Proceedings: 0203711-65.2016.8.19.0001

Electronic Proceedings

Class/Subject: Judicial Reorganization – Judicial Reorganization

Plaintiff: OI S.A.
Plaintiff: TELEMAR NORTE LESTE S.A.
Plaintiff: OI MÓVEL S.A.
Plaintiff: COPART 4 PARTICIPAÇÕES S.A.
Plaintiff: COPART 5 PARTICIPAÇÕES S.A.
Plaintiff: PORTUGAL TELECOM INTERNATIONAL FINANCE B.V.
Plaintiff: OI BRASIL HOLDINGS COÖPERATIEF U.A.
Interested Party: FEDERAL ATTORNEY'S OFFICE ASSOCIATED WITH ANATEL
Interested Party: BANCO DO NORDESTE DO BRASIL S.A.
Judicial Administrator: ARNOLDO WALD LAW FIRM
Interested Party: CHINA DEVELOPMENT BANK CORPORATION
Interested Party: GLOBENET CABOS SUBMARINOS S.A.
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
Expert: RIO BRANCO SP CONSULTORES ASSOCIADOS LTDA
Legal Representative: MARCELO CURTI
Interested Party: SOCIETÉ MONDIALE FUNDO DE INVESTIMENTO EM AÇÕES
Auctioneer: MAURO MARCELLO DA COSTA MACHADO
Interested Party: PEDRO MANUEL CORREIA DE RODRIGUES FILIPE
Interested Party: AMERICAN TOWER DO BRASIL - CESSÃO DE INFRAESTRUTURAS LTDA.

On the date hereof, I send the records for examination to Judge
Fernando Cesar Ferreira Viana

On 09/29/2020

Decision

As determined in the preliminary decision rendered in the records of Interlocutory Appeals No. 0055053-63.2020.8.19.000/0054925-43.2020.8.19.000, the new General Creditors' Meeting

(GCM) of the "OI Group" was held on 09/08/2020, in a virtual format, aiming at the resolution on the terms of the Amendment to the Judicial Reorganization Plan (RJ Plan) previously ratified.

After starting the works at 8:30 a.m., with the virtual registration, the quorum for instatement set forth in art. 37, paragraph 2, of Law No. 11,110/2005, was verified, with the presence of creditors representing the following credits: 92.13% of the Labor Creditors Class; 100% of the Secured Creditors Class; 54.70% of the Unsecured Creditors Class; and 89.95% of the Microenterprise Class.

After the GCM was convened, several suspensions and discussions occurred throughout the day, when finally the Amendment to the RJ Plan was submitted to vote with some new adjustments, being APPROVED with the following percentages: Class I (Labor Creditors - 99.86%); Class II (Secured Creditors - 100% per head and per amount); Class III (Unsecured Creditors - 96.84% per head and 68.15% per amount); and Class IV (Microenterprise Creditors - 99.20%), and only 26 creditors, out of the 5,148 registered and able to vote, did not exercise their voting rights and have not informed any problem in the chat, being thus considered as abstentions.

The Amendment to the OI Group's RJ Plan, therefore, had an expressively number of favorable votes, reaching the approval quorum, as per the legal provision of article 45 of Law No. 11,101/2005.

However, before starting to review its ratification, this Court has to hear and deal with issues inherent to the control of legality of the act. Though the creditors sovereignly have the power to decide on the proposals of the Amendment presented, there is the control of the Judiciary Branch to guarantee the balance between all interests involved in the judicial reorganization proceedings, as set forth by the "theory of the balanced division of burden in the reorganization", defended by Daniel Carnio Costa:

"The theory of the pendular dualism was in evidence before Law No. 11,101/2005, the emphasis of which was the liquidation of the assets of the company in crisis, whether favoring the creditors' interests or tending to the protection of the debtor's interests, and usually ignoring the maintenance of the production activity as result of the overcoming of the company's crisis. The theory of the Balanced Division of burden in the Reorganization arises from its recovery, indicating that all parties of the proceedings must act so that the proceedings ensure the useful result. Thus, all parties must assume the burden, being incumbent upon the Judge, together with the judicial administrator, to distribute in a balanced manner the burden between creditors and debtors." (Costa, Daniel Carnio. "*Teoria da distribuição equilibrada dos ônus na recuperação judicial da empresa"*, available at http://www.cartaforense.com.br/conteúdo/artigos/teoria-da-distribuição-equilibradda-dos-onus-na-recuperação-judicial-da-empresaa/12371.)

See the case law:

“CORPORATE LAW. JUDICIAL REORGANIZATION PLAN. APPROVAL IN A MEETING. CONTROL OF LEGALITY. ECONOMIC AND FINANCIAL FEASIBILITY. JUDICIAL CONTROL. IMPOSSIBILITY. 1. After the legal requirements are complied with, the judge must grant the judicial reorganization of the debtor the plan of which has been approved in a meeting (art. 58, main section, of Law No. 11,101/2005), not being allowed to meddle with the aspect of economic feasibility of the company, since such issue is to be examined exclusively by the general meeting. 2. The judge must exercise the control of legality of the judicial reorganization plan, which includes the rejection to fraud and to the abuse of rights, but not the control of its economic feasibility. In that sense, Statements No. 44 and 46 of the I Commercial Law Seminar of the Federal Courts Council (CJF)/Superior Court of Justice (STJ). 3. Special appeal (REsp) not granted. (REsp 1359311/SP[1], Reporting Justice LUIS FELIPE SALOMÃO, FOURTH PANEL, judged on 09/09/2014, Electronic Court Gazette (DJe) of 09/30/2014)”.

The first aspect to be dealt with by the Court is related to the issues raised by some Unsecured Financial Creditors regarding the illegality, abuse and arbitrariness allegedly committed by the Judicial Administrator when conducting the General Creditors’ Meeting, which would have made it null.

Initially, there is the allegation of irregularity in the quorum for instatement and resolution in the GCM. Some Financial Creditors once again insist on the thesis that there is abuse in the interpretation of Clause 11.8 of the original RJ Plan ratified, arguing that the last list of creditors prepared by the Judicial Administrator does not observe the criteria of the court decisions in force on the subject, especially the decision rendered in records 054925-43.2020.8.19.0000, in addition to not having had the due publicity.

They argue that there is the lack of publicity to the creditors and other interested parties regarding the successive lists of creditors able to vote, presented in the records, which violates the provisions of art. 8 of the Companies’ Reorganization and Bankruptcy Law [*Lei de Recuperação e Falência de Empresas*] (LRFE).

It seems to me that the opposing parties are wrong.

Regarding the questioning that the list of creditors had not complied with the specifications of the decisions in force, this argument is groundless. The Judicial Administrator prepared the lists exactly as determined by the Court. LIST 1 with creditors included in the Judicial Administrator’s Public Notice, which have already fully received their credits, and LIST 2 with creditors that had favorable judgments rendered in timely credit qualifications.

The Creditors wanted that the lists considered a voting criterion that was not accepted by the Court. In that sense, it is worth remembering the following decision that upheld the voting criteria:

“Pages 471,378/471,381 and 472,245/472,250 - Statements of Caixa Econômica Federal (CEF) and Banco Itaú Unibanco - Inconsistence in the List of Creditors. CEF and Banco Itaú Unibanco

