Court of Justice of the Judicial District of Lisbon
Lisbon Commercial Court - Judge 2
Av. D. João II, Nº1.08.01 Edificio G
1990-097 Lisbon
Tel.: 218360080 Fax: 211545180 Mail: lisboa.comercio@tribunais.org.pt

Proc. no. 11045/18.4T8LSB
Special Procedure Action
378227777

CONCLUSION - 07-11-2018

(Electronic document signed by Auxiliary Clerk Nicole de Oliveira Azevedo)

=CLS=

I

Oi S.A. – In Court-Supervised Reorganization, a company constituted and existing in Brazil, with principal place of business at Rua do Lavradio, 71, 2.º andar, Centro, in the City and State of Rio de Janeiro, CEP 20230-070, Brazil, registered with the CNPJ/MF under no. 76.535.764/0001-43;

Telemar Norte Leste, S.A. – In Court-Supervised Reorganization, a company constituted and existing in Brazil, with principal place of business at Rua do Lavradio, 71, 2.º andar, Centro, in the City and State of Rio de Janeiro, CEP 20230-070, Brazil, registered with the CNPJ/MF under no. 33.000.118/0001-79;

Oi Móvel, S.A. – In Court-Supervised Reorganization, a company constituted and existing in Brazil, with principal place of business at Setor Comercial Norte Quadra 03 BL A, Ed. Telefónica Terreo Parte 2, SCN, Brasília, DF, 71.215-000, Brasil, registered with the CNPJ/MF under no. 05.423.963/0001-11;

Copart 4 Participações, S.A. – In Court-Supervised Reorganization, a company constituted and existing in Brazil, with principal place of business at Rua General Polidoro, 99, 4.º andar, parte, Botafogo, Rio de Janeiro, CEP 2280-004, Brazil, registered with the CNPJ/MF under no. 12.253.691/0001-14;

Copart 5 Participações, S.A. – In Court-Supervised Reorganization, a company constituted and existing in Brazil, with principal place of business at Rua General Polidoro, 99, 5.º andar, parte, Botafogo, Rio de Janeiro, CEP 2280-004, no

Brasil, registered with the CNPJ/MF under no. 12.278.083/0001-64, require, under the provisions of Arts. 288 and 290 of the Code of Corporate Insolvency and Recovery (CIRE), acknowledge of the **Court-Supervised Reorganization Plan ratified in Brazil under the terms of the Legal Procedure of Reorganization already acknowledged in Portugal.**

Claim of respective factuality, the conclusion is for the petition of the acknowledgment, in Portugal, of the Decision of Homologation of the Organization Plan in the context of Court-Supervised Reorganization of Oi, S.A. – In Court-Supervised Reorganization, of Oi Móvel, S.A. – In Court-Supervised Reorganization, of Copart 4 Participações, S.A. – In Court-Supervised Reorganization, of Copart 5 Participações, S.A. – In Court-Supervised Reorganization, and of Telemar Norte Leste, S.A. - In Court-Supervised Reorganization, with the respective purposes, as duly explained in the certificate attached to the records, equally determining its publication, to wit:

"*V - CONCESSION OF COURT-SUPERVISED REORGANIZATION - In light of the foregoing, considering the approval of the plan by the expressive majority of debtor's creditors, in the General Meeting held on 12/19/2017, which waited the homologation of the PRJ by the Judiciary Power, and once the aspects of legality of the plan are examined, the Reorganization Court shall ratify by homologation the sovereign decision of the creditors. The decision of homologation must be immediate not only by virtue of the law, but because thousand creditors will have their credits fulfilled more rapidly, remembering that creditors who mediated Group 01, which are more than 30 thousand, will receive the residual balance within up to 10 days from the homologation; and labor creditors will start to receive within 180 days from the homologation. Clauses 4.4.1 and 4.1 of the approved plan are transcribed below: The initial term for creditors to choose between the payment options of their credits in the Debtor's platform will also depend on the homologation of the plan, as set forth in*

