[informal translation from Dutch]

decision

AMSTERDAM COURT OF APPEAL

Civil law and tax division

case number : 200.209.207/01
Suspension of payments number District Court of Amsterdam : C/l3/16/41 S

decision of the three-judge civil chamber of 19 April 2017

in the matter of:

1. CITADEL EQUITY FUND LTD.,
registered in Grand Cayman (Cayman Islands),
2. SYZYGY CAPITAL MANAGEMENT, LTD (AURELIUS),
with registered office in New York (United States of America),
3. TRINITY INVESTMENTS DESIGNATED ACTIVITY COMPANY,
with registered office in Dublin (Ireland),
4. YORK GLOBAL FINANCE FUND L.P.,
with registered office in London (United Kingdom),
appellants,

Counsel: F. Verhoeven, G.H. Gispen and D.G.J. Heems of Amsterdam,

versus

OI BRASIL HOLDINGS COÖPERATIEF U.A.,
registered in Amsterdam,
respondent,
Counsel: L.P. Kortmann and V.G.M. Leferink of Amsterdam.

1. The action in appeal

Appellants are hereinafter collectively called Citadel et al. and the respondent Oi Coop.

Citadel et al. filed appeal by a notice of appeal received by the registry of the Amsterdam Court of Appeal on 10 February 2017 against the decision of the District Court of Amsterdam of 2 February 2017 with the abovementioned suspension of payments number, in which the application seeking the retraction of the provisionally granted suspension of payment and the concurrent pronouncement of the bankruptcy of Oi Coop is denied.

The appeal was treated at the hearing of the Court of Appeal of 29 March 2017.
At that hearing appeared on behalf of Citadel et al. counsel Verhoeven, Gispen and Heems, aforementioned, as well as H.M.E. van Baren, a lawyer in Amsterdam. Counsel Gispen and Verhoeven further amplified the notice of appeal with the aid of notes of oral pleadings that were submitted to the Court of Appeal.
On behalf of Oi Coop appeared counsel Kortmann and Leferink, aforementioned, as well as A. Ourhris, a lawyer in Amsterdam. Counsel Kortmann further explained the statement of defence referred to below with the aid of pleading notes that were submitted to the Court of Appeal.

The administrator J.R. Berkenbosch also appeared, accompanied by his associates E.J. Schuurs and Y.S. Beerepoot, lawyers in Amsterdam, who explained his position with reference to speaking notes that were submitted to the Court of Appeal.

Additionally appeared on behalf of Portugal Telecom International Finance B.V. (hereinafter: PTIF), in its capacity of creditor of Oi Coop R.D. Vriesendorp, R. van den Sigtenhorst and K.M. Sixma, lawyers in Amsterdam. Counsel Van den Sigtenhorst further explained the position of PTIF with reference to speaking notes that were submitted to the Court of Appeal.
Further appeared on behalf of The Bank of New York Mellon (hereinafter: BNYM), acting for the benefit of the 2022 and 2021 beneficial noteholders, M.H.R.N.Y. Cordewener, a lawyer in Amsterdam.
Counsel Verhoeven and Gispen aforementioned also appeared on behalf of Monarch Master Funding 2 (Luxembourg) S.a.r.1. (hereinafter: Monarch) as holder of notes issued by Oi Coop.
Lastly appeared, the administrator of PTIF, J.L.M. Groenewegen, accompanied by his associate D.J. Bos, a lawyer in Amsterdam.

The Court of Appeal has taken knowledge of:
- the notice of appeal, with annex (exhibit 25);
- the documents from the proceedings in first instance, including the official record of the hearing of 12 January 2017;
- the letter from the administrator of 16 March 2017, with annexes (annex 1 through 3);
- the letter from the administrator of PTIF of 20 March 2017;
- the statement of defence from Oi Coop of 22 March 2017, met annexes (numbered 1 through 21 c);
- the administrator's statement of 23 March 2017, with annexes (exhibits 1 through 6);
- letters from Oi Coop of 20 March and 24 March 2017;
- letters from Citadel et al. of 21 March, 22 March and 24 March 2017;
- further documents of Citadel et al. (exhibit 26 through 33) submitted by letter of 27 March 2017;
- further documents of Oi Coop (annex 22 through 24) submitted by letter of 28 March 2017.

Counsel declared have taken knowledge of the aforementioned documents.

