

Private Law Division

bankruptcy number C/13/17/164-F

Decision 11 June 2018

confirmation of composition

In view of the draft composition filed with the clerk of this district court on 10 April 2018, offered by:

the private company with limited liability

PORTUGAL TELECOM INTERNATIONAL FINANCE B.V.,

with its official seat in Amsterdam,

registered with the Chamber of Commerce under file number 34108060.

with its official seat in 1043 BW Amsterdam, Naritaweg 165,

- hereinafter referred to as: the bankrupt company,

which was declared bankrupt in the ruling given by the Amsterdam Court of Appeal on 19 April 2017

The district court has taken note of the official record of the consultation and voting on the draft of the composition offered on 1 June 2018, the result of which vote was that the composition was approved.

The handling of the confirmation of the aforementioned composition took place at a public hearing held by this district court on 11 June 2018.

The following parties appeared at the hearing:

- *meester* J.L.M. Groenewegen, bankruptcy trustee, accompanied by *meester* M.N. de Groot, *meester* D.J. Bos, colleagues;
- *meester* A.E. de Vos, supervisory judge;
- A.R.R. Filho, indirect director of the bankrupt company;
- *meester* R.D. Vriesendorp, *meester* O. Salah, *meester* C.D. Veldman, *meester* T.L. Ticheloven, on behalf of the bankrupt company;
- *meester* V.R. Vroom, *meester* L.J.J. Kerstens and *meester* H. Zourakhti, on behalf of Oi S.A.;
- *meester* L.P. Kortmann and *meester* E.J. Oppedijk van Veen, on behalf of Oi Brasil Holdings Coöperatief U.A.;
- *meester* J.R. Berkenbosch, bankruptcy trustee in the bankruptcy of Oi Brasil Holdings Coöperatief U.A., accompanied by *meester* E.J. Schuurs and *meester* S.C. Pepels, colleagues;
- *meester* S. Savi (Barbosa Müssnich Aragao) and *meester* I. Wallace (White & Case), on behalf of Oi S.A. and the bankrupt company;
- *meester* M.H.R.N.Y. Cordewener and *meester* B.A. Keizers, on behalf of The Bank of New York Mellon;
- *meester* F. Verhoeven and *meester* K.H. Burg, on behalf of Capricorn Capital Ltd., CVI EMCVF Lux Securities Trading S.A.R.L., EOC Lux Securities S.A.R.L. Lex Claims L.L.C. and Syzygy Capital Management Ltd., noteholders;
- *meester* S.R.F. Aarts, observer;
- H. van den Berg, English-language interpreter;
- F. Salomons, Portuguese-language interpreter;
- *Meester* W.F. Korthals Altes, supervisory judge in the bankruptcy of Oi Brasil Holdings Coöperatief U.A.

The supervisory judge issued a written recommendation at the hearing of 11 June 2018.

At the hearing, the bankruptcy trustee maintained his earlier advice.

On behalf of the bankrupt company, *meester* Vriesendorp requested that the district court confirm the approved composition, as there are no grounds for its refusal. The composition provides for the situation that would arise were the RJ Plan in Brazil to fall through.

At the hearing, the district court established that no creditors had appeared who object to the desirability of confirmation.

In respect of the grounds for refusal stated in Article 153 (1) and (2) of the Dutch Bankruptcy Act (BA), namely (1) that the assets of the estate substantially exceed the sum stipulated in the composition and (2) that the compliance with the composition has not been sufficiently assured, the district court finds as follows.

Both grounds assume a composition in which the creditor cannot pay its debts in full but can in part, and a sum of money is available for partial lump-sum payment of the claims. In this case, that is not the situation for a large portion of the creditors. There is no direct, partial payment of the claims; what the composition offers depends on the nature of the creditor, the claim of said creditor and the choice said creditor makes. In essence, this comes down to deferred payment of the claim, or partial conversion of the claim into risk-bearing capital and partially into a new loan. The Bankruptcy Act does not rule out such agreements between creditors and the debtor. Given that the grounds for refusal stated in Article 153(2)(1) and (2) BA were written for situations where an amount is available as a lump sum for direct partial payment of the creditors and the composition has a different purpose, in this case it concerns the application of the objective of these provisions when evaluating the confirmation.

The objective of Article 153(2)(1) BA is that one must evaluate whether the offered composition is a realistic offer given the state of the group of companies to which the bankrupt company belongs. As the bankruptcy trustee and the supervisory judge have explained, information is lacking for them to be able to fully evaluate this. The same goes for the district court. However, the district court does see indications that this does concern a realistic offer. In the first place, this ensues from the Ernst & Young report of 23 March 2018 (Annex G to the composition), indicating that, according to Ernst & Young, restructuring on the basis of the composition is more favourable for the creditors than a liquidation would be.

A second indication is that a very large majority of the creditors has approved the composition. Given the substantial financial interests in this case, it can be assumed that they will have only done this after thorough examination. In any event, it cannot be said that it has become evident that the assets of the estate considerably exceed what is stipulated in the composition.

As for the question of whether compliance with the composition has been sufficiently assured (Art. 153(2)(2) BA), this requirement was also written on the basis of the situation that a partial payment will be made in one lump sum. Since, in this case, a large proportion of the creditors agree to deferred payment and/or to conversion into risk-bearing capital and/or new loans, the district court does not need to examine whether the compliance is assured. After all, the agreements made in the composition already entail that compliance is uncertain and the ultimate yield of what will be received is not determined in advance, but is partly contingent on the future profitability of the conglomerate of companies to which the bankrupt company belongs. Insofar as the composition provides for direct payment, it has not become evident that the funds required for this are not available. Insofar as the composition provides for the conversion of loans into risk-bearing capital and/or new loans, there is no indication that the agreed conversions will not occur.

The foregoing means that the grounds for refusal stated in Article 153(2)(1) and (2) BA are not applicable.

The district court also finds that the grounds for refusal of confirmation in Article 153(2)(3) and (4) BA are not present and likewise sees no reason to refuse the confirmation of its own motion. The composition will consequently be confirmed.

The district court will determine the bankruptcy trustee's remuneration in a separate decision. The court fees payable for filing the composition will be determined.

DECISION

The court:

- confirms the aforementioned composition;
- determines that the remuneration of the bankruptcy trustee, *meester* J.L.M. Groenewegen, will be determined in a separate decision;
- determines the court fees payable for filing the composition at € 617;
- charges this amount to the bankrupt company.

This decision was given by *meester* R.H.C. Jongeneel, W.M. de Vries and P. Vrugt and was pronounced in open court on 11 June 2018.