clause 4.5 of the plan. Therefore, in light of the foregoing, observing the legal requirements, I HEREBY GRANT THE COURT-SUPERVISED REORGANIZATION and SANCTION THE COURT-SUPERVISED ORGANIZATION PLAN presented by 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 av, and OI BRASIL HOLDINGS COOPERATIEF U.A., with the following restrictions: a) invalidation of Section 11 of the Attachment (named Subscription and Commitment Agreement of the PRJ), regarding the faculty granted to the Debtor to reimburse expenses incurred by the creditors while seeking the fulfillment of their credits; b) that the conditions set forth in item 5 of such Attachment, which establishes the payment of a commitment fee, shall be extended to all creditors in the same conditions. Under the terms of the groundings above, and observing Art. 50 of the LRF, it is worthwhile noting that the sovereign will of the creditors must be fully observed, prohibiting the practice of any action – either by stockholder, board member, or officer of the company – with the purpose of impeding the observance of the reorganization plan approved by the law. The Chairman of the Board of Directors shall immediately and effectively enforce the approved plan as soon as it is approved, assuring, among other, the conditions related to corporate governance and conversion of debt into shares, at the exclusive discretion of the creditors. As provided for above, the certificates set forth by Art. 57 of the LRF are hereby exempted. The present shall be published and notified to the Federal Prosecution Office and other agencies with the same prerogative. Let the present be summoned and enforced."

For that matter, claim is made as follows:

- On June 20, 2016, Oi, in conjunction with a few of its direct or indirect subsidiaries, among them Oi Móvel, Telemar, Copart 4, Copart 5, Portugal Telecom International Finance B.V. – In Court-Supervised Reorganization ("PTIF") and OI Brasil Holdings Cooperatief U.A. – In Court-Supervised Reorganization requested a

Court-Supervised Reorganization Procedure (hereinafter "PRJ"), allocated in the 7th Corporate Court of the Judicial District of the Capital of the State of Rio de Janeiro, filed and carried under no. 0203711-65.2016.8.19.0001.

- In view of the acknowledgment of the PRJ in Portugal, Oi and Telemar and, in a second instance, Oi Móvel, unfolded a series of legal procedures suitable for the effect, based on the provisions of Articles 288 and 290 of the CIRE, requesting such consent under the procedures given no. 28111/16.3T8LSB, carried by the Lisbon Commercial Court – Judge 3, and no. 16421/17.7T8LSB, carried by the Lisbon Commercial Court – Judge 5, respectively.
- In Brazil, the PRJ is governed by Act no. 11.101, dated February 9, 2005, and has as its objective to allow the recovery of company(ies) in economic-financial crises, aiming the "preservation of the company, source of employment and wealth to society as a whole", similar to the Special Revitalization Procedure ("PER"), set forth in Arts.17.-A to 17.-I of our CIRE.
- the Reorganization Plan was approved in Creditors Meeting called for the matter on December 19 and 20, 2017.
- the Court-Supervised Reorganization Plan was ratified by the decision delivered on January 8, 2018.
- under the prejudice of voiding the decision of acknowledgment of the PRJ, twice delivered in the Lisbon Commercial Court, imposition is now made to acknowledge the Reorganization Plan ratified by the 7th Corporate Court of the Judicial District of the Capital of the State of Rio de Janeiro.
- in the logic of the legal regime in force, the fulfillment of the requirements of acknowledgment in relation to the PRJ, confirmed twice by the Court, resorts to the acknowledgment of the Reorganization plan ratified under the scope of the PRJ already acknowledged.

- although the Reorganization Plan is the same to the seven companies of the Oi Group, including the Dutch Debtors, Dutch companies, in Holland it is necessary to approve composition plans in the same format of the Reorganization Plan in relation to the Dutch Debtors, being scheduled to voting of the respective reorganization plans by the respective creditors, before the competent Dutch courts, on June 01, 2018.

- the decision delivered by the Dutch courts, confirming the composition plans after approval, will be covered by the provisions of Art. 32 of Regulation (EU) 2015/848, dated May 20, 2015, related to insolvency procedures, acknowledged in Portugal without further formalities and performed under the terms of Arts. 39 to 44 and 47 to 57 of Regulation (UE) no. 1215/2012.

- without requirement of the Portuguese legislator that the Homologation Decision whose acknowledgment is not even a non-appealable decision, nor lacking a procedure of acknowledgment of any summoning, the Petitioners understand that all requirements legally specified for the validity of their request are fulfilled.

