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Zagreb Stock Exchange

The Subject Matter: **Delivery of the Resolution of the High Commercial Court in the Dalekovod case**

Zagreb, December 5, 2013 - Dalekovod d.d., please find attached thereto the Resolution of the High Commercial Court.

Dalekovod d.d.

THE REPUBLIC OF CROATIA
HIGH COMMERCIAL COURT OF THE REPUBLIC OF CROATIA
ZAGREB

R E S O L U T I O N

The High Commercial Court of the Republic of Croatia, by the single judge Raoul Dubravec, in the proceeding for establishing the pre-bankruptcy settlement over the debtor DALEKOVOD d.d., Zagreb, Ulica Marijana Čavića 4, Registry No. 090010093, PIN: 47911242222, ruling on appeals of a debtor and creditors ZAGREBAČKA BANKA d.d. Zagreb, Trg bana Josipa Jelačića 10, Reg. no.: 080000014, PIN: 92963223473 and SOCIETE GENERALE SPLITSKA BANKA d.d., Split, Reg. no.: 60000488, PIN: 69326397242, Ruđer Bošković 16, against the Resolution of the Commercial Court in Zagreb, business number Stpn-7/13 of September 16, 2013, on November 25, 2013,

r e s o l v e d

I. Appeals submitted by Dalekovod d.d. as a debtor, and Zagrebačka banka d.d., and Societe Generale Splitska banka d.d., as creditors, are accepted, and therefore the Resolution of the Commercial Court in Zagreb, business number Stpn-7/13 of September 16, 2013 is rescinded. The subject is to be returned to that Court for the repeated proceeding.

II. The appeal submitted by Dalekovod d.d., as a debtor, is dismissed as unjustified, and the Resolution of the lady-president of the Commercial Court in Zagreb, business number Su-1124/13 of September 2, 2013 is confirmed.

III. It is ordered that the repeated proceeding should be carried out by the other single judge.

Explanation

By the rebutted Resolution, the Commercial Court in Zagreb, under the Line I. of its dispositive, dismissed the proposal of Dalekovod d.d., as a debtor, for establishing the pre-bankruptcy settlement of April 26, 2013, corrected on July 19, 2013, and the same is considered to be inadmissible, and in the Line II. of the dispositive, the court has ordered to the Financial Agency to announce the Resolution at its website.

In the explanation of the Resolution, it is stated that the debtor issued the incomplete proposal for establishing the pre-bankruptcy settlement on April 26, 2013 based on the provision of Article 66 of the Act on Financial Operations and Pre-bankruptcy Settlement (Official Gazette no. 108/12 and 144/12; hereinafter referred to as: AFOPS). The Settlement Council of FINA RC Zagreb informed the first instance court that by their conclusion of May 13, 2013, the enforceability certificate for the Resolution of that Council no.: UP-I/110/0712-01/83, Reg.no.:04-06-13-83-919 of April 9, 2013, which established that the financial restructuring plan of the debtor Dalekovod d.d. was considered to be accepted. The aforesaid Resolution became enforceable on May 31, 2013 as established by the first instance court. Whereas the proposal

for the pre-bankruptcy settlement has not been submitted along with the proposal for establishing the bankruptcy settlement, the first instance court invited the debtor by its Resolution of May 3, 2013, to rectify, that is, supplement the proposal in a manner to submit the proposal of the content of the pre-bankruptcy settlement pursuant the provision of Article 66 Paragraph 10 Line 1 of AFOPS. The Debtor executed the Resolution thereof on the same day, and submitted the content of the pre-bankruptcy settlement comprising 2,000 pages of text; therefore, the court on July 12, 2013, scheduled a hearing for establishing the pre-bankruptcy settlement to be held on July 23 2013. By its subsequent review of the text of the proposal for the pre-bankruptcy settlement, the court found further faults, and by its Resolution of July 16, 2013, invite the debtor once again to correct and supplement the aforesaid proposal, which the debtor executed on July 17 and 18, 2013.