argue that the List of Creditors Able to vote in the GCM submitted by the Judicial Administrator in, agreement with the determinations of the decision on pages 456,178/456,185, presented some inconsistences, since it encompasses the Qualified Bondholder Creditors, which had their credits fully settled as set forth in Clauses 4.3.3.2 and 4.3.3.8 of the original RJ Plan, thus going against the court order that made clear that only the creditors which have not had their credits fully settled would maintain the right to “petition, voice and vote”. They request that the list be made again excluding the Qualified Bondholder Creditors that had their credits settled based on said clauses, and maybe the possibility of separating voting. The Judicial Administrator states that there is no inconsistences in the List of Creditors able to vote (List 2), since what the challenging creditors actually intend is to oppose once again to the legality, validity and applicability of clause 11.8 of the original RJ Plan. It states that the Banks actually intend to articulate the understanding that the conversion of part of the credits into shares, Notes, etc. leads to the exclusion of the bondholders from the list, despite the fact that said clause clearly maintains these rights “regardless of the conversion of the Qualified Bondholders’ Unsecured Credits into new Common Shares - I and the respective settlement.” It further says that the fully paid creditors were excluded, including approximately 3,000 non-qualified bondholders that received 100% of their credits. Finally, it argues that the list was prepared in strict compliance with what was determined, fully ratifying its terms. This is the brief report. Firstly, it is necessary to make clear that there are decisions rendered in the sense of considering all full terms of clause 11.8 of the ratified RJ Plan as existing, valid and effective. Against all evidence, however, the unsecured financial creditors try to disqualify such adaptation to prevent the Qualified Bondholder Creditors from exercising the right to “petition, voice and vote” in an GCM convened to resolve on and vote the Amendment to the original Plan. Regarding this effort, it is possible to verify that a new interpretation appears with each decision rendered, aiming at removing creditors that compete in their Class. As it was well stressed by the Judicial Administrator, Clause 11.8 warns that, “regardless of the conversion of the Qualified Bondholders’ Unsecured Credits into new Common Shares - I and respective settlement,” the right of the Qualified Bondholder creditors will be maintained. In this sense, in addition to what was decided in the Motion to Clarify filed by CEF, when it was clear that all creditors that did not have their credits “fully settled”, including the Bondholders, will be able to vote, they decisively seek to enforce the ineptitude of these votes, in view of the considered settlement imposed pursuant to clauses 4.3.3.2 and 4.3.3.8. One cannot deny that the method of payment provided to the Qualified Bondholder Creditors in clause 4.3.3.2 establishes, in clause 4.3.3.8, the “consequent settlement, pursuant to Clause 11.10 of this Plan, without prejudice to Clause 11.4”. However, the maintenance of the right to “petition, voice and vote” in each and every General Creditors’ Meeting after the Judicial Ratification of the Plan, of the Qualified Bondholder creditors, “regardless of the conversion of the Qualified Bondholders’ Unsecured Credits into new Common Shares - I and respective settlement,” is also undeniable. The exception established in the agreement and ratified is characterized by good faith, taking into account that it was included to protect those that, though they have had their credits or a part thereof considered as “settled” according to the Plan, they remain fully connected and interested in the procedure of recovery of the RJ Debtors, as they have delayed the receipt of their credits through new bonds with future maturity, such as, for instance, in the case of receiving through the Notes, the payment of which will only occur within

seven (7) years from its issue. Thus, by integrating the provisions of the RJ Plan to what was decided, and with the exception that two subclasses were created between the Qualified and Non-Qualified Bondholder Creditors, we conclude that only the "Non-Qualified Bondholders" which fully received their credits lost the right to "petition, voice and vote" (three thousand (3,000)), according to information of the Judicial Administrator, and, on the contrary, the rights of the Qualified Bondholders remain in force in view of the exception included in clause 11.8. Based on the foregoing, I fully deny the requests made by Creditors CEF and Banco Itaú Unibanco, including regarding any requests made by the latter, maintaining the Restated List of Creditors Able to Vote as presented by the Judicial Administrator."

The decision that defined the criteria for the preparation of the lists by the Judicial Administrator was upheld by the 8th Civil Chamber, through the decision of the Reporting Judge of the interlocutory appeals filed by the Financial Creditors, being clear and decided that:

"In this case, as established in the appealed decision, clause 11.8 of the Original RJ Plan, by providing for the voting criterion in a General Creditors' Meeting after the Judicial Ratification of the Plan, expressly determined that the Qualified Bondholder Unsecured Creditors that converted part of their Qualified Bondholders' Unsecured Credits into Oi's share capital, as Capital Increase - Capitalization of Credit, will maintain the amount and number of their Pre-Petition Credits for the right to petition, voice and vote, regardless of the conversion of the Qualified Bondholders' Unsecured Credits into New Common Shares - I and respective settlement. Therefore, in relation to the Qualified Bondholder Unsecured Creditors, they will maintain the amount and number of their Pre-Petition Credits for the right to petition, voice and vote, regardless of the conversion of the Qualified Bondholders' Unsecured Credits into New Common Shares - I and respective settlement, as described in clause 11.8 of the Original RJ Plan, which remains in force. Moreover, one can assume from said clause that, while the closing of the Judicial Reorganization is not verified, all creditors will maintain the amount and number of their pre-petition credits for the right to petition, voice and vote at each and every General Creditors' Meeting after the Judicial Ratification of the Plan."

Under these terms, one cannot talk about incongruences in the list of creditors able to vote, or even consequent irregularity in the calculation of the quorum for instatement and for resolution, since the Judicial Administrator complied with the court orders in the sense that the Qualified Bondholder Creditors could vote even if part of their credits had been converted into new shares of the company.

Regarding the lack of publicity of the lists and violation of art. 8 of the LFRE, said creditors will not have a better fate. This is because all terms determined by the law were complied with by the Judicial Administrator, in addition to those signed by this Judicial Reorganization Court and by the Court of Appeals.

I recall that, in the new GCM held to vote the Amendment to the ratified RJ Plan, after several reflections, including by the Public Prosecutor's Office, and due to the period elapsed after the

first meeting, it was found out that the Judicial Administrator should present lists with the creditors able and not able to vote, observing the criteria of the decisions of this Court and of the Reporting Judge of the Court of Appeals.

As already said, after timely complying with all determinations of the court, the Judicial Administrator prepared a last list complying with the determination of the 8th Civil Chamber, in interlocutory appeals presented by the Financial Creditors themselves.

And the list was not only made available by means of attachment to the electronic records, but also through the judicial administrator's electronic platform, as expressly determined, which imposes the rejection of the allegation of nullity for lack of publicity.

Contrary to what it is intended to imply, there is no legal provision establishing that the judicial administrator must make the list of creditors able to vote in the GCM public, through a Public Notice, since they are recorded in the consolidated general list of creditors (QGC) and, in the absence thereof, in the lists presented pursuant to paragraph 2 or 1 of art. 7 of the governing Law, as the case may be.

Therefore, after complying with the guidelines of the court decisions, the lists were published at the electronic address of the Judicial Administrator, as determined, having the Court issued the relevant Notices about their presentation, which was sufficient to ensure the publicity of said acts.

Finally, it is not possible to find any violation of art. 8 of the LRFE, since said provision establishes the obligation of publication "through public notice", for the purposes of submitting qualifications/oppositions regarding the list of creditors and credits that are subject to the reorganization regime, and not to oppose to creditors entitled to the right to "petition, voice and vote".

Having said that, I will now analyze the allegation of denial of creditors' rights during the General Creditors' Meeting.

According to the already mentioned theory of the balanced division of burden in the reorganization, "all parties of the proceedings must act so that the proceedings ensure the useful result". Thus, all parties must assume the burden, being incumbent upon the Judge, together with the judicial administrator, to distribute in a balanced manner the burden between creditors and debtors".

I preliminarily highlight the technical capacity of the company subcontracted by the Judicial Administrator that conducted the General Creditors' Meeting works in a virtual format, since the occurrences narrated throughout the meeting were irrelevant and did not cause any loss.

It must be praised the excellence of the work developed by the entire team of the Judicial Administrator that has been conducting its role in a recognized transparent and efficient manner, a task that is known to be Herculean in such a large case.

However, the Financial Creditors argue that the Chairman of the General Creditors' Meeting acted in an arbitrary manner, preventing the voting of the request of suspension submitted thereby.

Very well. The purpose of the Judicial Reorganization procedure, in the Brazilian law, is to create a favorable environment for the negotiation between the debtor and its creditors. This model aims at helping the companies to obtain the economic and financial recovery, within an environment where the market solutions agreed upon in the Plan may minimally meet the interests of the majority of the creditors, with the compensation of making possible the maintenance of the company's activities upon the preservation of jobs, taxes, movement of goods, services and wealth in general.

Notably this has been occurring since the beginning of this judicial reorganization, considering that, paying attention to the new possibilities of negotiation solutions to the conflicts, I have promoted the implementation of several mediation procedures between the RJ Debtors and different Classes and identified Sub-classes of Creditors, these with varied homogeneous interests.

