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The Court of Roskilde

On 2 May 2011 at 02:45 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

The trustee appeared.

Attorney Henrik Lind appeared on behalf of new Roskilde Bank.

Attorney Aagaard represented by attorney Tauby Sørensen appeared on behalf of Taberna Europe CDO.

Henrik Bjerre-Nielsen and Kaare Davidsen appeared on behalf of Finansiell Stabilitet (the Financial Stability Company).

As creditors/former shareholders of Roskilde Bank, Karin Nikolajsen, Anne Christrup and Jeanette Nielsen appeared.

A copy of notice published in the Danish Official Gazette convening the creditors' meeting, including agenda for the meeting, was produced.

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The trustee accounted in general for the estate's affairs. He referred to the statements made in Circular Letter no. 10 of 12 January 2011 stating that a large number of potential claims have been filed against the estate by several shareholders claiming that their claims should (also) be regarded as claims under s. 97 of the Danish Bankruptcy Act. Such filings have been made by the Danish consumer ombudsman and directly by individual creditors.

The simplest possible procedure must be identified and planned through dialogues between the trustee and the consumer ombudsman/individual creditors and new Roskilde Bank, respectively.

The trustee produced an updated version of the register of debts. He observed that there will be no coverage for subordinated claims. Claims in the form of subordinated loan capital have been filed in the amount of DKK 1,835,343,233.69.

A claim filed by Crédit du Nord Société in the amount of DKK 74.5 million has been re-filed, now as a claim under s. 97 of the Bankruptcy Act. This claim will be examined at a later creditors' meeting.

The claims filed by shareholders under s. 97 of the Bankruptcy Act are based on the relevant creditors finding themselves to be misled, and the creditors are therefore claiming compensation for their losses or claiming that they are not liable for the loans raised for the acquisition of shares. The claims filed under s. 97 of the Bankruptcy Act total almost DKK 396 million, including the claim raised by Crédit du Nord Société.

The trustee ascertained that the meeting was not attended by at least 1/3 of the voting creditors, and that, consequently, the meeting did not constitute a quorum. Therefore, the trustee would have to resolve on the items on the agenda.

Re. item 2 – Examination of claim filed by Taberna Europe:

The trustee stated that on commencement of the bankruptcy proceedings, Taberna had filed a claim regarding a subordinated loan subject to s. 136. Subsequently, the creditor has specified that, under the specific circumstances, the claim should be raised as an unsecured claim. The creditor has requested the trustee to examine the claim.

The trustee referred to his recommendation letter dated 13 April 2011 in which the trustee recommended that the claim be dismissed as a claim ranking under s. 97.

With the consent of the Bankruptcy Court, the trustee suspended the deadline fixed for the creditor's commencement of legal proceedings until 31 August 2011.

Re. item 3 - position with respect to approach received from new Roskilde Bank regarding a final clarification of the "earn-out-model" provided for in the transfer agreement dated August 2008:

The trustee explained that a purchase price adjustment clause was inserted in the transfer agreement. According to the statements made in a report circulated by Finansiell Stabilitet, here on behalf of new Roskilde Bank, the adjustment clause will not become relevant. Consequently, the trustee has recommended to the creditors that they accept that no further claims may be raised with respect to the said clause.

Henrik Bjerre-Nielsen accounted in further detail for the background for the request filed.

The trustee noted that since the meeting was not attended by a sufficient number of the voting creditors, s. 119(3) of the Bankruptcy Act stipulates that it is left for the trustee to decide whether to abandon the adjustment clause, unless the Bankruptcy Court finds that this matter must be deferred for a later creditors' meeting.

In accordance with the recommendation made, the trustee decided that the estate is willing to waive any future relying on the adjustment clause.

As the majority of the subordinated creditors are domiciled abroad, the trustee recommended that the deadline for the creditors to file individual claims, if any, under s. 137 of the Bankruptcy Act be fixed at four weeks.

Attorney Tauby Sørensen stated that he would like to receive additional information/calculations from Finansiell Stabilitet. Such information must be translated and sent to his client abroad and therefore the deadline recommended by the trustee will be too narrow.

Henrik Bjerre-Nielsen noted that Finansiell Stabilitet would be able to provide such information before the end of the week, provided that the relevant questions were submitted to him in writing as soon as possible after the creditors' meeting.

The trustee noted that he will circulate the responses given by Finansiell Stabilitet among all creditors.

The Bankruptcy Court fixed the deadline for the commencement of legal proceedings, if any, under s. 137 of the Bankruptcy Act for such deadline to expire on 30 June 2011.

The trustee responded to an inquiry made by Anne Christrup as to how the adoption by the shareholders of the adjustment clause at a general meeting should be seen as compared to the decision made today by the trustee to abandon the clause. The trustee stated that, by reason of the bankruptcy, he had taken the place of the corporate management and that, in his capacity as trustee, he had now presented this material matter at a creditors' meeting. As the creditors' meeting did not form a quorum, the trustee decided to abandon the adjustment clause, subject, however, to a deadline fixed under s. 137 granting the creditors a certain period of time to commence legal proceedings, if any.

Case stayed.

Court adjourned.

Merete Lyck
deputy judge