2. The oral hearing in appeal

2.1. The Court of Appeal decided in advance of the hearing on the applications made by the parties as set out in the letters from the administrator (16 March 2017), from Oi Coop (20 March 2017) and from Citadel et al. (22 March 2017) in regard to the public nature of the hearing. These decisions were communicated to those involved by e-mail of 23 March 2017 and by letter of 24 March 2017, which read as follows. By analogy with article 220 of the Dutch Bankruptcy Act (*Faillissementswet* "Fw") the treatment of the present appeal is to take place in camera. Those who can demonstrate that they are creditors may attend the hearing in appeal. The administrator of PTIF may also attend. Lastly, the Court of Appeal directed on the basis of article 29 of the Dutch Code of Civil Procedure (DCCP) that it is forbidden to make disclosures to third parties with respect to the proceedings in camera and the contents of the litigation documents. Though Oi Coop has requested this, there is no occasion to revert this decision.

2.2. Taking into account the provisions above, the Court of Appeal requested N. Wendling, employed at G5 Evercore and financial adviser of Citadel et al., to leave the hearing, as he is not a creditor of Oi Coop. He complied with this request. Documents have been submitted (as evidence or otherwise) on behalf of PTIF, BNYM and Monarch, sufficiently demonstrating in which capacity they have appeared in chamber and that they each have an interest in being present. Given this, the Court of Appeal directed that PTIF, BNYM and Monarch may be present during the hearing in chamber.

3. The established facts

3.1. On 9 August 2016, Oi Coop submitted a petition for a (provisional) suspension of payments to the District Court of Amsterdam. A draft composition plan was attached to the application. In a court order of 9 August 2016 the District Court granted Oi Coop a provisional suspension of payments, thereby appointing the aforementioned Berkenbosch as administrator and W.F. Korthals Altes as supervisory judge. In this context the District Court also ordered that the hearing referred to in Article 218 Bankruptcy Act (meeting of creditors) will not take place and that the consultation and voting on the offered composition plan will take place on 18 May 2017 at 10:00 hours.

3.2. Oi Coop was established on 20 April 2011 and belongs to a group of companies (the "Oi Group"). The Oi Group is one of the largest integrated service providers in telecommunication industry in the world. The sole member of Oi Coop is Oi S.A., the parent company of the Oi Group. The shares in Oi S.A. are traded on the stock exchange of Sao Paulo and on the New York Stock Exchange. A large share of the financing of the Oi Group is conducted via its two Dutch financing companies: Oi Coop and PTIF. PTIF was granted a provisional suspension of payments on 3 October 2016 with the aforementioned Groenewegen appointed as administrator and M.J.E. Geradts appointed as the supervisory judge.

3.3. The operational activities of the Oi Group primarily take place in Brazil, but the Oi Group is or has also been active in Portugal and various African countries. In Brazil the telecom activities are regulated by the Brazilian Agência National de Telecomunicaões ("ANATEL").

3.4. The activities of Oi Coop include (i) attracting monies from the international capital markets, primarily by issuing notes (bonds), (ii) receiving funds from PTIF via a credit agreement which Oi Coop and PTIF concluded on 2 June 2015 and which has been revised from time to time (the "PTIF loan") and (iii) the on-lending of funds that Oi Coop has raised by means of the notes or has received from PTIF (by means of the PTIF loan), to members of the Oi Group. The notes are guaranteed by Oi S.A. Oi Coop does not itself have any operating activities and the noteholders can only be paid from the revenue and proceeds generated by the operating companies of the Oi Group. Under the guarantee of Oi S.A., the noteholders also have a direct claim on Oi S.A.

3.5. Oi Coop is issued two series of notes, as at 20 June 2016 for a total of € 1.9 billion. Under the PTIF loan, it owes PTIF approximately € 3.8 billion. Oi Coop has lent approximately € 4 billion to Oi S.A. and in the period of June 2015 to March 2016 and approximately € 1.6 billion to Oi Móvel S.A. ("Oi Móvel") in March 2016 (hereinafter referred to jointly as the Coop transactions)