As emphasized by Antonio Evangelista Netto and Samantha Mendes Longo, the alternative methods must be stimulated in the course of the company reorganization proceedings:

"The practice shows, therefore, that mediation and the methods of resolution of dispute by the parties themselves are fully compatible with the judicial reorganization and bankruptcy proceedings, being incumbent upon the Judiciary Branch to explore even more such tool, which may significantly contribute to the recovery of companies facing difficulties. (...) No one doubts that the restructuring process of a company requires multiple efforts of all parties involved, in the sense of aiming at its recovery. It is essential that the debtor, its shareholders or partners, and the creditors, among which the suppliers and financial institutions, contribute with their share of effort for the common good. After all, everyone must give in so that the company may continue exercising its social function, generating jobs, paying taxes and promoting the economy." (Netto, Antonio Evangelista de Souza; Longo, Samantha Mendes. *A Recuperação Empresarial e os Métodos Adequados de Solução de Conflitos*, Paixão Editores, 2020, p. 158)

Having this in mind and paying attention to the special conditions of the Financial Creditors, before the holding of the General Creditors' Meeting, I have determined the starting of mediation between the RJ Debtors and the representatives of the most relevant creditors, so qualified among those that had financial credits above BRL 500 million, as soon as their objections to the Amendment and oppositions to the criteria for the selection of creditors able to vote were presented.

Having commenced the General Creditors' Meeting, is its effective performance is the rule. In exceptional cases where the meeting is suspended, the purpose of the suspension is to make the negotiation of the RJ Plan feasible.

However, after many interruptions described in the Minutes, the RJ Debtors informed that they have reached their best offer for payment of the Financial Creditors, and that any development in that sense would not be achieved, neither at that moment nor in the future.

As it involved negotiation issues, the intended suspension would only be feasible if there was an agreement between all creditors present and the debtor itself, which was not demonstrated, since the RJ Debtors adopted the position of impossibility of any other development, which is a material fact to consider as innocuous the request of postponement of the meeting, considering the final position of the debtor regarding the method of payment to the Financial Creditors.

The Judicial Administrator started the works of the General Creditors' Meeting in compliance with the direct decision of this Court, and only with the consent of the RJ Debtors and all attending creditors, under the penalty of non-compliance with the order, it could have stayed the continuity of the works, in order to consult the court on the request of stay then unanimously made, and it was previously known that such unanimity did not exist.

Moreover, in addition to informing that there was no space for development in the negotiations with the Financial Creditors, the RJ Debtors were emphatic when they explained that, if the General Creditors' Meeting was not held at that moment, the entire schedule for implementation of the business reorganization included in the Amendment itself submitted to voting would be compromised.

With no developments in the negotiation stage started through the mediation, the known non-conformity of the Financial Creditors with the new market solutions and the change in the method of payment of their credits is not a sufficient reason to stay the General Creditors' Meeting granted a long time ago and held in compliance with all legal provisions required, and observing the concepts of the theory of the balanced division of burden in the Reorganization presented above.

I consider that the decision included in item 22 of the order on pages 227,024/227,027 made clear the attributions assigned to the Judicial Administrator at the first General Creditors' Meeting, among which "to decide on objections" presented throughout the discussion, so that, if there is no proven material fact that justifies the postponement of such a complex General Creditors' Meeting, the Judicial Administrator, by complying with the duty to preside, conduct and decide on objections during the General Creditors' Meeting, acted in a correct manner when it considered unnecessary to submit to voting a proposal that had delaying purposes only and that would clearly cause procedural and economic and financial loss to the RJ Debtors and other creditors involved in the case.

The opinion of Professor Manoel Justino Bezerra Filho, attached to the records by the RJ Debtors after the General Creditors' Meeting was held, is in that sense:

"Were it not for the energy and perfect legal knowledge of the Judicial Administrator, allied to an extraordinary dose of common sense and ability, the General Creditors' Meeting would certainly be postponed, and not by any kind of determination, but by absolute exhaustion of those attending it. In this regard, one must praise the perfect conduct by the Judicial Administrator to the development of the works, observing the rights of all those present, without renouncing to its legitimate power of directing and organizing the development of the meeting. One can note that the Judicial Administrator's decision that denied the request of postponement without submitting the subject to the General Creditors' Meeting is correct, regardless of the aspect under which it is analyzed. More than correct, as the Judicial Administrator could not postpone the meeting even if the majority agreed with the postponement request, an agreement that is highly improbable, which is demonstrated even by the more than significant voting for the approval of the plan's amendment. Sérgio Campinho (*Falência e Recuperação de Empresa*, 9th ed., Saraiva, page 72), talking about the difficult work of the Judicial Administrator, observes that "Their work is, thus, essential to the administration of the respective proceedings and appears as a safe source for achieving its purposes."

Luiz Roberto Ayoub, who has also analyzed the issue at the request of the RJ Debtors, equally concluded that there was no illegality in the conduct of the Judicial Administrator:

"a) The competence to examine objections not included in the agenda and that may be raised in a general creditors' meeting is reserved to the Judicial Administrator, taking into account that it is said trustee who presides it; b) Considering that the acting of the general creditors' meeting is limited to the matters included in the judicial reorganization plan, it is not incumbent thereupon to examine any objections; c) Due to the express judicial statement that denied the request for suspension of the meeting, it is not incumbent upon the Judicial Administrator to submit such matter to be decided on by the general creditors' meeting; d) Using the provisions of paragraph 3, art. 56, of Law No. 11,101/2005, which addresses the voting of the judicial reorganization plan, any change in the system of the meeting related to its formalities will only be possible upon express agreement of the Client group; e) There are no nullities to be raised against the general creditors' meeting of the Client group, to the extent that the quorums for instatement and for resolution were observed, which removes any allegation of loss due to the non-suspension of the works."

Therefore, I consider the position adopted by the Chairman of the General Creditors' Meeting to be right, taking into account the procedural principles of cooperation, judicial economy, speed and good faith, to which all those that are a subject of the proceedings must be submitted.

Regarding the alleged nullity due to not reading the minutes, as emphasized in the decision on pages 466,855/466,860, it is incumbent upon the Judicial Administrator, pursuant to the law, to prepare the minutes reporting the occurred facts:

“Further, as an auxiliary body of the judge, the role of the Judicial Administrator is to organize, structure and conduct the reorganization proceedings, always acting in order to facilitate the interaction between the RJ Debtors, creditors and other interested parties and inspectors, to create a favorable environment for the renegotiation and restructuring of liabilities, aiming at the recovery of the company in crisis. The provisions of art. 37 of the LFRE is among these duties, according to which it is incumbent upon the Judicial Administrator to preside over the General Creditors’ Meeting; therefore, the Judicial Administrator is responsible for the adoption of measures necessary for its holding, among which the main measures are: I) definition and preparation of the place; II) determination of the time of opening and closing for counting, and preparation of the attendance list of creditors; III) quorum verification, establishing the percentage and each of the attending classes; IV) instatement of the General Creditors’ Meeting, considering the necessary quorum in first session; V) organization of the discussion and voting; VI) accounting of the votes; VII) announce the result; and VIII) prepare the Minutes and report of the occurred facts. Therefore, based on evidence, it seems prudent to adopt the successful measures previously proposed by the Judicial Administrator, before the first designated General Creditors’ Meeting, which showed to be very effective, since the meeting was developed and adjourned with commendable organization, despite the clear and obvious complexity and grandiosity of the General Creditors’ Meeting.

Though art. 37 of the LFRE does recognize that the reading of the minutes at a General Creditors’ Meeting is a practice that satisfy the principle of transparency of the acts of the judicial reorganization, it does not establish that this practice must be carried out at the end of the General Creditors’ Meeting, but only the preparation of the minutes and its delivery to the Court within 48 hours, together with the attendance list.

As the General Creditors’ Meeting was conducted in a virtual format, where not even the signatures were to be collected in the act that was not in person, the Judicial Administrator explained to the creditors that the minutes were to be prepared soon after the meeting and sent by email to the creditors, who would then sign it digitally. Moreover, considering that the General Creditors’ Meeting lasted more than 10 hours, one could not expect that the minutes were ready to be read to the creditors immediately after the voting.

Thus, the fact that the minutes were not read at the end of the General Creditors’ Meeting does not violate any legal provision.

Based on the foregoing, I reject all alleged procedural nullities of the General Creditors’ Meeting.

Next, I verify that some Unsecured Financial Creditors (Itaú Unibanco, CEF, Banco do Brasil (BB), China Development) have submitted requests for the annulment of the General Creditors’

Meeting based on the existence of defect of the legal transaction agreed upon, which, though through different points of view, are all based on the generic grounds of denial of the creditors' rights; abusive constitution of quorum for approval; breach of the *pars conditio creditorum* in the unsecured class and excessive burden.

Thus, I explain that the hearing and decision of the issue will be made in a broad manner, without the need of indicating all grounds presented by each of the Financial Creditors, since all of them are directed to one single request, namely, the nullity of the General Creditors' Meeting.