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Aware of the request, Pharol SGPS, S.A., formerly known as Portugal Telecom SGPS, S.A., Open Company, defended the invalidity of the request based on the verification of the dilatory exception of disregard of the necessary joinder, with all legal consequences and, subsidiarity, try the action as fully invalid, not proven, without acknowledgment or publication of the Court-Supervised Reorganization Plan, based on the *de facto* and *de jure* claims listed above and considering the provisions of Arts. 288 and 290, both of the CIRE.

Notwithstanding the pertinence of the arguments presented in the request, especially regarding the violation of the Fundamental Principles of the Portuguese Legal Order, its severance has been determined because the records do not include summoning and intervention of eventual interested parties as set forth in the court-supervised reorganization plan.

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Notified to state their opinion on the competent jurisdiction of this court due to hierarchy, the Petitioner resorted to the notes of Luís Carvalho Fernandes and João Labareda on the provisions of Art. 293 of CIRE (as per "Código da Insolvência e da Recuperação de Empresas Anotado", Quid Juris, 2008, page 896), to conclude that such provision is only valid in case of need of the compulsive execution in Portugal of a foreign decision.

In, in the path of such authors, note is made in the sense of attributing to no. 2 of Art. 288., in the section applicable to the measures of conservation adopted after the determination of insolvency and, in general, to any decision made aiming at the execution of the procedure (foreign, worth stressing), the regime of acknowledgment of the declaratory decision, as per its no. 1 and complemented by Art. 290 of the CIRE.

The Petitioners have also informed the following in the records:

- In the decision delivered by the Judge of the 7th Corporate Court of the Judicial District of the Capital of the State of Rio de Janeiro, delivered on June 26, 2018, reference is made to the reorganization plan whose decision of homologation is sought to be acknowledged and published in these records, the vast majority of creditors gathered in General Creditors Meeting (AGC) approved such plan, which has been duly ratified, not delivered until the decision in second instance modifying or suspending the homologation decision, in part or as a whole;
- as per decision delivered in Nova, full effect and validity was granted in the United States to the reorganization plan approved and ratified under the scope of the court-supervised reorganization procedure of the Petitioners hereto.

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In view of the elements brought to the records, and the expertise of the court in the exercise of its attributions, of the procedures under the terms under nos.

28111/16.3T8LSB and 16421/17.7T8LSB, all conditions for the delivery of a fair and contentious decision on the matter are present.

II

The Court is competent as a result of the nationality, matter, hierarchy[1], and territory.

The procedure is specific and free of any nullities that may invalidate it.

The Petitioners have legal personality and capacity, have *ad causam* legitimacy, and are duly represented by their counsels.

There are no dilatory exceptions, nullities, or prior issues that should be known.

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The *thema decidendum* of these records consist of knowing if the regime of the insolvency procedure set forth in Art. 288 of the CIRE is applicable to the special revitalization procedure and, if positive, if the acknowledgment of the appealable decision of the first instance court does not lead to a result manifestly against the fundamental principles of he Portuguese legal system.

III

3.1 – Admissibility of acknowledgment of the homologation decision delivered by a State not member of the EU, under the scope of the revitalization procedure.

TITEL XV of the CIRE governs the rules on conflict, consisting of the chapters applicable to the general provisions (chapter I) and the foreign insolvency procedure (CHAPTER II), whose main center of the interests of the debtor are outside a State member of the European Unit.

[1] Considering the delimitation of the object, according to the request and the cause of action, the present instrument shall include the strict knowledge of the decision delivered abroad, outside a State member of the European Union.

Aware of the nomenclature of CHAPTER II, question may be made if such regime applies to the revitalization procedures.

As acknowledged by the legislation in the preamble of the 1899 Code of Bankruptcies "*in matter of bankruptcy, there are no legislative provisions sufficient nor long lasting reforms. On the one hand, the extreme mobility and susceptibility of the credit, whose safety the bankruptcy act proposes to protect, mislead and diminish the most complete and suitable steps and force the legislator to follow its constant transformations and peculiar movements of this marvelous proteus*".

In fact, in the aurora of the regime in scree, without precedence in the Code of the Special Procedures of Business Reorganization and Bankruptcy (CPEREF), the provisions of Regulation (CE) no. 1346/2000 apply.

