF JUSTICE HAVE HELD A POSITION TO THE EFFECT THAT THE TECHNIQUE OF REASONING "PER RELATIONEM" DOES NOT VIOLATE THE PROVISION UNDER ARTICLE 93, PARAGRAPH IX OF THE BRAZILIAN FEDERAL CONSTITUTION OF 88. THE APPEAL IS GRANTED. "

This is not the case of this judicial recovery, which began in June, 2016. However, still the certificates cannot be required.

As rightly pointed out by the Public Prosecutor's Office, "the time elapsed and the reflection about the precedents established, including by the Superior Court of Justice, have been causing a change in the understanding of the Public Prosecutor's Office of Bankruptcy Estates in the Judicial District of the city of Rio de Janeiro. In fact, the requirement for submission of clearance certificates in the present moment would only postpone the expected conclusion of the controversies arising in this case to a future and uncertain moment in time. It is not an exaggeration to expect that the deterioration of the activities and relations of the companies under recovery with their creditors and investors would be an inevitable result. While the plan is not confirmed, no payment or measure under it would be possible, as the phase of implementation would not commence." (page 9 of the opinion)

It is worth pointing out the position brought to the legal sphere by an appellate decision made by this Court, upon examination of interlocutory appeal no. 0050788-91.2015.8.19.0000, which syllabus states thus:

"BUSINESS LAW. INTERLOCUTORY APPEAL. JUDICIAL RECOVERY. APPEALED DECISION MAKING THE PLAN CONFIRMATION CONDITIONAL UPON SUBMISSION OF TAX DEBT CLEARANCE CERTIFICATES REQUIRED UNDER ART. 57 OF THE FISCAL RESPONSIBILITY ACT, CONSIDERING THE ENACTMENT OF LAW 13.043/2014, WHICH REGULATES THE SPECIAL PROGRAMME FOR PAYMENT OF TAX DEBTS TO THE FEDERAL GOVERNMENT IN INSTALMENTS BY COMPANIES BEING REORGANIZED. UNNECESSARY. OVERRULED. 1. Before the enactment of the abovementioned Law 13.043/2014, precedents of the Superior Court of Justice established that the non-existence of a specific law regarding the rules for payment in instalments of tax and social security debts of companies being reorganized authorizes the confirmation of the plan without the need for submission of clearance certificates required under Art. 57 of the Fiscal Responsibility Act. 2. According to the guidance of the Superior Court of Justice, "Art. 57 of Law 11.101/2005 and Art. 191-A of the Brazilian Tax Code should be interpreted under the light of the new guidelines laid down by the legislator for tax debts, with a view especially to the legal provision for payment of tax liability in instalments for the benefit of the company being reorganized, which is cause for the suspension of the tax requirement, pursuant to Art. 151, paragraph VI, of the Brazilian Tax Code." Also, "any failure to comply with the provisions under Art. 57 of the Fiscal Responsibility Act can only be attributed, at least immediately and for the time being, to the lack of a specific legislation regulating the payment in instalments within judicial recovery. It should not be incumbent on the taxpayer to submit tax debt clearance certificates in order to be granted judicial recovery while the legislator is silent about the matter." (Special Appeal 1187404/MT, Rapporteur Luis Felipe Salomão, Special Court, decision on June 19, 2013).3. In the present case, the judicial recovery

was filed on May 20, 2013, therefore before the enactment of Law 13.043/2014, which became effective only on November 13, 2014. Thus, as there was no law regulating the special programme for payment in instalments when the action was filed, the dispute should be solved based on the principle of tempus regit actum, without disregard for the principle of legal certainty. Therefore, for this reason, Art. 57 of the Fiscal Responsibility Act cannot be an obstacle to the confirmation of the judicial recovery plan, in line with the Superior Court's understanding. 4. Moreover, the payment in instalments provided for by Law 13.043/2014 only applies to federal debts, and therefore legislation is still silent as regards state and municipal tax debts. Therefore, it is illogical, from a reasonable point of view, that only the federal tax debt clearance certificate is relevant for the purpose of confirming the recovery plan, to the detriment of the state and municipal tax debts, as if there were an unthinkable hierarchy in the payment of taxes. Therefore, the special payment in instalments set forth by Law 13.043/2014, due to its incompleteness, does not satisfy the requirement under Art. 57 of the Fiscal Responsibility Act, and therefore the prevailing Superior Court precedent regarding the matter must be upheld so as to allow the exemption of the clearance certificates for the purpose of confirming the recovery plan. 5. It is important to acknowledge that, in many cases, Articles 47 and 57 of the Fiscal Responsibility Act are irreconcilable, making the judicial recovery processes impossible and, therefore, making impossible the uplifting of the company that faces financial difficulties. Although the confirmation of the recovery plan is conditioned upon the submission of tax debt clearance certificates (Art. 57, Fiscal Responsibility Act and Art. 191-A, CTN), the principle of preservation of the company under Article 47 of the recovery law must take prevalence, since the main purpose is to protect the productive source of jobs, the company's social function and the stimulus to the economic activity. 6. The provisions under the Fiscal Responsibility Act must be applied harmonically and systematically, and not in isolation. Article 47 states categorically its aim, which is to make the company viable, with a real chance of recovery, so as to preserve it as a productive source of jobs, furthering its social function and stimulating its economic activity. Article 57, in turn, only provides for the formal requirement of ensuring the tax payment, giving priority to it. Both interests (preservation of the company vs. tax payment) are in favour of the collectivity. The former aims at keeping jobs and the productive activity, while the latter considers that the taxes paid are presumably converted to the common good, so as to meet society's demands. 7. In the case at hand, based on the principles of reasonability and proportionality, the protection of the most relevant legal and social interest, which is the company's preservation, must prevail, since pursuant to Art. 5 of the introductory law to the Standards of Brazilian Law, "to apply the law, the judge will serve the social purposes to which the law is connected as well as the requirements of the common good." In this context, protection of jobs, social value of work, preservation of the company with potential to recover and contribute to the development of the economy should prevail, also continuing the payment of taxes, which would cease should the company become bankrupt. Logically, it can be stated that the continuity of a viable company also serves the interest of the tax authority of collecting taxes, and therefore serves the interest of the collectivity. 8. Opinion of jurists and precedents on the matter. 9. The appeal is granted, exempting the company from submitting tax debt clearance certificates as a condition for the confirmation of the Judicial Recovery Plan, even after the enactment of Law 13.043/2014 (Appellate Judge Luciano Saboia Rinaldi)"