3.6. On 20 June 2016, Oi Coop, together with Oi S.A. and five other group companies, namely PTIF, Oi Móvel, Telemar Norte Leste S.A., Copart 4 Participates S.A. and Copart 5 Participaões S.A. (jointly referred to as: the RJ creditors), submitted a petition for opening consolidated judicial restructuring proceedings in Brazil (recuperacaõ judicial, the "RJ Proceedings"). The Brazilian Court granted this request on 29 June 2016. The objective of the RJ Proceedings is to restructure the Oi Group as a going concern by means of a composition plan (the "RJ Plan") negotiated with the creditors and approved by the creditors and the Court to avoid liquidation. On 5 September 2016, a consolidated (draft) RJ Plan was filed with the Court in Rio de Janeiro, Brazil. Oi S.A. announced by press release of 22 March 2017 that the (draft) RJ Plan will be amended. The changes are shown by the attachments to that press release. It follows from the original (draft) RJ Plan and the amended (draft) RJ Plan that Oi Coop will not receive distributions on its claims on Oi S.A. and Oi Móvel on the basis of the Oi Coop transactions. The chairman of the board of Oi S.A. stated on this: “This is the proposal we’ll send to the judge and put to a vote.”

3.7. By letter of 2 March 2017, the administrator of Oi Coop wrote to the management of Oi Coop the following, insofar as relevant:

“(■■■)
1.2 The Court has instructed us (directors and administrator) to discuss the possibilities for further cooperation, in pursuit of a Dutch composition plan that is acceptable to the Coop creditors

(see the Decision at 8.20 Decision). During our video conference on 7 March 2017 we will discuss those possibilities for further cooperation, including preparations for the creditors' meeting on 18 May 2017 and the working mode to be adopted.

1.3 The present letter raises a number of fundamental questions based on the Decision. My aim is to achieve clarity on what intentions Coop and Oi S.A. (''Oi '') have, and whether they are indeed willing to address the issues in a new amended RJ Plan.

(...)

3. QUESTIONS

3.1 (...) I have various questions, which are set out below. Please respond as soon as possible, and at the latest by 10 March 2017 COB. The Financial Information (question 5) and the new and amended RJ Plan (question 1) at the latest by 22 March 2017 COB.

(...)

3.5 Question 1.—Amended RJ Plan

(i) When will an amended RJ Plan be presented that can be considered an offer rather than a draft placeholder plan only?

(...)

3.6 Question 2. - Intercompany Claims

(i) What recovery is (or will be) offered to Coop for the Intercompany Claims under the (new amended) RJ Plan?

(...)

(ii) If no recovery is offered to Coop, what equivalent compensation is (or will be) offered to Coop's creditors for the renunciation of the right of recovery on the Intercompany Claims?

3.7 Question 3. - Guarantee Claims

(i) What recovery, if any, is (or will be) offered to Coop's creditors under the (new amended) RJ Plan for the Guarantee Claims?

(...)

(ii) Why do Coop's creditors receive the same payment for two claims as other Class III creditors of the RJ Debtors receive for one claim?

3.8 Question 4. - Bankruptcy scenario/Secondary Claims

(i) What recovery is (or will be) offered to Coop's creditors under the (new amended) RJ Plan for the Secondary Claims (...)?

(...)

3.9 Question 5. - Financial Information

(i) Please confirm that you are willing to provide the Financial Information (including segregated creditors ' lists) by COB on 22 March 2007 at the latest.

Once I receive your confirmation, I will provide you with further questions regarding the financial information that I need in order to perform my tasks as administrator (...)

(ii) Please confirm that you (RJ Debtors) are willing to support and finance that I retain a financial expert.

3.10 Question 6. - Withdrawal of the filing of 28 November 2016

(i) Please confirm that you will immediately withdraw the filing of 28 November 2016.

(...)

3.11 Question 7. - Consolidation

(i) Why is substantive consolidation of the assets and liabilities of the RJ Debtors in the best interests of Coop's creditors, compared with an unconsolidated restructuring?

You represented this in the writ of defence, and the Court took it into consideration. I presume that you can support this sweeping statement by presenting expert opinions; if so, kindly share these opinions with me. According to the calculations presented to me by creditor groups, unconsolidated restructuring could substantially increase the recovery for Coop's creditors (45.80% via Coop plus 18% on Guarantee Claims instead of a total of approximately 30% under current RJ Plan). In your answer, please include what percentage Coop's creditors would receive if the RJ Plan did not provide for substantive consolidation.

3.12 Question 8. - Tax implications

(i) Why does substantive consolidation provide for an optimal tax structure in the restructuring?

(ii) Why does bankruptcy of Coop have negative tax implications for Coop's creditors?

(iii) Why would a distribution on the Intercompany Claims trigger negative tax implications?