In the explanation thereof, it is stated that the first instance court by the same single judge, in the proceeding upon the proposal for establishing the pre-bankruptcy settlement Stpn-59/13 upon the proposal of Industrogradnja grupa d.d. Zagreb, as a debtor, found the same to be inadmissible, because the major part of determined claims are “conditional guarantees” for non-existing and not-genuine claims based on which voting rights could not be exercised, which rights affect the rights of other creditors that were put in unjust position due to such actions. The court found that the debtor and affiliated companies have, by acting contrary to AFOPS, rights they were not entitled to, and thus act contrary to the public moral of the citizens of the Republic of Croatia.

In the case within which the rebutted Resolution was passed, it is stated that the court put the proceeding into stay, and on July 29, 2013, applied the proposal for evaluation of the constitutionality of particular provisions of AFOPS considering them to be contrary to the Constitution of the Republic of Croatia. After the Constitutional Court of the Republic of Croatia in its Resolution U-I-4175/2013-PP of August 27, 2013, established that the proposal for initiating the procedure for evaluation of compliance of AFOPS with the Constitution, was issued, and ordered to the first instance court to continue without stay with the proceeding Stpn-7/13, the proceeding has been continued. The court exposes its own evaluation of particular provisions of the ‘Act on Financial Operations, Insolvency Procedures at Compulsory Cessation’ of the Republic of Slovenia, which stipulates how to manage such cases and compares it with provisions of AFOPS.

The content of the debtor’s proposal for initiating the proceeding for the pre-bankruptcy settlement at FINA of November 14, 2012, is analysed and pointed out that there are differences in data on debtor’s financial liabilities declared in the auditing report drawn up by the certified auditor and claims as determined by the Resolution of FINA. It is found that the Resolution of FINA declares more than 50% more claims than declared by the debtor in the proposal for initiating the proceeding for the pre-bankruptcy settlement. The court’s opinion is that according to provisions of AFOPS, courts are not competent to evaluate if the legality has been infringed during the proceedings for recognition of claims, but pursuant the provision of Article 321 Paragraph 4, in relation to Article 3 Paragraph 3 of the Litigation Proceeding Act (Official Gazette no. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11 and 25/13, hereinafter referred to as: LPA), the court will not accept the Parties’ conduct, which is contrary to compulsory regulations and regulations of public moral; therefore, the court is competent to dismiss the proposal for establishing the pre-bankruptcy settlement. It is the court responsibility to determine if the Constitution of the Republic of Croatia or any other law as well as international agreement was infringed in the preliminary proceeding, after the court received the proposal for establishing the pre-bankruptcy settlement, as well as to determine may the court approve, dismiss or refuse the proposal for establishing the pre-bankruptcy

settlement, but not to repeat the proceeding for establishing claims and voting for acceptance of the pre-bankruptcy settlement plan, that is, to establish the factual state completely and properly. AFOPS, which was in force at the time of filing the proposal for initiating the proceeding of the pre-bankruptcy settlement was amended by the Regulation of the Government of the Republic of Croatia just after the proceeding for the pre-bankruptcy settlement has been initiated, and before accepting the financial restructuring plan, that is, determining the claims in the proceeding before FINA. After filing the proposal for establishing the pre-bankruptcy settlement, AFOPS was amended once again, and that even before the court has decided on the proposal for establishing the pre-bankruptcy settlement. In the explanation, differences among provisions of Articles 60 and 72 (a) of AFOPS are compared in respect of particular amendments to AFOPS. It is considered that aforesaid amendments are favourable for debtors in a manner that in the proceeding of the pre-bankruptcy settlement they takeover in the same time even the role of the biggest creditor and court and results of the proceeding adjust to their desires and needs, which the court considers to be inadmissible in the constitutional as well as moral sense. Guarantors and joint debtors are exclusively affiliated companies of the debtor, and in the proceeding of filing claims based on guarantees and joint indebtedness the real claim is multiplied several times. Therefore, provisions of Article 60 and 72 (a) of AFOPS as interpreted by the debtor, contrary to the provisions of the Constitution of the Republic of Croatia, give the voting rights to the guarantors-joint debtors of affiliated companies of the debtor and financial institutions notwithstanding that they did not settle the claims, or that the claims were not created until the initiation of the pre-bankruptcy settlement, which is contrary to the constitutional provisions that order equality of all before the law, and by which the proprietary rights are guaranteed as well as entrepreneur's and market freedom established as the foundation of economic system of the Republic of Croatia. Realisation of equally legal position in the market has been ensured by the state. If the proposed settlement were established, the debtor would occupy significantly favourable position in the market, because the part of receivables from entrepreneurs, who did not initiate the pre-bankruptcy settlement, because they want to meet their liabilities, would be written-off. When previously mentioned creditors of multiple accounted claims accepted the financial restructuring plan, the rights of creditors who have real claims and shares of voting rights were infringed, and thus observing the voluntary principle at voting procedures for accepting the Plan herein was put into question.