In that sense, the Superior Court of Justice has already mitigated the application of art. 489, IV, of the Civil Procedure Code (CPC) when it decided that:

The judge is not required to reply to all questions raised by the parties when he or she has already found sufficient reasons to render the decision. The judge has the duty to deal only with issues capable of weakening the conclusion adopted in the appealed decision. Thus, even after the effectiveness of the Civil Procedure Code of 2015 (CPC/2015), a motion to clarify cannot be filed against a decision that did not deal with a certain argument that was not able to weaken the conclusion adopted. STJ. 1st Section. Motion to Clarify (EDcl) in Writ of Mandamus (MS) No. 21.315-DF, Reporting Justice Diva Malerbi (Convened Judge of the Regional Federal Court (TRF) of the 3rd Circuit), judged on 06/08/2016 (Info 585)."

Having established such introduction, I emphasize that the case law is already consolidated in the sense that, even if the judicial reorganization plan has achieved the quorum for approval, it is subject to control of legality, so that the requirements of validity of the legal acts in general, set forth in the Civil Code, in repudiation to any fraud or abuse of right, are analyzed, without, however, including the aspects of economic feasibility of the market solutions presented, which are the merits of the sovereign will of the General Creditors' Meeting.

Now I will examine it together with the opinion of the Public Prosecutor's Office on pages 479,346/479,367, which considered said issue.

Regarding the formal legality, the prosecutor informs that issues related to the holding of the General Creditors' Meeting and to the vote of the creditors were all examined by the court and are object of appeal in the reviewing instance, and emphasized the maintenance of its position already presented in the appeal.

As a technique for the verification of the legality, the First Bankruptcy and Judicial Reorganization Court of São Paulo has been adopting the criterion of the "four-stage" control, which consists in the verification through a methodology divided into four stages, which must be highlighted by this reorganization court.

The first stage is the one where the control of the clauses of the judicial reorganization plan is conducted, where the violation of any rule of public order existing in the legal system is verified.

Such situation is clearly identified in the provisions mentioned in clauses 3.1.3 and 3.1.1.4, since, as well pointed out by the Public Prosecutor's Office, they fully violated the statutory rule included in article 66 of Law No. 11,101/2005, by considering in a generic manner the possibility of disposing of or encumbering goods or rights of its permanent assets, and the clause must be adapted to include that "the authorization of the court or of the creditors is essential for the assets so classified to be disposed of, except for those already related in the ratified RJ Plan. However, the disposal may occur as long as the amount is not lower than the appraisals that are already in the records, and that all details are included in the monthly activity report for the control of the Court and of the Creditors, including to verify the reserve defined for payment of the post-petition credits"; it states that it shall also be applied in the case of Clause 5.1.1.

Clause 3.1.3.2 also deserves to be amended under this point of view, taking into account what had been decided in the records of Interlocutory Appeal No. 0041221-94.2019.8.19.0000, in order to include that "the rule of non-succession of the acquirer of goods disposed of during the judicial reorganization, set forth in the single paragraph of art. 60 and in item II of art. 141, both of the LFR, only applies when the disposal is made through judicial sale."

I equally understand that clause 3.1.1 must be adjusted when it considers the presentation of incident for the qualification of post-petition credit as a sufficient statement for the submission of the post-petition credit to the composition with creditors. If any post-petition creditor wants to be subject to the effects of the RJ Plan, which seems to me to be extremely uncommon, the statement must be express and clear in that sense. The simple protocol of incident of qualification of credit cannot be considered a sufficient statement, especially because, in this gigantic judicial reorganization, there are uncountable cases of creditors that are wrong and think that, in order to receive the post-petition credits, they need to prove a claim in the proceedings.

As it was well pointed out by the Public Prosecutor's Office, there is no qualification of post-petition credit. Thus, if a post-petition creditor wants to voluntarily submit its credit to the composition with creditors, such statement must be express and clear in that sense, the mere filing of qualification of credit not being sufficient for it.

Another aspect that must be analyzed is the provision included in clause 6.17, which changes the wording of clause 13.3 of the original RJ Plan and extends the final term of the court supervision and consequent closing of the Judicial Reorganization to May 30, 2022.

It is necessary to recall that, a little before the end of the term of legal supervision, the Group under reorganization filed a motion requesting that the judicial reorganization proceedings not to be closed. In the decision on pages 425,465/425,471, I have emphasized that "it is not reasonable that the Court decides, without hearing the parties most interested in the proceedings, an extension of the period of court supervision. (...) Gathered in a new Meeting, the creditors may decide if they want that the group under reorganization remains under the supervision of this Court and if they approve or not the changes to the RJ Plan."

Having held the General Creditors' Meeting, the creditors understood that changes to the RJ Plan must be made and that the group must remain under Court supervision until 05/30/2020, which is two more years as from the presentation of the amendment.

As already presented in the decision mentioned above, I understand that the creditors should decide if the proceedings would be closed or not at that moment, but it is not incumbent upon them to define how long the RJ Debtors will be under court supervision.

Article 61 of Law No. 11,101/2005, which deals with the period of supervision by the Court regarding the compliance with the obligations assumed in the RJ Plan, cannot be the object of negotiation by creditors and debtors. It is not a rule that, pursuant to article 190 of the CPC, may be negotiated, since its strict compliance results in several other procedural consequences, such as the decree of bankruptcy as set forth in paragraph 1 of said article.

It is a fact that the two-year term of the judicial reorganization ended on 02/04/2020, but, given the request of extension of the proceedings, which was accepted by the creditors at the General Creditors' Meeting, it is necessary to consider the nuances of the new situation, from the several legal transactions to be conducted and constituted with the approved provisions of the Amendment, which, if ratified, will need the Court authorization and supervision, with the follow-up by all interested parties and inspectors involved.

Considering the different and important disposals of UPIs that were approved by the creditors, the largest already constituted in judicial reorganization proceeding, which will require the approval not only of the creditors but also of other relevant parties, such as the Brazilian Telecommunications Agency (ANATEL) and the Administrative Council for Economic Defense (CADE), I follow the position of the Public Prosecutor's Office in the sense that, given the complexity and interest involved, which is both private and public, it is reasonable to determine a term of 12 months for the closing of the Judicial Reorganization, which may be extended, if it is necessary to conclude the acts related to the disposal of said assets.

The second stage imposes the verification of the existence of defects of the legal transaction, constituted in the creditors' decision resulting from the General Creditors' Meeting. Under this point of view, some Financial Creditors that voted against the approval of the Amendment point out the occurrence of abusive and illegal situations by the RJ Debtors and other creditors, especially the Qualified Bondholder Creditors, against a group of minority financial creditors, in which they are included, in subsumption to article 187 of the Civil Code, and in violation of paragraph 3 of art. 45 and 47 of Law No. 11,101/2005.

Thus, there is the division of creditors in subclasses and the inclusion of forecasts that are contrary to the equality between creditors, with the single purpose of reaching the approval quorum, consisting in the maintenance or improvement of the conditions to the majority of the

creditors and imposing, in return, degrading conditions to the Financial Creditors, which were then isolated in a minority subclass.

They describe that the distorted interpretation of Clause 11.8 was applied with the sole purpose of obtaining a quorum for the instatement and approval of the Amendment by creditors that have already had their credits settled and that did not suffer any change in their conditions attributed in the original RJ Plan.

They point out that the original RJ Plan created several subclasses, with the payment of the credits that adhered to subclasses “Restructuring Options I and II” without any kind of discount, pursuant to clauses 4.3.1.2 and 4.1.3.3, with advance payments upon the distribution of exceeding cash (cash sweep) from the disposal of assets also without any kind of discount, as per clause 5.2, which were fully maintained.

They consider that, given those facts, the provisions of Law No. 11,101/2005 prohibit creditors that did not suffer any changes to their conditions of payment from participating in and voting at the General Creditors’ Meeting, and the maintenance of the constitution of these creditors as able to vote came from the wrong interpretation of Clause 11.8 of the RJ Plan, constituting the formation of an abusive quorum for approval in Class III, since, basically, the majority had been constituted by creditors that had their payment conditions unchanged and even improved, to the detriment and unreasonable sacrifice of a specific group comprised by the Unsecured Financial Creditors, for which reason the resolution of the majority would be defective.

Given the perspective brought by the Financial Creditors, it is necessary to verify if the will of soundness in the constitution of majority for approval of the plan was not defective. In this second stage of verification of the legality, the Judge must control precisely the soundness of the constitution of the majorities for approval of the judicial reorganization plan, ensuring that everyone was duly informed about the content of the plan; if they were not forced, misled or if their will was defective when they voted, also verifying if there were no simulation between groups of creditors and the debtor, in order to ensure the approval of the plan, to the prejudice of the majority of the creditors.