In this sense, and based on the provisions resulting from a bankruptcy legislation, it should be noted the change to the community legislation with the revocation of such Regulation (CE) no. 1346/2000 by the Regulation (EU) of the European Parliament and the Board on May 20, 2015, whose preamble included their application in the procedures aiming the reorganization of companies that are economically feasible, but that are in difficulties and that give a second chance to stakeholders.[2]

On the other hand, the national legislation has suffered successive conceptual changes, especially in relation to the end of the bankruptcy procedure, either with the entry into force of the CIRE on September 18, 2004, or under the scope of this Code, with special reference to those introduced by Act no. 16/2016, dated April 20, with the addition of a CHAPTER II to TITLE I, under the title of Special Revitalization Procedure (PER), changed by Decree-Act no. 79/2017, dated June 30.

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[2] Item (10) expressly refers that the regulation shall, in special, extend to the procedures that foresee the revitalization of the debtor in a phase in which there is only a probability of insolvency or that will keep the debtor in a situation of complete or partial control of its assets and business.

Even though the matter could be considered as clear in the light of the rules applicable to the interpretation of the law, contained in Art. 9 of the Civil Code, the legislator did well when expressly meaning, by virtue of the amendment to the segment of rule contained *in fine* of no. 3 of Art. 17º-A, by Decree-Law no. 79/2017, dated June 30, that the revitalization procedure is subject to the application of all rules set forth in the CIRE that are not incompatible with their nature.

Thus, either because the Special Revitalization Procedure (PER) expressly foresees it, or because the community diploma that gave origin to the introduction of CHAPTER II of TITLE XV, foresees the extension of the insolvency regime to that of revitalization, it should be concluded, without further ado, that the acknowledgment set forth in Art. 288 of the CIRE is also applicable to all legal decisions delivered in that special procedure.

3.2 - Non-appealable judgment of homologation of the revitalization plan.

It is clear that, by virtue of the community law, the Regulation (EU) of the European Parliament and of the Board, dated May 20th, 2015, prevails over the domestic Portuguese law and, consequently, any decision determining the opening of an insolvency procedure (i.e., special revitalization procedure) delivered by a jurisdictional agency of a competent State-member, is acknowledged in all other State-members **as soon as it produces effects in the state of Opening of the procedure** – as per Art. 19 of the Regulation[3], with emphasis by us.

Regarding the acknowledgment of decisions delivered in State not member of the European Union, item b) of no. 1 of Art. 188 of the CIRE establishes that the decision is acknowledged in Portugal, except if the acknowledgment leads to a result manifestly contrary to the fundamental principles of the Portuguese legal system.

The automatic acknowledgment is removed from this concept (of the decisions producing effects in State-Members), and the foreign decision is submitted to the

[3] Principle of automatic recognition already set forth in Arts. 17 and 25 of Regulation (CE) no. 1346/2000.

jurisdictional control of Portuguese courts so that the acknowledgment is effectively assured.

The law makes no reference, but it is implied that also in the acknowledgment set forth in Art. 288 of the CIRE there is a requirement that such decision should produce effects to the foreign State.

In fact, it results from the procedures of review and confirmation, set forth in TITLE XIV of the CPC (Arts. 978 et al.), that the principles and rights referred by us in the tried case are protected with the summoning of the interested parties for them to deduce their opposition, discussion, and sentence, and thus the verification of the dual jurisdiction with the filing of review appeal (Art. 985 of the CPC).

Thus, the *mens legis* of Art. 293 (*in fine*) of the CIRE, especially in relation to the review and confirmation of the decisions made in foreign insolvency procedure, as well as the lack of need of the requirement of non-appealable decision, it is possible to conclude, *on the contrary*, that under the terms of Art. 288 the decisions with the verification of the requirement of non-appealable decision are only acknowledged in the first instance court.

Overall, and as long as the appeal to the decision of homologation of the insolvency plan or revitalization plan has a devolution effect, the normative rule also diverges: (i) the first is expressly set forth in no. 5 of Art. 14 of the CIRE (the suit is only ended upon judicial determination under the terms of letter b) of no. 1 of Art. 230 of the CIRE); (ii) the second results from the application of the civil procedural regime (Art. 647, no. 1 of the CPC ex vi Art. 17, no. 1 of the CIRE), with reference in the records - as per letter a) of no. 1 of Art. 14 of the CIRE -, since the homologation decision ended the case.

Thus, the reference of the appeal in the records would enable the revitalization exclusively regarding the practice, if the case, of acts with provisional nature, in which

the insolvency and revitalization plans in course in Portugal remit, by rule, to the beginning of its performance or effects for the date of the non-appealable decision.