In the explanation, all determined claims of particular affiliated companies based on joint indebtedness as well as financial institutions are analysed and the way of their settlement commented in the proposal of the pre-bankruptcy settlement. Seemingly, it is stated that in petitions there are no proofs that claimed receivables were settled, and it is pointed out that joint debtors are not personal creditors of the debtor, which would at the time of initiation of the proceeding for the pre-bankruptcy settlement have any proprietary claim against the debtor in the sense of Article 3 Paragraph 1 Line 12 of AFOPS. Individual parts of the changed proposal for the pre-bankruptcy settlement of July 16, 2013 are quoted, and is repeatedly stated that the court would infringe the basic constitutional principle of equality in the proceeding before the court conducted pursuant the law if the court would allow establishing the pre-bankruptcy settlement by which individual creditors are to be settled from the amount acquired from sales of shares in the affiliated company.

The court puts into question the constitutionality of the provision of Article 59 of AFOPS as amended by the Law on amendments of the Act on Financial Operations and Pre-bankruptcy Settlement (Official Gazette no. 81/13), which is not applied in this proceeding, and states that

receivables have been determined for three banks, although they did not waive the right to be separately settled.

Affiliated companies and financial institutions in the proceeding declared claims in the amount of 1,494,345,568.13 HRK, which is in total 46.75% of aggregate claims, and claims as determined by the resolution of FINA amounted 1,800,883,562.07 HRK or 53.31% of aggregate claims and votes. By all the aforesaid, the provision of Article 3 Paragraph 1 Line 12 of AFOPS has been infringed because creditors had rights which they are not entitled to pursuant the Constitution and AFOPS, wherewith in the preliminary proceeding has been conducted in contrary to AFOPS, especially to the provision of Article 22 of AFOPS, which is in contrary to compulsory regulations of the Constitution of the Republic of Croatia and public moral; therefore, the first instance court, by directly implementing provisions of Articles 14, 48, and 49 of the Constitution of the Republic of Croatia, determined that the proposal for establishing the pre-bankruptcy settlement was inadmissible.

The first instance court considers decisions of the debtor's Main Assembly, which was allegedly held on July 22, 2013, and at which the debtor's subscribed capital was diminished, in relation to the offer of the company Konsolidator d.o.o. Zagreb, for the debtor's capital increase in the amount of 150,000,000.00 HRK, and concludes that there was an attempt to use the proceeding for the pre-bankruptcy settlement for takeover of debtors outside market conditions, which is contrary to a sense of the Constitution of the Republic of Croatia, AFOPS, and Joint-stock Companies Takeover Act.

The debtor by their appeal rebuts the Resolution due to appellant reasons, stating that the litigation proceeding provisions were breached, the applicable law was erroneously implemented, and factual state established incorrectly and incompletely, with a proposal to alter the rebutted Resolution due to breached provisions of litigation proceeding, and that the court should resolve the case by itself or rescind the Resolution and case return for the repeated proceeding to the first instance court before other single judge.

In the essential part, it is stated that the appellant reason has been realised due to the major breaching of the litigation proceeding provisions, because the dispositive of the rebutted Resolution by which the proposal for establishing the pre-bankruptcy settlement was in the same time dismissed and announced to be inadmissible is contrary to the provisions of AFOPS. The rebutted resolution does not contain reasons regarding decisive facts, and declared reasons are vague and contradictory. The first instance court passed the decision on issues beyond the court competence, on which issues the competent body passed the Resolution in the administrative proceeding. The explanation of rebutted decision contains parts irrelevant to decision-making process in this case, which are related to a personal attitude of the judge toward AFOPS in general, in comparison with the respective Slovenian Act, and the Constitution as well as provisions of AFOPS. The first instance court in its explanation of the rebutted decision, has completely neglected the content of numerous debtor's petitions, by which they warned the court about correct implementation of regulations and explainsed the factual state in the case. Attention of the acting judge, according to appellant's opinion, has been focused rather on declaring his attitudes regarding the constitutionality and quality of AFOPS as the regulation, than to state the facts and reasons decisive for passing the decision.