The constitution of the quorum for approval in Class III - Unsecured Creditors, where the Financial Creditors are included, consented to the resolutions of the Amendment to the original RJ Plan in the following proportion: Class III Unsecured Creditors - 96.84% per head and 68.15% per amount.

The Public Prosecutor’s Office correctly denounced that the issues related to the creditors able to vote, and the issues of validity and effectiveness of Clause 11.8 of the original RJ Plan were decided and are now being reviewed through interlocutory appeals filed by the interested parties.

Since such issues have already been decided by this court, new challenges on creditors able to vote considering the validity of clause 11.8 of the original RJ Plan will not be heard and decided herein.

In conformity with this condition, the validation of the quorum for instatement and voting in Class III is based on the decisions in force in the first and second judicial instances, and there is no defect that may contaminate its constitution. No allegation of nullity in that sense is applicable.

Having overcome the verification of legality of the attending quorum and ability of the creditors in Class III, the analysis must now be focused on the alleged defect of will, pointed out to annul the provision favorable to the approval of the Amendment in said Class.

The Unsecured Financial Creditors argue that, given that the provisions of the Amendment do not change the original method of payment established in the ratified RJ Plan for the qualified and non-qualified Bondholder Creditors, a lineage of credit and subclass was created in said Class, which isolated the Financial Creditors in a minority block, a measure that makes the true will of the Class defective, since the creditors that did not suffer any economic and financial change for receiving their credits do not have any interest in reproving the provisions under voting. In that sense, they describe that the quorum for approval of said Class was already previously defined and adjusted with the RJ Debtors, which would taint the legal transaction.

For the Law, the will reveals the intention, or desire to do something, and corresponds to the resolution or intention taken by the agent, in order to have consent in the practice or performance of a legal act that creates rights and gives rise to obligations.

However, for the production of such effects to be externalized in a valid and efficient manner, it is necessary that this is done in a free and conscious way, so that it is not contaminated by any defects that may cause their nullity or annulment.

The “*voluntate*” generically expresses the will of wanting, the external manifestation of a desire, the purpose in doing something, the intention to proceed in this or that way.

Based on the assumption that the resolutions voted at the General Creditors’ Meeting have a “legal transaction” nature, it is necessary to verify if the statements of will presented through the creditors’ votes were provided observing the concepts of objective good faith and autonomy of the will.

As explained above, it is not possible to state the defect in the quorum for voting, since it was constituted based on the resolutions of the court itself; therefore, there is the need to verify if the will of the majority is defective.

Regarding the verification of the volition factor in the legal transactions, two great theories are developed: the theory of will and the theory of statement.

The first one, followed by Savigny, Windscheide, Dernburg, Unger, Oertmamm and Enmeccerus, consists in the pursuit of the actual will of the declarant; while, on the other side (Erklãrungstheorie, Zittlemann), it is considered that the investigation must be deepened with the statement itself.

There is a lot of discussion on the role of the will in the challenges regarding the defective constitution of the legal transactions. In this aspect, the discussion is around what would be better to conduct the investigation: the will or the good faith objectively considered.

For Emílio Betti, the will, as a merely internal psychological fact, is anything that, in itself, is not understandable and uncontrolled, and belongs solely to the personal level of the individual conscience, and for that reason it is impossible to be verified, which can only occur when it is externalized to the social world.

Let us see:

“Actually, the “will”, as a merely internal psychological fact, is anything that, in itself, is not understandable and uncontrolled, and belongs solely to the personal level of the individual conscience. Only to the extent that it becomes recognizable in the social environment, whether through statements or behaviors, it starts to be a social fact, susceptible to interpretation and valuation by the consortium members. Only statements or behaviors are entities socially acceptable and, therefore, capable of being the object of interpretation, or instrument of private autonomy. The fact that, in the interpretation and valuation of statements and behaviors, we must not focus on the external or literal form of the conduct of any others; first, we must try to find the *mens animadora*, or the intent sought thereby, which does not mean that *mens* and intent can be guessed, ignoring the form under which it has become recognizable. Only objective data, a recognizable entity, precisely in the social environment, can be the object of interpretation and social valuation. Apart from that, there is the requirement of recognition and, if it discovers in the antinomy between the *mens* in a representative manner, it clarifies, according to a dialectic antithesis between being intimate immanent in itself (Nasich-sein) being recognizable by others (Sein-fur-Anderes), that was stressed by the modern logic as a necessary position of speculative thinking.” (*Teoria geral do negócio jurídico*. Campinas: Servanda, 2008, p.89-90).

Antônio Junqueira de Azevedo teaches that the solution is to first interpret the statement in an objective manner, taking into account its entire context, observing the good faith, the uses and practice, to only then start the investigation of the actual will of the declarant and, if necessary, of the presumed will, always seeking what actually occurred between the parties (integrative interpretation):

“The most adequate way to solve the problem of interpretation of the legal transaction, especially in the Brazilian law, where, by law, the priority of the will is undeniable, is to simply increase that first moment of interpretation, which starts with the statement. Statement must be understood,

as we have been insisting, not only as the “text” of the transaction, but also all that, by its circumstances (according to the context), appears to the eyes of a regular person, mainly due to good faith and uses and practice, as being the statement. The essence of the statement is given by these circumstances. Then one can start to investigate the actual will of the declarant. Therefore, the solution consists in first interpreting the statement in an objective manner, based on an abstract criterion and, only in a second moment, investigating the intention of the declarant (concrete criterion); thus, it starts with the objective side (the statement as a whole) and then goes to the subjective one (the actual will of the declarant). With these two operations, a good part of the questions will be answered (especially if it deals with non-receivable unilateral acts). However, if it is still possible (and this will generally occur in the bilateral acts and in receivable unilateral acts, since, especially in the agreements, the issues that usually depend on interpretation are precisely those that the parties did not provided for and regarding which, therefore, strictly speaking, there is no intention to be sought), one must use, to supplement the interpretation process, the presumed will, then already considering what has concretely occurred between the parties and, mainly, what one could reasonably expect to have occurred between them (integrative interpretation)”. (*Negócio jurídico, existência, validade e eficácia* [Legal transaction, existence, validity and effectiveness], cit. P. 102-103, 4th ed., São Paulo, Saraiva 2010.)

Based on this clarifying lessons, I must analyze the behavior of the creditors that constituted the approval majority in Class III, especially the Qualified Bondholder Creditors, and not in an isolated manner in this last meeting only, but through their behavior throughout the reorganization proceedings, for the purposes of analyzing the position they adopted in the voting and their good faith.

Class III is composed of a range of creditors. It includes ANATEL, the largest individual creditor of the Oi Group, the Financial Creditors, the supplier creditors, the judicial creditors, among which there are the small creditors from the Special Courts, the PEX creditors and the foreign creditors, the so-called Bondholder Creditors, qualified or non-qualified, which, throughout the entire reorganization, have always been proactive, whether acting through the Trustee or individually, demonstrating great receptivity to the many negotiations started by the RJ Debtors and by the court, and to the measures presented by the RJ Debtors as market solutions, which has greatly contributed to the regular development of the proceedings.

The communion of homogeneous interests of this group of creditors was soon identified by the peculiarity of dealing with foreign creditors and the common origin of the credit, the latter represented by the acquisition of bonds.

Therefore, having identified the existence of objective criteria, it was possible, since the beginning, to sub-classify such creditors, which was never challenged by the other creditors, whether inside or outside the Class. Accordingly, the receipt of these credits through more specific conditions and measures has never been opposed, until this moment, by the other

creditors, having been fully approved at the first General Creditors' Meeting without any qualifications.