(...)
3.13 Question 9. - Respect the vote in the Netherlands
(1) Please confirm that you will not withdraw the suspension of payment proceedings and that you will respect and act in accordance with the outcome of the vote by Coop's creditors in the Dutch proceedings. (...) "

3.8. By letter of 15 March 2017, the board of Oi Coop responded to the administrator as follows, in so far as relevant:
"(...) As discussed during the recent video conference, we would like to propose to address your questions during our future scheduled conferences, as the restructuring process further develops and the required information becomes available (some of your information requests can simply not be complied with at this stage of the restructuring process, which is not uncommon in multi-jurisdictional restructurings). (...) "

4. Adjudication

4.1. As well as Citadel et al. the administrator of Oi Coop has also requested the District Court to withdraw the provisional grant of suspension of payments and at the same time to pronounce Oi Coop's bankruptcy. In the same determination that is under challenge the District Court dismissed the administrator's application and, in summary, held that it had neither been contended nor had it become apparent that the creditors would be better off were the suspension of payments to be withdrawn and Oi Coop to be declared bankrupt and that none of the grounds for withdrawal of the suspension of payments (under Article 242 paragraph 1 Fw) were present. Lastly, the District Court urged the parties to enter into consultations with each other in order, once again, to align their mutual expectations and to enable the administrator to perform his duties satisfactorily.
The application of Citadel et al. was also dismissed given that the District Court found that this request reposed on no grounds other than those of the administrator.
It is against this decision and the grounds underpinning it that Citadel et al. have directed their grievances.

4.2. The primary grievance of Citadel et al. contends that the determination under challenge lacks sufficient substantiation insofar as this concerns their action against Oi Coop. This grievance fails. In its determination the District Court held that Citadel et al. had put forward no grounds other than those which the administrator had used to underpin his application and that there application could not "likewise" lead to the withdrawal of the provisional grant of suspension of payments. As the Appeal Court understands this, in making this finding the District Court meant that the reasons it gave for its dismissal of the grounds put forward by the administrator likewise held for the identical grounds that Citadel et al. had been put forward. That, as they claim, Citadel et al. "had never seen" the administrator's application does not change this.

4.3. Citadel et al. then proceeded to raise as grievance that the District Court had erred in linking to the ground for withdrawal that the debtor was attempting to prejudice his creditors (Article 242 paragraph 1 under 2 Fw) the precondition that this had to take place in the course of the suspension of payments. However this time clause is only set out in Article 242 paragraph 1 at 1 Fw. As the administrator has found that Oi Coop together with Oi S.A. and Oi Móvel seriously prejudiced its creditors in the year preceding the suspension of payments, the Article 242 paragraph 1 at 2 ground has been satisfied, so Citadel et al. claim.

4.4. The Appeal Court rules as follows. Article 218 paragraph 4 Fw provides that a suspension of payments may never be granted definitively where there is a well-founded fear that the debtor will attempt to prejudice the creditors during the suspension of payments. Article 242 paragraph 1 subsection 1 Fw provides that the suspension of payments may be withdrawn by the district court where, in the course of the suspension of payments, the debtor has engaged in bad faith management of the estate. Given the time clause set out therein, these two provisions refer to impermissible acts of omission and commission on the part of the debtor during the suspension of payments. However no

such time clause is to be found in Article 242 paragraph 1 subsection 2 Fw: the suspension of payments may be withdrawn where the debtor seeks to prejudice his creditors. This suggests that this time clause does not apply to this ground for withdrawal. In addition a situation in which a debtor might seek to prejudice his creditors during the suspension of payments would anyway fall under his bad faith management in the sense of Article 242 paragraph 1 subsection 1 Fw. This means that the situation referred to at Article 242 paragraph 1 subsection 2 Fw would not enjoy any independent significance if the construction adopted by the District Court is followed, a construction that the legislator did not intend. Nor is it reasonable to suppose that the legislator had wished to make it impossible for the suspension of payments to be terminated where the administrator, in the course of his activities, discovers acts of omission or commission on the part of the debtor prior to the suspension of payments that lead to prejudice being visited on the creditors. In such a case the debtor does not in principle “deserve” any stay of payment on the part of his creditors.