In the moment of issuing the proposal for establishing the pre-bankruptcy settlement, there was the Final Resolution of FINA on determined claims, which is the preliminary issue in the concrete situation. Therefore, the court has not been competent to examine the claims that were established in the finally resolved administrative matter. The court has not been competent to evaluate the constitutionality of particular provisions of AFOPS, or to apply particular

provisions of the Constitution directly that only and explicitly the Constitutional Court of the Republic of Croatia is competent for.

The rebutted decision has been passed by a judge who should be excluded. Reasons for the exclusion thereof appeared during the proceeding. The debtor states that from the day of issuing the proposal, that is, April 26, 2013, until the July 5, 2013, the court has not passed any decision whatsoever regarding the content of the proposal thereof, although the AFOPS prescribes the term within which the hearing for establishing the pre-bankruptcy settlement should be scheduled. The judge has appeared in media as a replacement of the Court's Public Relations. The judge appeared in media and negatively commended the decision of the Constitutional Court of the Republic of Croatia by which the Resolution to put the proceeding of this case into stay was dismissed. The judge, also, suggested that he, regardless all previously mentioned, reserves his own opinion. Petitions filed for the exclusion of the judge were dismissed by the lady-president of the Court.

The appellant states that the wrong implementation of applicable law may be found in the fact that the first instance court applied some constitutional provisions although the court could not do that according to provisions of the Constitutional Act. Contrary to general provisions of the Litigation Proceeding Act (Official Gazette no. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11 and 25/13, hereinafter referred to as: LPA) the court expanded its inquisitive competences contrary to the provision of Article 66 of AFOPS, and excluded the implementation of provisions of Articles 62 and 72 (a) of AFOPS, for the implementation of general provisions of the Law on Civil Obligation and the Constitution. Due to the erroneous implementation of applicable law, the court put itself in the position of controlling the matter finally resolved in the administrative proceeding, as well as individual conducts of debtors and creditors in the proceeding before FINA evaluating them as immoral and inadmissible. The issue of the percentage of written-off claims, deadlines for settling claims encompassed by the settlement, way of declaring claims and conditional claims, computing the voting rights, are all issues regulated by provisions of AFOPS, and the court should not review and evaluate their morals and lawfulness again. The court mistakenly understood that conditional claims under Article 72(a) of AFOPS were not permitted to be established. It is pointed out the content and difference of binding relationship guarantor – debtor, stating that the first instance court erroneously interpreted claims based on joint indebtedness.

The first instance court established the factual state erroneously. During the proceeding, the debtor declared that not one creditor appealed against the Resolution on established claims, which would be expected if it was about fictive claims in large amounts. Differences between balance sheet and out-of-balance sheet claims determined by the Resolution were explained, which has been taken into consideration at settling in the pre-bankruptcy settlement. Previously stated settlement Resolutions are in accordance with positive legal provisions and subsequent amendment to AFOPS. The Court mistakenly determined percentages of votes, along with the exclusion of the multiple voting right based on the claims of affiliated companies. The financial restructuring plan is accepted by the majority of more than half of votes, in any version.

Common appeal against the first instance court's Resolution was issued also by creditors Zagrebačka banka d.d. and Societe Generale Splitska banka d.d. for appellant reasons of the essential infringement of the litigation proceeding provisions, erroneous implementation of applicable law, and incorrectly and incompletely determined factual state, with the proposal that the second instance court should rescind the Resolution and the case return for the repeated proceeding before other single judge.