The Superior Court of Justice has considered as valid the use of this methodology through the creation of subclasses, observing such conditions:

"SPECIAL APPEAL No. 1.700.487 - MT (2017/0246661-7) REPORTING JUSTICE: RICARDO VILLAS BÔAS CUEVA. REPORTING JUSTICE FOR APPELLATE JUDGMENT: MARCO AURÉLIO BELLIZZE. APPELLANT: ARIEL AUTOMÓVEIS VÁRZEA GRANDE LTDA. - UNDER JUDICIAL REORGANIZATION. ATTORNEYS: EUCLIDES RIBEIRO S JUNIOR - MT005222, EDUARDO HENRIQUE VIEIRA BARROS - MT007680. APPELLEE: BANCO INDUSTRIAL E COMERCIAL S/A. ATTORNEY: CLEIDI ROSANGELA HETZEL - MT008244B. ENTRY OF JUDGMENT. SPECIAL APPEAL. JUDICIAL REORGANIZATION PLAN. 1. DELIMITATION OF THE CONTROVERSY. 2. DIFFERENTIATED TREATMENT. CREDITORS OF THE SAME CLASS. POSSIBILITY. PARAMETERS. 3. CONVERSION OF THE REORGANIZATION INTO BANKRUPTCY. CALL OF GENERAL CREDITORS' MEETING. NONNECESSITY. 4. PROVISION OF SUPPRESSION OF SECURED AND PERSONAL GUARANTEES DULY APPROVED BY THE GENERAL CREDITORS' MEETING. BINDING OF THE DEBTOR AND ALL CREDITORS, INDISTINCTLY. 5. SPECIAL APPEAL PARTIALLY GRANTED. 1. The controversy refers to defining: a) if it is possible to provide a differentiated treatment to creditors of the same class in the judicial reorganization; b) if it is necessary to call the general creditors' meeting before the conversion of the judicial reorganization into bankruptcy in case of non-compliance with an obligation included in the judicial reorganization plan; c) if the suppression of the secured and personal guarantees expressly included in the judicial reorganization plan, approved in a general creditors' meeting, binds all creditors of the respective class or only those that voted in favor of the suppression. By unanimous vote. 2. The creation of subclasses between the creditors of the judicial reorganization is possible as long as an objective criteria is established and justified in the judicial reorganization plan, involving creditors with homogeneous interests, with the stipulation of discounts that imply a truly annulment of rights of any isolated or minority creditors being prohibited. 3. When foreseeing difficulties to comply with the judicial reorganization plan, the debtor may propose changes to the plan's clauses, which will be submitted to the approval of the creditors. Once the obligations established in the plan are not complied with and the conversion of the reorganization into bankruptcy is required, the debtor cannot submit to the creditors a decision that is under the exclusive jurisdiction of the reorganization court. By majority of votes. 4. In the case of the records, the suppression of the secured and personal guarantees was expressly included in the judicial reorganization plan, which was approved by the creditors duly represented by the respective classes, and it implies that all creditors are indistinctly bound thereby. 4.1. As a rule (and considering the silence of the judicial reorganization plan), despite the novation operated by the judicial reorganization, the guarantees are preserved as to the possibility of its holder exercising its rights against third-party guarantors and imposing the maintenance of the actions and enforcements filed against sureties, "aval" guarantors or co-obligors in general, except for partners with unlimited and joint and several liability (paragraph 1, art. 49, of Law No. 11,101/2005). Specifically regarding the

secured guarantees, they can only be suppressed or replaced, at the time of their disposal, upon express consent of the creditor that is the holder of such guarantee, pursuant to paragraph 1, art. 50, of said Law. 4.2. Maintaining, in principle, the conditions originally contracted, where the adjusted guarantees are included, the governing law expressly provides for the possibility of the Document: 94863913 - ENTRY OF JUDGMENT/APPELLATE JUDGMENT - Certified website - DJe: 04/26/2019 Page 1 of 2 Superior Court of Justice [*sic*] judicial reorganization plan providing otherwise in relation thereto (paragraph 2, art. 49, of Law No. 11,101/2009). 4.3. Upon resolution of the judicial reorganization plan presented, the creditors, represented by their respective class, and the debtor proceed to the negotiations intended to adapt the conflicting interests, assessing the efforts and waivers they are willing to support, with the intention of reducing the imminent losses (under the creditors' perspective), as well as allowing the restructuring of the company in crisis (under the debtor's point of view). And, in order to allow the creditors to have an appropriate representation, whether for the instatement of the general meeting or for the approval of the judicial reorganization plan, the governing law establishes, in art. 37 and art. 45, the respective minimum quorum. 4.4 Therefore, it is inappropriate to limit the suppression of the secured and personal guarantees, as set forth in the judicial reorganization plan approved by the general meeting, only to the creditors that have voted in favor thereof, treating the other creditors of the same class in a different way, being clearly contrary to the resolution of the majority. 4.5 Specifically, the suppression of the secured and personal guarantees was expressly established in the judicial reorganization plan, which was approved by the creditors duly represented by the respective classes (therefore, it is a measure that, in a weighting of values, corresponds to the interests of the majority), which implies, in reflection, the compliance with paragraph 1, art. 50, of Law No. 11,101/2005, and mainly implies all creditors being indistinctly bound. 5. Special appeal partially granted."

The gathering of the Bondholder creditors, qualified or non-qualified, in a block, as well as the isolation of the Creditor ANATEL, the union of the PEX creditors and the identification of the Financial Creditors, took place in order to make specific discussions and negotiations possible given the peculiarities of the credits (origin, legitimacy and homogeneous interests), occurring within the legality, transparency and good faith, and, as it must be repeated, it was not challenged until this moment.

It is correct to state that the Amendment voted did not create any subclasses, but only maintained the formats that were already included in the original RJ Plan, and caused, as an exception, a change regarding the term of payment for the creditors that had made statements in favor of restructuring options I and II, in case of excess cash due to the disposal of assets.

Analyzing the voting scenario of Class III, the argument of constitution of a previously aligned and defective majority falls apart when the unit Creditor ANATEL, the credit discount of which was 50%, with payment within seven (7) years, voted favorably, without having any alignment with the bondholders subclass and, mainly, when the bondholder Brookfield Credit Opportunities Master Fund, L.P, a shareholder of the OI Group, voted in contrary, which concretely undo any conclusion in the sense of previous alignment between the Subclass and the RJ Debtors.

Thus, it is not possible to consider defective the “objective statement” of said creditors that were based initially on the full approval of the provisions of the original RJ Plan and now the ones of the Amendment, because, as it is supported by the abovementioned lessons of Emílio Betti and Antônio Junqueira de Azevedo, it must be valued as a whole since the beginning of the Judicial Reorganization, when it is possible to state that, even before voting at the first General Creditors’ Meeting, this group of creditors has always adopted a favorable position regarding the market solutions presented and negotiated with the RJ Debtors, being plausible to state that they were always in favor of the corporate group’s recovery.

It must be remembered that these Qualified Bondholder Creditors, pursuant to the approved RJ Plan, have contributed new money to the RJ Debtors and converted part of their credits into new shares of OI. They have invested BRL 4 billion so that the companies in crisis continued to exercise their activities and they trusted in the restructuring project by becoming shareholders of the companies.

On the other hand, the arguments that the will of the Class was defective because the majority did not have any intention of voting against the approval seems to be groundless, since their original method of payment did not change, and there was also the possibility of improvement in certain cases, (cash sweep) of clause 5.2, which was fully maintained.

Paragraph 3, art. 45, of Law No. 11,101/2005 establishes as follows:

“The creditor will not be entitled to vote and will not be considered for the purposes of verifying the quorum for resolving on whether or not the judicial reorganization plan changes the amount or the original conditions of payment of its credit”.

The interpretation that was made regarding said provision is unreasonable, since, even if the Amendment voted had not modified the amount and the payment conditions of the qualified bondholder creditors, which were ratified with the original RJ Plan, the RJ Plan itself radically modified, initially, the payment of these bonds.

One cannot make such an interpretation regarding the provision invoked only from the Amendment’s perspective, because, as the name already indicates, it is incorporated to the provisions of the original RJ Plan, so it is not a new plan. Therefore, if the creditors had their credits changed in the original composition (the ratified RJ Plan), even if these conditions have been fully maintained in the Amendment, we cannot consider the effects of the provisions of paragraph 3, article 45, to remove the ability and participation of these creditors in a new General Creditors’ Meeting.

This is because the interpretation of said article must start with the analysis of the original bond that caused creditors to be subject to the effects of the Judicial Reorganization, and not of the “novated bond”, due to the ratification of the original RJ Plan.

For all purposes, we must consider that the Bondholder creditors had suffered and will continue to suffer, at least until the closing of the Judicial Reorganization, when the new bond granted thereto will be stabilized (paragraph 1, article 59, of Law No. 11,101/2005), significant changes in their original method of payment that were included in the "indenture deed", and if said conditions had been fully maintained by the original RJ Plan, they would remove the power of making resolutions at the original meeting from such creditors, according to the provision mentioned, and now also aiming at resolving on its Amendment.

