

The Court of Roskilde

On 2 February 2010 at 01:30 pm, deputy judge Merete Lyck presided over the Bankruptcy Court.

The following was heard:
SKS 21-354/2009.

Bankruptcy proceedings

Selskabet af 1. september 2008 A/S
Algade 14
DK-4000 Roskilde
CVR no.: 50020010

Circular Letter of 6 January 2010 and a copy of notice convening this meeting of creditors published in the Danish Official Gazette, including two items on the agenda, were produced.

The trustee appeared.

Mr Jürgen Stelljes appeared on behalf of Deutsche Bank AG representing a subordinated claim of DKK 373 million and in his capacity as member of the creditors' committee.

Mr Anders Aagaard, attorney, appeared on behalf of Taberna Capital Management LLC representing a claim of DKK 223 million and in his capacity as member of the creditors' committee. Mr Aagaard was accompanied by Mr Tauby Sørensen, attorney.

Mr Ole Møller Andersen and Ms Anne Christrup appeared as members of the board of directors of Roskilde Bank Erstatningsgruppen.

Mr Ole Nielsen appeared, representing himself.

Mr Jacob Thomsen, attorney, appeared on behalf of Ernst & Young.

Mr Erik Malberg, attorney, appeared on behalf of Copenhagen Branch representing a subordinated claim of DKK 100 million.

Mr Morten Schultz, attorney, and Ms Elisabeth Stamer, manager, appeared on behalf of Nykredit Bank representing a claim of DKK 295 million.

The trustee stated that he had been granted a power of attorney to support item 2 on the agenda issued by HSH Nord Bank, Scandinotes bonds representing a claim of DKK 676 million, and by Norske Tillidsmænd representing a claim of DKK 232 million.

In pursuance of the said Circular Letter, the trustee accounted for the background for convening this meeting of creditors. He stated that in connection with the transfer of all assets to New Roskilde Bank just before the issue of the bankruptcy order against Old Roskilde Bank, no explicit decision was made as to whether such transfer was to include a potential claim for damages to be raised against the former management and board of directors.

The limited amount allocated in the opening balance sheet of New Roskilde Bank makes it impossible for the trustee to make the investigations and in-depth analyses that would be required in order to provide any recommendation on the potential commencement of independent legal proceedings.

By resolution of the Danish Ministry of Economic and Business Affairs, the necessary funds to conduct a legal investigation lead by Mr Henrik Lind, attorney, have been provided. The outcome of such investigations was that it was decided to take legal action for damages against the former management. The attorneys in charge of the investigations were requested to base their investigations on the assumption that the ownership of such claim lies with New Roskilde Bank.

The most recent discussions conducted between the trustee and Mr Lind have resulted in a proposed model, cited in the circulated draft response letter dated 25 January 2010.

The trustee noted that he has found it crucial to ensure that the creditors are not placed in a less favourable position, cf. s. 137 of the Danish Bankruptcy Act. Item 6 of the draft response is modified by the contents of item 5. He is of the opinion that if item 6 is tightened, the estate will have no deal. As provided in item 8, a subsequent decision on the ownership of the claim must be made. Each party may decide, subject to three months' notice, to conduct independent legal proceedings.

Period allowed for discussions and the posing of queries in respect of the trustee's statement.

Mr Jürgen Stelljes questioned the sequence recommended by the trustee according to which the claim for damages will be pursued firstly, and then a decision on the ownership issue will be made. Deutsche Bank would have preferred if the trustee would firstly have submitted the ownership issue for decision among the creditors.

Mr Aagaard agreed with Mr Jürgen Stelljes. It must be in the interest of the creditors to have the trustee conduct the necessary analysis and make his recommendation based thereon. If the matter had been submitted to the creditors, the creditors would have been willing to provide liquidity for such investigations, but the factual background required in this respect is missing.

The trustee noted that no questions asked in the creditors' committee remain unanswered.

The trustee further noted that he has made his recommendation to the creditors by way of Circular Letter no. 5. No potential rights will be abandoned until the creditors have had the opportunity to decide whether to pursue the claim independently. The estate is now being faced with the fact that New Roskilde Bank intends to take legal action, either on its own behalf or on behalf of New and Old Roskilde Bank. Concurrently therewith or at a later stage, each party may commence legal proceedings for the purpose of ascertaining whether the right to the claim for damages has been assigned. This means that in three months, New Roskilde Bank may decide that it is not willing to accept the uncertainty pertaining to the ownership issue and thus commence legal proceedings to settle this matter.

The trustee was not willing to carry the risk on behalf of the estate, by adopting a wait-and-see attitude, that New Roskilde Bank would claim inactivity or abandonment of the claim.

If a specific proposal by the creditors, including the necessary funds, is now available, a new meeting of creditors may be convened to decide on such proposal submitted by the members of the creditors' committee.

Mr Erik Malberg, attorney, and Ms Stamer, manager, stated that they supported the course of action adopted by the trustee.

Mr Tauby Sørensen, attorney, inquired whether it would be possible to improve the agreement, e.g. so that New Roskilde Bank will cover the costs of the subsequent legal proceedings for the purpose of establishing whether the claim has been transferred.

The trustee recommended that attempts be made to agree on an addendum stipulating that the necessary resources must be available to the estate to settle the matter of ownership of the claim for damages.

The trustee stated that claims totalling DKK 2.4 billion have been filed against the estate, and that further claims have just been filed in the amount of DKK 170 million.

The trustee noted that more than 1/3 of the total claims filed against the estate was represented at the meeting, and that the majority had expressed their support to the trustee's proposal.

The Bankruptcy Court ascertained that the creditors attending the meeting had approved and granted the trustee the required power of attorney in order for the trustee to conclude the necessary agreements with the board of directors of New Roskilde Bank on the estate's contributing to the pursuit of the contemplated claim for damages under s. 140 of the Danish Public Companies Act against the former management etc. of Old Roskilde Bank.

The trustee indicated that he intends to work on improving the covering of costs to be incurred in the event of a future dispute between the estate and New Roskilde Bank.

Case and court adjourned.

Merete Lyck
Deputy Judge