This position is supported not only by the highest principle of the specific standard being analysed - of company preservation, under Art. 47 -, but by the conviction that, while practical and efficient rules for granting effective measures for the companies facing economic and financial difficulties to satisfactorily pay their tax liabilities - in any government level - are not enacted, the companies facing crises cannot be imposed a nearly impossible requirement.

Law 13.043/2014 causes perplexity, for in addition to only mentioning tax credits due to the Federal Government, it provides for measures for the payment of debts in instalments that are more detrimental to companies being reorganized than to those that are supposedly financially and economically healthy.

This is why part of the opinion of jurists raises questions regarding the unconstitutionality of said Law, in view of two basic points. First, as regards the requirement for the taxpayer to include all of its tax debts in the programme for payment in instalments, whether they are registered as an overdue tax

liability or not, even if they are being discussed in court. Second, in the need for express and irrevocable waive of any opposition, action or appeal, and cumulatively, of any allegations of right on which the administrative and judicial disputes are based.

Such requirements, in fact, seem to go against the uncontested Federal Supreme Court precedents to the effect that political sanctions cannot be used to collect taxes.

In general, with the enactment of Law 13.043/2014, the mitigation under the established precedents can no longer be understood as absolute, and therefore the rule under Article 57 must be interpreted as necessary only in cases where it does not harm the main principles of recovery: preservation and social function of the company.

We should not forget that the tax liabilities are not affected by the Judicial Recovery and are not even subject to it, which means that the requirement for submission of certificates of no overdue tax liability or certificates of suspended tax liabilities by a company being reorganized is in a way contrary to the highest purpose of the Law.

Therefore, notwithstanding the enactment of Law 13.043/2014, which in addition to covering only Federal Government tax debts does not serve, in this case, the principles that guide the Fiscal Responsibility Act, the highest purpose of the process of Judicial Recovery must continue to be given priority, namely the preservation of the company for its social function, its natural capacity of generating wealth, jobs and of paying taxes.

In fact, in line with the position stated in the appellate decision mentioned above, and with the opinion of the Public Prosecutor's Office, I dismiss the enforceability of the submission by the debtors of the tax clearance certificates required under Art. 57 of Law 11.101/2005.

V - GRANTING OF JUDICIAL RECOVERY

Considering the approval of the plan by a significant majority of the creditors of the companies under recovery, in the General Meeting of Creditors held on December 19, 2017, pending the approval of the Judicial Recovery Plan by the Judicial Branch, and after examining the aspects of legality of the plan, there remains to the Recovery Court to confirm the sovereign decision of the creditors.

The approval decision should be immediate, not only by virtue of the law, but because thousands of creditors will have their credit satisfied faster. It is noteworthy that the creditors who mediated with the Oi Group, which are more than 30,000, will receive the residual balance in up to ten days after approval; and the labour creditors will begin to receive within 180 days from the confirmation. Let us check Clauses 4.4.1 and 4.1 of the approved plan:

The beginning of the deadline for creditors to choose between credit payment options in the platform of Companies under Recovery also depends on plan approval, as seen on Clause 4.5 of the plan.

Therefore, in view of the foregoing, and in compliance with the legal requirements, I GRANT THE JUDICIAL RECOVERY AND CONFIRM THE JUDICIAL RECOVERY PLAN presented by OI SA, TELEMAR NORTE LESTE S.A., OI MÓVEL S.A., COPART 4 PARTICIPAÇÕES S.A., COPART 5 PARTICIPAÇÕES S.A., PORTUGAL TELECOM INTERNATIONAL FINANCE BV and OI BRASIL HOLDINGS COÖPERATIEF U.A., with the following constraints:

a) Section 11 of the Annex (called the Subscription and Commitment Agreement of the Judicial Recovery Plan) must be considered invalid as regards the ability of the Companies under Recovery to reimburse expenses incurred by creditors in the search for satisfaction of their credits;

b) The conditions set forth in Item 5 of the same Annex, which provide for the payment of commitment fee, shall apply to all creditors under the same conditions.

In accordance with the above reasoning, and in accordance with Art. 50 of the Fiscal Responsibility Act, I clarify that the sovereign will of creditors must be fully respected, and even the undertaking of any act - be it by a shareholder, a member of the board or a manager of the company -, that is intended to prevent the fulfilment of the recovery plan approved by the law. The Chairman of the Board of Directors is to immediately and effectively comply with the approved plan, as soon as it is confirmed, ensuring, among others, the provisional conditions of corporate governance and the conversion of debt into shares, according to the sovereign statement of the creditors.

I dismiss the certificates required on Art. 57 of the Fiscal Responsibility Act, per reasons given above.

Let it be published, and let the Public Prosecutor's Office and other bodies with the same prerogative be aware.

Summoned and complied with.

Rio de Janeiro, January 8, 2018.

Fernando Cesar Ferreira Viana – Chief Judge

Records received from the Honourable Judge

Fernando Cesar Ferreira Viana

On ____/___/____

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