The rule should only be applied if the conditions and amount of the original bond (indenture deed) were not changed; however, one cannot deny that the creditors suffered significant changes in the method of payment of their credits, especially regarding the receipt of credits through the receipt of shares and notes.

Regarding any defect of the will under the perspective that the credits were already settled and, therefore, there would be no reason for the non-adversely affected creditors to resolve on the non-approval of the Amendment, I refer to what had already been decided on pages 472,609/472,613.

In this sense, upon all evidence, the interest of the creditors in the success of the judicial reorganization proceeding and, consequently, in the approval of the market solutions presented and voted remained in force, so that they could have the guarantee that they will receive their credits, the maturity of which had been delayed precisely due to the measures presented.

Moreover, the Amendment voted encompasses great structural changes in the organization of the companies under reorganization through the creation and sale of UPIs and other Assets, conditions that were essential to reformulate and maintain the economic and financial feasibility of the companies and that, therefore, are closely inserted in the interest of all creditors that have not received their credits yet.

"The exception established in the agreement and ratified is characterized by good faith, taking into account that it was included to protect those that, though they have had their credits or a part thereof considered as "settled" according to the Plan, they remain fully connected and interested in the procedure of recovery of the RJ Debtors, as they have delayed the receipt of their credits through new bonds with future maturity, such as, for instance, in the case of receiving through the Notes, the payment of which will only occur within seven (7) years from its issue".

As an example, I stress that, even in case of acceptance of the nullities and exclusion of the Bondholder Creditors from the voting, the facts regarding the Amendment approval would not change, since the approval would be achieved through more than 50% of the creditors of Class III, which would be sufficient to constitute the majority.

Thus, I hear but reject all requests of nullity of the quorum for voting and approval of the Amendment, as there were no defects in its constitution and will.

Still within the second phase of the four-phase control, I continue to remind you that the best legal scholars state that, from Law No. 11,101/2005, under the influence of the reform that took place at the end of the last century and was implemented by the USA, a new legal system regarding business insolvency was introduced in the Brazilian legal order, which did not privilege the protection of the interests of the creditors nor the ones of the debtors, but privileged the division of burden between creditors and debtor as a predominant factor so that the reorganization of the company can be reached due to social and economic benefits resulting therefrom.

Based on art. 47, the Brazilian model of judicial reorganization is guided by procedures that provide appropriate conditions for creditors and debtors to proactively seek solutions that help the company to overcome its crisis and, therefore, keep complying with its social function through the healthy development of its business activity, benefitting not only the parties involved in the proceedings but also the entire society, by virtue of the production and distribution of wealth.

In that sense, I refer again to the lessons of Daniel Carnio Costa: “the judge responsible for conducting this special type of proceedings must always take into account the theory that I call balanced distribution of burden in the judicial reorganization. There are two core points in this theory: a) it is stated that the company under reorganization must assume the burden of what is incumbent thereupon in the procedure by acting in an appropriate manner, both from the procedural point of view and regarding the development of its business activity; b) the judicial reorganization only makes sense because it creates relevant social and economic benefits that result from the continuity of the development of the business activity, such as creation or maintenance of jobs, movement and generation of wealth, goods and services and payment of taxes.”

Thus, the judicial reorganization would be beneficial to the debtor, which would continue producing to pay its creditors; beneficial to the creditors, which would receive their credits, although in new terms and conditions; but it would be especially beneficial to the social interest, since the process of recovery is only justified if the continuity of the business activity creates the social benefits that result from the exercise of its activity. In this process, discounts and extension of terms for the receipt of credits are validly considered as a burden to the creditors.

Based on the allegations of differentiated treatment and abusive burden, the latter allegedly found in the discount of 55% attributed to their credits, some Financial Creditors have stated the impossibility of ratifying the Amendment and the nullity of the General Creditors’ Meeting.

At first sight, the argument is inserted in the economic content of the resolutions submitted to voting, which prevents the Judiciary Branch from making any considerations due to the sovereignty of the GCM decisions in this case. However, even if the issue has a financial nature,

I decide to hear its reasons in the sense of investigating if there was a differentiated treatment, justified by the provisions related to the changes in the method of payment used regarding the Financial Creditors.

Said Creditors argue that the breach of the *pars conditio creditorium* is evident, given the burdensomely excessive discount imposed only to the Financial Creditors as components of Class III, to the extent that no other creditor that is a part thereof has suffered such burden, that is, the majority had their conditions of payments agreed upon in the original RJ Plan unchanged.

Being heard, the RJ Debtors vehemently denied such arguments, stating that everyone in Class III, without any exceptions, had their credits encumbered to some degree, and that the discount attributed in the Amendment to the Financial Creditors results from the repayment due because of the adjustment in advancing the term of payment set forth in the original RJ Plan.

They say that, despite the allegations of the Financial Creditors, still in the course of the General Creditors' Meeting, the RJ Debtors, as far as possible, were able to implement improvements for the payment of their credits, as follows:

a) reduction in the discount of pre-payment from 60% to 55% on the face value of the RJ Debtors' debt, if they have their credits settled almost 10 years before the term originally established by the original RJ Plan; and

b) reduction from 55% to 50% of said discount due to the pre-payment applied on the debt for the Financial Creditors that provide bank surety facilities in guarantee for the RJ Debtors.

They state that the discount offered to the Financial Creditors results from the equivalent, in economic terms, to the amount that would be paid in a much longer term, according to the original RJ Plan. Therefore, the difference is due to the anticipation of the payment, and the amount that would be paid was brought to the present value, pursuant to the opinion presented by the consulting company Tendências:

"From the description of the 60% discount in the pre-payment proposal in the Amendment instrument to the groups of creditors of the Restructuring Option I and II, this subsection explores the economic and financial rationale underlying the percentage of discount proposed and its impact on the recovery of these credits. In a brief manner, the recovery of a certain credit is an indication defined by the ratio between the estimated net present value of the flow of receivables and its own face value (...) As presented in the previous graphs, rates between 15.0% and 16.0% in Reais, or between 11% and 12% in Dollars, take Banks and Ecas (creditors present in the Restructuring Option I) to a recovery of approximately 40%, also reflecting a discount of the same magnitude on the face value (already adjusted to July 2020) of these credits, a percentage that is close to that observed by the Qualified Bondholders and adherent to the market reality."

It seems to me that there is an exaggerated resistance by certain Financial Creditors included in Class III regarding the new market solutions provided by the RJ Debtors in the Amendment, which aim at adjusting conditions that minimally meet the interest of the majority of the creditors and, at the same time, provide conditions for the maintenance of the business activity and the social function exercised by the business companies.

It is generally known that a judicial reorganization requires, given its own purpose, a sacrifice from all parties that are subject thereto. As mentioned above, debtor and creditors must be minimally aligned and be in accordance regarding the recovery of the business company in a feasible manner, able to produce the expected effect, which is the preservation of the company through the effectiveness of the judicial reorganization proceedings.

In this sense, I understand that it is reasonable that all parties involved in a unique judicial reorganization such as this one, the size of which has no precedent in the history of Brazilian law, must suffer some losses, sometimes of a significant amount, but that are justified, especially if relativized given the large credits with the most different natures.

The Amendment thus initially set forth a 60% discount, followed by a 55% one agreed upon at the General Creditors' Meeting, and that may reach 50% in a certain situation. As explained by the RJ Debtors, the amount of the discount granted to the Financial Creditors only corresponds to the need of bringing the amount to present value due to flattening of the term of payment and, therefore, a new discount was not being applied, it was granted in the original RJ Plan.

The RJ Debtors' argument is absolutely sustainable. This is because, by taking as basis for the calculation the total amount due to the Financial Creditors, in the capitalization due on the full initial period established for the payment, in case of advancing the term of payment, the repayment of the capitalization of the advance period had to be granted, under penalty of unjust enrichment by the other party. The discounts pointed out were only the need of bringing the debt to its present value, which is a market practice in cases of early payment, and the percentages represent only the reality of the monetary situation.

This finding is well presented in the opinion of Fábio Ulhoa Coelho presented by the RJ Debtors, when he states that "the 55% discount is not an adjustment in the amount of the credit discount so that the RJ Debtors succeed in overcoming the crisis. On the contrary, the discount is fully rational, usually applied by the market to bring such credits amount to the present value (that is, to transform it from the Term of Anticipation to the Term of the Pre-Payment). If any amount is anticipated without a discount rate, the creditor's undue enrichment will necessarily occur. Thus, the 55% discount of the Amendment is not an aggravation in the sacrifice of the RJ Debtors' creditors; it is, clearly, a measure of justice that avoids their undue enrichment".