4.5. In this context the following is pertinent. It is common ground between the parties that in the June 2015 – March 2016 period Oi Coop lent EUR 5.6 billion to Oi S.A. and Oi Móvel, of which EUR 1.6 billion to Oi Móvel a few days before it was made known (on 9 March 2016) that a financial adviser had been appointed with a view to a restructuring of the debts of the Oi Group. An abstract from the Commercial Register concerning Oi Coop dated 22 December 2016 (Exhibit 1 attached to the application of Citadel et al.) shows that A.J. Lavatori Correa has been a director of Oi Coop since 3 March 2016. Given his business e-mail address (lavatori@oi.net.br), it is sufficiently likely that he is an employee of one of the members of the Oi Group, or, failing that, that he occupies a position there. At point 7.3 of the second public report of the administrator dated 3 March 2017 it is stated that the EUR 1.6 billion loan made to Oi Móvel was extended after the change in the board of 3 March 2016, a point that Oi Coop has not gainsaid.
The administrator has qualified these loans designed wrongfully to place assets beyond the reach of creditors; or, failing that, as unlawful. Aside from the question of whether all the loans satisfy these qualifications (or only one of them), the EUR 1.6 billion loan is in any case highly suspicious if only in the light of the fact that Oi Coop, as the financing vehicle within the Oi Group, is also obliged to take account of the need to promote the durable success of the business of the Oi Group. This loan was extended shortly before the announcement of the restructuring of the debts of the Oi Group. In this context Oi Coop's position as the financing vehicle within the Oi Group and the *de facto* involvement of the Oi Group in Oi Coop when this loan was extended (given that one of its employees was at the time a newly appointed director of Oi Coop) are also pertinent. On the basis of these facts and circumstances, when viewed in mutual connection and correlation, the Appeal Court finds it likely that Oi Coop's board had knowledge of the financial problems of the Oi Group when it extended the EUR 1.6 billion loan to Oi Móvel. It may also be noted that Oi Coop has not denied having this knowledge.
Given that in principle a restructuring of debts means that creditors are no longer repaid in full (or, in any case, not on time) and that Oi Coop knew or ought reasonably to have known that Oi Móvel, or, respectively, Oi S.A. would be unable to comply with its duties of repayment (or not within a reasonable term) with regard to Oi Coop or, respectively, with its guarantee obligation with regard to the noteholders, the position that there obtains a prejudicial act in the sense of Article 242 paragraph 2 subsection 2 Fw has been made out to a sufficient degree. In this context note has been taken of the point that, according to the proposed RJ composition (in draft form) and the amended RJ composition (in draft form), Oi Coop has consented to the consolidated restructuring of the debts of the Oi Group in which context no distribution will be made against its claims against Oi S.A. and Oi Móvel on the ground of the Oi Coop transactions, a matter that, given its damaging character, scarcely appears likely in any case for the EUR 1.6 billion loan to Oi Móvel.

4.6. In addition this ranks as an act of management or disposition on the part of Oi Coop in respect of an asset that is part of the estate: it having made a proposal to waive its claims against Oi S.A. and Oi Móvel, for which the administrator's agreement was required (Article 228 paragraph 1 Fw) even though Oi Coop did not seek that permission. This satisfies the grounds for withdrawal pursuant to Article 242 paragraph 1 at 3 Fw.

4.7. Citadel et al. pursue their grievances when they contend, in summary, that as from day one

until the end of his appointment the administrator must have at his disposal the same information as Oi Coop (or its board) “in order to secure management of the debtor's affairs in collaboration with the debtor” (Article 215 paragraph 2 Fw), although Oi Coop (or its board) declines to share this information with the administrator.

4.8. In this connection the administrator's viewpoint, that he despatched to the Appeal Court for the purposes of the appeal hearing and that he commented upon at the hearing, is of importance. This viewpoint is not, as Oi Coop argued at the hearing, an unacceptable disguised appeal flying in the face of the point that the administrator has not launched any appeal. Pursuant to Article 242 paragraph 3 Fw the administrator is anyway to be heard in order to make known his viewpoint.

4.9. The administrator noted that in a press release of 22 March 2017 (for details see paragraph 3.6 above) the Oi Group stated that in the immediate future an amended version of the RJ composition (in draft form) was to be lodged. An appendix attached to the press release provided details of the changes. According to the administrator it could be deduced from these details that even in the amended plan (i) no compensation was to be accorded to Oi Coop for its intercompany claims on the grounds of the Oi Coop transactions, (ii) no account was taken of the Oi Coop transactions which the administrator has deemed to be designed wrongfully to place assets beyond the reach of creditors and to be unlawful while (iii) no account was taken of the fact that in addition to their claims against Oi Coop the noteholders also have claims against Oi S.A. arising from the guarantee it had extended. The administrator also noted that this amended plan had been submitted in, in part, Oi Coop's name but that this had not been discussed with him.