In light of the foregoing and respecting the always due respect for the contrary opinion, the revitalization plan should only produce legal effects after the non-appealable decision of its homologation.[4]

3.3 – Nature and effects of the non-appealable decision in the Portuguese legal system.

In the Portuguese legal system[5] a legal decision, either a judgment or order, will be non-appealable when not susceptible to ordinary appeal or claim.

The definition of non-appealable in the procedural base is dual, for it considers both the temporal and appeal aspects. Once the deadline for filing the appeals without impugnation of the sentence expires, the sentence will be non-appealable by preclusion – as per Art. 619 of the CPC.

However, beyond the delimitation of the concept in a purely procedural-dogmatic point of view, it is worthwhile noting the fact of knowing if the jurisdictional decision is legitimate considering the production and inspection of the procedure.

Under the scope of the procedural principles governing our legal system, the following have relevance among the constitutional principles: principle of adversary proceeding and right to a fair hearing, as well as the duality of jurisdiction.

Although the Constitution has not an express provision that consecrates the right to appeal to another court in a civil procedure (set forth in the criminal procedure after constitutional review no. 1/97, dated September 20, which started to include, in Art. 32, the express mention to the appeal, included in the guarantees of defense), has been defended as constitutionally included in the principle of the State of democratic law

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[4] In this sense, the provisions of RC dated 7/3/2012, of the RP dated 06-01-2015, both available at www.dgsi.pt.

[5] We believe that in the Brazilian legal system, whose traditional procedural precedents consider that the non-appealable decision is that against which there is no more appeal, either ordinary or extraordinary. The Brazilian Civil Code of Procedure establishes in its Art. 474 that: "*Once the decision on the merits is tried as non-appealable, all claims and defense that the party could present to the validity or rejection of the request are exhausted and repealed*."

the right to appeal to decisions that affect rights, liberalities, and guarantees assured by the Constitution, even outside the criminal scope.[6]

Mutual is the understanding that with the imposition by the Constitution of a hierarchy of the legal courts (with the Supreme Court of Justice on the top, without prejudice of the competence specific of the Constitutional Court - Article 210), it must be admitted that the ordinary legislator cannot suppress in block the appellate courts and the appeals.[7]

Well, *in casu*, the acknowledgment of a foreign decision under appeal, with the inherent possibility of execution, would invalidate the rights exercised by interested parties and intended in the acknowledgment, which, for they have interest and legitimacy, appealed to it.

Under these terms, resulting from the records that the decision submitted to acknowledged is no non-appealable due to appeal filed by creditors residing in Portugal, the request must be tried as invalid in relation to the companies headquartered, or that have the center of their key interests, in a State that is not member of the European Union, for any other decision would lead to an outcome manifestly against the fundamental principles of the Portuguese legal system.

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Regarding the companies headquartered or having the center of their key interests in a State-Member, the acknowledgment is automatic as soon as it is valid in the State in which the procedure is carried (as per Art. 19 of the Regulation (UE) 2015/848, dated May 20, 2015, and, with such effects in force, it shall consider the

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[6] As per the statements of vote of Board Members Vital Moreira and António Vitorino, respectively, in Appellate Decision no. 65/88, Appellate Decisions of the Constitutional Court, vol. 11, page 653, and in Appellate Decision no. 202/90, id., vol. 16, page 505

[7] In this sense, A. Ribeiro Mendes (Direito Processual Civil, III - Recursos, AAFDL, Lisboa, 1982, p. 126), Appellate Decisions nos. 31/87, Appellate Decisions of the Constitutional Court, vol. 9, page 463, and no. 340/90, id., vol. 17, page 349

regime of registration and publicity contained in Articles 24 (effective as of July 26, 2018 – Art. 92 of the Regulation) and 28.

IV

In light of the foregoing, based on the principles and rules applied to the case, I hereby invalidate the acknowledgment of the judgment of homologation of revitalization plan, delivered in a foreign case, for it is pending appeal.

Costs to be incurred by the plaintiffs.

To register and summon.

Lx., 2018-07-30 (processed using the IT means and with advanced electronic signature – as per Art. 131, no. 5 of the CPC and Art. 19 of Directive no. 280/2013, dated August 26)