I remind that Creditor ANATEL has suffered a similar discount, as its credit was reduced in 50% for payment in seven (7) years and, even so, this fact was not considered a burdensomely abusive condition in relation to said creditor, which is majority in said Class.

Thus, considering that the credits of the Financial Creditors were stable and equivalent to what they would receive under the terms and maturities of the original RJ Plan, and that the discount granted was necessary to avoid a possible unjust enrichment, and to the detriment of the other creditors, the alleged unequal treatment in view of the excessive burden allegedly imposed to the Financial Creditors was not characterized. The allegation must be rejected.

Finally, the argument that clause 7.2 is illegal must be analyzed. Pursuant to said clause, the creditors release the Exempted Parties and former administrators from each and every liability for regular management acts practiced and obligations contracted between the approval of the RJ Plan and the approval of its amendment, including in relation to the restructuring acts set forth in the amendment and necessary to the constitution of the UPIs.

Banco Fibra argues that “the simple approval of the amendment cannot mean a safe conduct for any fraudulent act practiced, such conducts not being within the rights available by the creditors”. Banco Itaú, in turn, says that the clause is “absolutely illegal as it provides for liabilities that are properly regulated in the Brazilian Corporations Law.”

There is no doubt that the approval of the amendment and said clause cannot result in safe conduct for fraudulent management acts. Any fraud or abuse by the administrators may and must be investigated by the court with jurisdiction, pursuant to the Brazilian Corporations Law. What the clause says is that the creditors, by agreeing with the restructuring acts set forth in the amendment to the RJ Plan, also agree with the management acts necessary for the implementation of the amendment, exempting the administrators from any liability regarding such acts. It is a logical and natural consequence of the amendment’s approval.

In that sense, the RJ Plan approved in 2017 also had a clause with the same content that was not the object of any discussion. Thus, I do not see any illegality in said clause.

Having concluded the analysis according to the criteria of the first and second phases, we will start the third phase, where the control consists in verifying the legality of the extension of the decision of the majority of the creditors against the dissenting creditors.

Here, though the provisions are free of defects and, therefore, legal, extending them to the dissenting creditors could, in theory, be illegal by being against a public order rule that cannot be mitigated, as it occurs when the majority agrees that the approval of the plan will affect the guarantees of the co-obligors, sureties and holder of rights of reimbursement, which is against the provisions of paragraph 1 of art. 49 and 59 of Law No. 11,101/2005.

In this aspect (extending the decision of the majority to the dissenting creditors), the Amendment approved did not present any provisions that minimally indicates a violation of the legal order.

As the last stage, the control of legality must be limited to the possible abuse of the creditor's vote.

Law No. 11,101/2005, contrary to the Civil Code and the Brazilian Corporations Law, does not have any objective provisions that define the abusive exercise of the voting right, leaving this role to the legal scholars and the case law.

Usually, this control is exercised from the votes contrary to the plan, which are cast through the abusive exercise of voting rights, by creditors that hold, according to the financial criterion, enough power to decide the course of the General Creditors' Meeting, but nothing prevents it from being examined in a reverse manner, as the Financial Creditors did.

Once again, it is necessary to value and emphasize the entire pursuit of the creditors' will that constituted the quorum for approval under the perspective of the objective good faith. Pursuant to this guideline, I declare that no abuse of the right to vote was demonstrated.

This is because, despite the sovereignty of the Meeting's decisions, the creditors' votes are not absolute and, therefore, as all legal acts, they are limited by the good moral conduct, good faith and social and economic function, so established in article 187 of the Civil Code.

However, to examine the creditors' practice of any irregular exercise of the right is not a task to be conducted only through open concepts, that serve as limitation parameters, but also through the analysis of the concrete case.

There is no doubt that the creditors must enter the Judicial Reorganization with the purpose of optimizing the receipt of their credits, seeking to minimize their losses to the maximum extent possible, but weighing that condition within the entire scenario that includes the actual economic and financial capacity of the Debtor to make its payments, its credit class, the total amount of the liabilities subject to the reorganization, the payment conditions proposed in the plan and, finally, the possibility of not receiving its credit if the bankruptcy is adjudicated.

In addition to that, the creditors, through all business actions taken in the course of the proceedings and of the business restructuring requested, such as the creation of UPIs and the sale of assets, must consider that the RJ Debtors may have full capacity to comply with the obligations assumed, and that the recovery of the "OI Group" is feasible, even if it is remodeled.

Having verified the economic and financial feasibility of the companies and the due consideration of the causes and effects of the market solutions presented, the creditors, acting through the major principle of the Law, that is, the preservation of the company (art. 47), presumably voted considering the interest in receiving their credits with as little loss as possible, determined by the possible correctness of the measures presented and discussed. From the reading of the minutes of the General Creditors' Meeting, one can notice that, in a free and spontaneous manner, the

creditors understood and voted with the majority of Class III for the approval of the Amendment, thus removing the characterization of any abuse in the exercise of that right.

Having concluded the analysis of the legality, on its different aspects, before conducting the final analysis on the ratification of the General Creditors' Meeting, I refute some other issues presented in the records.

The first one, proposed by the State of Minas Gerais, arguing that it is not possible to grant the Judicial Reorganization without the presentation of the Debt Clearance Certificates (CND), in compliance with the recent decision rendered by the Federal Supreme Court (STF), in the records of Precautionary Measure in Claim No. 43.169-SP.

However, the decision of the Federal Supreme Court does not apply to this case, since we are not deciding on the granting or not of the judicial reorganization, which has been already granted at the time of the ratification of the original RJ Plan. What is under analysis at this moment is the ratification of the Amendment to the RJ Plan, a decision limited, therefore, to the new terms of the legal transaction approved at a new General Creditors' Meeting.

The second one, regarding the allegations made by Escritório Candeias on pages 480,697/480,716 and 480,697/480,716, consists of mere resistance and shallow considerations of an economic and financial nature, and the court cannot overcome the sovereignty of the General Creditors' Meeting in approve them, as already exhaustively explained.

The third one, regarding the statement on pages 480,679/480,695, the creditors did not even indicate the specific clause of the amendment to the RJ Plan that they consider illegal. They only say that the Covid-19 pandemic did not adversely affect the financial results of the company, which would mean "bad faith of the RJ Debtors and the single intention of emptying their material equity with the purpose of obtaining an illicit economic advantage, to the total detriment of the creditors". There is nothing to be granted given what was fully presented in this decision.

The fourth and last one is related to the insurgency of Banco Fibra, on pages 481,277/481,289, regarding the transaction entered into with creditor ANATEL. It argues that the amendment to the RJ Plan does not cover the credits of the other unsecured creditors, such as FIBRA, which "cannot be admitted, according to the principle of *par conditio creditorum* adopted by art. 126 of Law No. 11,101/05". The argument cannot be successful. The payment conditions of the largest individual creditor of this reorganization had already been defined in the RJ Plan approved in 2017 and were now adjusted and, as already stated in this decision, the regulatory agency is giving up 50% of its credit in favor of the preservation of the companies under reorganization. There is no violation of the principle of *par conditio creditorum*.

Based on the foregoing:

a) I reject all allegations of procedural nullity of the General Creditors' Meeting, remove the allegation of unequal treatment between creditors, and reject the requests of nullity of the quorum for voting and approval of the Amendment, as they did not have any defects in its constitution and will.

b) overcoming the due control of legality, I consider as present all the requirements of article 104 of the Civil Code and, taking into account the quorum for approval pursuant to article 45 of Law No. 11,101/2005, I RATIFY, in order to produce the due legal effects, the TERMS OF THE AMENDMENT to the ORIGINAL JUDICIAL REORGANIZATION PLAN, presented on pages 476,326/479,153, with the due integration qualifications granted in this decision.

c) I determine the term of 12 months for the closing of the Judicial Reorganization, as of the date of publication of this decision, which may be extended if necessary to execute the acts related to the disposals of the relevant assets.

Publish. Notify the Judicial Administrator and the Public Prosecutor's Office.

Rio de Janeiro, 10/05/2020.

Fernando Cesar Ferreira Viana - Tenured Judge

Records received from the Judge
Fernando Cesar Ferreira Viana
On ____/____/_____

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FERNANDO CESAR FERREIRA VIANA: 17528 Signed on 10/05/2020 22:30:24
Place: Rio de Janeiro State Court of Appeals (TJ-RJ)