4.10. In the light of the foregoing the administrator is of the view that since the hearing of the application for withdrawal before the District Court in the first instance and despite the District Court's call, made in the determination under challenge, for cooperation with him (i) Oi Coop (or its board) continues to refuse to supply him with the information he needs to fulfil his duties properly, (ii) Oi Coop (or its board) has not involved him in important acts in Oi Coop's name, such as amending the RJ composition (in draft form), with direct consequences for Oi Coop's assets. A further point of note is that while the Oi Group may claim that negotiations are proceeding positively with the creditors, a large group of creditors of the Oi Group (who in aggregate represent claims amounting to some USD 4 billion) have stated that the Oi Group has not been negotiating with them at all.

4.11. The administrator concludes that it has become apparent from the course of affairs following the determination under challenge that Oi Coop (or its board) and the Oi Group will not change their policy of excluding him. With the announcement of the amendments to the RJ composition (in draft form) it has become clear that Oi Coop and the Oi Group will pay no heed to Oi Coop's exceptional position; nor to the creditors of Oi Coop as a consequence of the intercompany claims; nor to the guarantee claims against Oi S.A.; nor to the Oi Coop transactions.
For this reason the administrator believes it to be in the interest of Oi Coop's creditors that an (independent) trustee be appointed who can safeguard their interests and, for as long as this remains possible, may have influence on the exercise of the RJ proceedings in Brazil.

4.12. The Appeal Court notes that it follows from the correspondence between the administrator and Oi Coop's board that is reproduced at paragraphs 3.7 and 3.8 above that Oi Coop is not prepared to answer the administrator's questions which the Appeal Court considers are relevant to this matter given that his duty is to pursue the management of its affairs together with Oi Coop's board (Article 215 paragraph 2 Fw) and to report on the composition plan proposed at the meeting (Article 265 paragraph 1 Fw). While it may be the case that the RJ proceedings are a complicated process and that the results cannot be precisely predicted (if they can be predicted altogether) but the answer made by Oi Coop's board (see paragraph 3.8) does not bear witness to any real readiness to enter into genuine and worthwhile consultations with the administrator about the financial implications of the RJ composition (in draft form). This unwillingness follows from the fact, a fact that has not been denied, that the amended RJ Plan (in draft form) has in part been lodged in Oi Coop's name but has not been

discussed with the administrator. Lastly, the response from Oi Coop's board only to respond to questions "as the restructuring process further develops and the required information becomes available" testifies to a passive, waiting approach on the part of Oi Coop's board that quietly submits to the imminent RJ plan without, as may be expected of a board, examining the consequences of the proposed intended RJ plan and without actively collecting the information necessary for this and sharing this with the administrator. These are initiatives that are in the interests of the estate and that should be carried out in collaboration with the administrator.

4.13. The Appeal Court recognises that as the financing company of the Oi Group Oi Coop wishes to align its conduct with the justified interests of the group of which it is part but this cannot diminish the point that it may not lose sight of the interests of its own creditors. It is inconsistent with this principle for Oi Coop (or its board) to provide the administrator with insufficient information (if it provides any information at all) as a consequence of which the administrator is insufficiently informed about the Brazilian composition negotiations and as a result is unable to determine whether acceptance of the consolidated restructuring of the debts in the context of the RJ proceedings is in the estate's interests. This means that the acts and conduct on the part of Oi Coop (or of its board) described at paragraph 4.11 above that are at odds with the District Court's recommendation furnish an Article 242 paragraph 1 subsection 4 Fw ground for withdrawal of the suspension of payments.

