

October 2012

Inside Story: Photo Hall Multimedia

This month's Inside Story is brought to you by Mr Bart De Moor of Taylor Wessing,
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The Belgian company Photo Hall Multimedia SA and its subsidiaries operate in the retail fields of audio, TV, IT and mobile phones. In early 2012 the group was made up of 87 stores including franchised stores and an e-commerce store, with a staff of 385, in Belgium, Luxembourg (through a subsidiary) and, previously, in France.

In 2012, Photo Hall Multimedia SA suffered financial distress due to: (i) the global financial and economic crisis which resulted in decreasing turnover; (ii) the limited innovation in the multimedia industry (especially TV) leading to a decrease in the sale of products as well as in the unit prices, (iii) the impossibility of further expanding the product variety; and (iv) the fierce competition in the industry which resulted in limited margins.

By a judgement of 30 July 2012, the commercial court of Brussels appointed Mr. Bart De Moor, Mr. Jan Van Camp and Mr. Frank Taideman Janssens Casteels collectively as “mandataires de justice” charged with the duty to organise a transfer of undertakings, under judicial authority, of Photo Hall Multimedia SA. The undertakings, possibly to transfer, include the shares of the subsidiary, real estate, local businesses and related lease contracts.

The proceeding is an application of the Belgian law on corporate reorganisation which was adopted in 2009, the “law on the continuity of enterprises”. It is the reorganisation proceeding for Belgium as listed in annex A of the EC Council Regulation 1346/2000 on insolvency proceedings. The new Belgian law provides for three types of reorganisation proceedings. One is based on the negotiation of agreements with a limited number of creditors. Another is based on the adoption of a reorganisation plan through a vote by all creditors. The third type of proceedings tends at the transfer of undertakings. These are all debtor-in-possession proceedings, without the court appointing administrators except for the third type of proceedings tending at the transfer of undertakings, where the law provides for the appointment of “mandataires de justice” with the specific duty of realising the transfer.

The proceedings tending at the transfer of undertakings provides a legal framework for offering a maximum chance of recovery of the viable parts of the activity of a company in distress, preserving a maximum of employment without the prior opening of bankruptcy proceedings. The comparison between the reorganisation and liquidation proceedings is interesting from the point of view of the creditors' rights.

The complexity of the operation resides in the different possible combinations of offerings by potential buyers to take over parts of activity, of machinery, of employment and of real estate. The court has to choose between the different offerings according preference to the preservation of employment and taking into account the creditors' rights. The “mandataires de justice” have to find potential buyers, provide all relevant information to them and to organise and realise the transfer once the decision is taken. In the case at stake, the “mandataires de justice”

have to find potential buyers not only in the same sector of commercial activity but also outside, given the saturation of the market and the existing fierce competition. Potential buyers from other sectors might possibly offer to take over, less members of personnel.

Buyers of parts of activities and assets must be aware that no warranties can be provided by the seller. Indeed, after the transfer of the assets and activities, the company under reorganisation becomes an almost empty shell, which then has to be liquidated.

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