4.14. It follows from the foregoing that the grounds of withdrawal set out at 2, 3 and 4 of Article 242 paragraph 1 Fw are satisfied. In summary, Oi Coop makes the following case in support of the non-withdrawal of the suspension of payments and in support of not pronouncing bankruptcy. The bankruptcy of Oi Coop offers the creditors no advantages (no higher compensation, the creditors may already participate in the RJ proceedings) and only has disadvantages (disrupting the RJ proceedings, the bankruptcy of Oi Coop might possibly have negative fiscal consequences).
The balancing exercise performed by the Appeal Court of the interests at play dictate withdrawal of the suspension of payments and pronouncement of bankruptcy. In the light of the amended RJ plan (in draft form), in respect of which the CEO of Oi S.A. has stated "*This is the proposal we'll send to the judge and put to a vote* ", it is now, contrary to the position at the time of the determination under challenge (see paragraph 8.7 thereof), sufficiently plausible that no distribution will be made against Oi Coop's claims against Oi S.A. and Oi Móvel. In addition the call made by the District Court to Oi Coop to collaborate with the administrator and to provide him with the information he requires in order to perform his duties satisfactorily (see paragraph 8.20) has not, as the foregoing shows, led to the desired result. The Appeal Court is unable to follow the arguments made by Oi Coop in this context. In the absence of any further explanation (and this is lacking) it cannot be stated in advance that a trustee (of Oi Coop and of OI S.A., the surety) to be appointed will, in the final analysis, be unable to secure higher distributions to the creditors than those that the RJ composition (in draft form) currently proposes. The purported negative fiscal consequences have encountered reasoned challenge and lack specific and examinable substantiation. The contention that the RJ proceedings will be "distorted" by Oi Coop's bankruptcy has not been properly substantiated either.
That, according to Oi Coop, Citadel et al. only represent a relatively small group of noteholders is, aside from the question of whether this is truly the case, not of decisive importance given that any creditor may apply for withdrawal of the suspension of payments and given that Oi Coop has failed to explain why, contrary to the findings set out above, the fact that Citadel et al. represent a small group of creditors should oblige a decision neither to proceed to the withdrawal of the suspension of payments and nor to pronounce bankruptcy (for example because a majority of the creditors (who are not part of the Oi Group) support the maintenance of the suspension of payments). In conclusion Oi Coop contends that a decision declaring Oi Coop bankrupt and appointing a trustee may well not be recognised in Brazil. Whatever the position in this regard may be, this furnishes no basis for not offering the estate the opportunity of effectively upholding, to the extent of its ability, its interest, including that of its creditors, by means of a trustee to be appointed.

4.15. The conclusion is that the grievances reviewed in the foregoing put forward by Citadel et al. succeed and the determination under challenge will be annulled. The suspension of payments provisionally granted to Oi Coop will be withdrawn and Oi Coop will be declared bankrupt. It also

follows from the foregoing that the bankruptcy declaration constitute main proceedings in the sense of EU Council Regulation (EC) No 1346/2000. In the light of the provisions of Article 3(1) of the said Regulation, the Appeal Court will open these main proceedings given that it has found that the centre of Oi Coop's main interests is located in the Netherlands. The remaining grievances will not detain this Court. As the party against whom the judgment is given Oi Coop will be ordered to pay the costs in both instances. The administrator's fee and the remaining charges incurred in the suspension of payments may be quantified in a determination made separately by the District Court.

5. Judgment

The Court of Appeal:

annuls the determination of 2 February 2017 of the Amsterdam District Court in so far as this refers to the application submitted by Citadel et al., and in a new judgment:

withdraws the suspension of payments provisionally granted to Oi Coop;

declares Oi Coop bankrupt;

appoints as supervisory judge W.F. Korthals Altes, a judge of the Amsterdam District Court and appoints as trustee J.R. Berkenbosch, associated with Jones Day Advocaten en Notarissen, Concertgebouwplein 20, P.O. Box 51204, 1007 EE Amsterdam, telephone number 023 - 5530230;

mandates the trustee to open letters and telegrams addressed to Oi Coop;

orders Oi Coop to bear the costs before both instances, these being those of Citadel et al. before the lower court that are quantified at EUR 619 in disbursements and at EUR 904 in counsel’s fees; and those of Citadel et al. of counsel and on appeal until the time of this judgment that are quantified at EUR 716 in disbursements and at EUR 1,788 in counsel’s fees;

understands that the administrator's fee and the remaining charges incurred in the suspension of payments may be quantified in a determination made separately by the District Court;

declares this determination immediately enforceable.

This decision is given by judges M.L.D. Akkaya, D.J. Oranje and J.W.M. Tromp and was pronounced in open court on 19 April 2017 in the presence of the clerk.

An appeal to the Supreme Court challenging this determination may be made within eight days following the date of the judgment, which appeal is to be lodged by filing an application with the clerk of the Supreme Court.

Issued for copy, clerk of the Amsterdam Court of Appeal