In the essential part thereof, they declare that the dispositive of rebutted Resolution by which the court in the same time has dismissed the proposal for establishing the pre-bankruptcy settlement, and decided that the proposal was inadmissible has not been foreseen by AFOPS, by which the appellant reason of essential breaching the litigation proceeding provisions was realised. The court essentially breached the litigation proceeding provisions when determining and making decision on matters already finally resolved in the administrative proceeding conducted by FINA. The court erroneously implemented the applicable law, when stated in the dispositive that conditional claims based on guarantees and joint indebtedness were not permitted to be determined, nor creditors of these claims were permitted to be treated as creditors in the pre-bankruptcy settlement. Seemingly, they find that the first instance court erroneously understood the content of obligatory relationship as a guarantee and joint-indebtedness pursuant the Law on Civil Obligation. The court could not consider the claims of separate creditors based on the amendment to AFOPS, which is not applied in this concrete case. The court failed to consider provisions of AFOPS in relation to the very purpose of AFOPS itself, as prescribed by the provision of Article 20 of AFOPS, stating that the purpose of the pre-bankruptcy settlement is to enable creditors more favourable settling than the one they would have in the bankruptcy proceeding. The court erroneously understood that the claim for declared receivables based on guarantees and joint indebtedness guarantees was not created in the time of initiating the proceeding for the pre-bankruptcy settlement, because such liabilities are created at entering into a contract of issuing the guarantee and are realised when the creditor pays its liability under the guarantee. Guarantees are still in effect, and there are no unrealised guarantees. If claims of the affiliated companies would be removed from voting, still there would be necessary majority for establishing the settlement, which the court failed to determine in its explanation.

Creditors Intehna Zagreb d.o.o. Zagreb, and Iscar alati d.o.o. Samobor, filed by the same authorised person, a response to the debtor's appeal in part relating to their claim. The text of the pre-bankruptcy settlement published at the website of FINA is different in comparison with the proposal filed at the court. They consider that the proposal of the settlement as brought before the court might be interpreted, in respect of their claim, that the debtor would not be obliged to settle the determined claim of the creditor in case if the capital increase of the debtor has not occurred; therefore, such proposal for settlement was much unfavourable than the proposal as determined at FINA.

Appeals of the debtor and creditors are justified.

The rebutted Resolution has been reviewed based on provisions of Article 365 Paragraph 1 and 2, and Article 381 of LPA, in relation to Article 66 Paragraph 14 of AFOPS. within limits of appellant reasons, taking into consideration *ex officio* essential breaches of procedural provisions stipulated under Article 354 Paragraph 2 Lines 2, 4, 8, 9, 11, 13, and 14 of LPA as well as proper implementation of the applicable law.

The rebutted Resolution is covered with all appellant reasons as stipulated under Article 353 Paragraph 1 Line 1 to 3 of the LAP.

Due to erroneous legal understanding about the conduct of the first instance court in the proceeding for establishing the pre-bankruptcy settlement, and related particular provisions of AFOPS, the first instance court failed to give reasons about decisive facts if assumptions for establishing the pre-bankruptcy settlement were fulfilled; therefore, the factual state has been determined incompletely.

Contrary to appellant statements of the debtor and creditors that the dispositive of the rebutted Resolution is contrary to the provisions of AFOPS, or LPA respectively, because the proposal for establishing the pre-bankruptcy settlement was in the same time dismissed and considered inadmissible, it is stated that the court has already decided on the proposal by dismissing it. The fact that the court considers the proposal to be inadmissible is an excess, which does not affect the clarity of the dispositive of the rebutted Resolution. Namely, according to the provision of Article 66 Paragraph 8, 9, and 10 of AFOPS, assumptions as well as the procedure for approving the pre-bankruptcy settlement are prescribed. In the proceeding before court in this case, rules of the litigation proceedings are implemented in an appropriate manner. That means that according to the provision of Article 321 Paragraph 5 of the LPA, when the court passes the Resolution by which it bans the settlement, the effect of this Resolution is suspensory until it became final. When the court dismissed the proposal for establishing the pre-bankruptcy settlement, it passed the Resolution, which did not fully comply with provisions of the LPA in a sense of terminology. However, the Resolution is not for that reason less understandable, because the court did rule on the proposal herein. Evaluation stated in the dispositive about the proposal being considered inadmissible is unnecessary, and does not affect the clarity of the dispositive thereof.

Appellants justifiably declare that the rebutted Resolution has the major infringement of the litigation proceeding provisions under Article 354 Paragraph 2 Line 11 of the LPA, because reasons regarding decisive facts were not stated, in relation to fulfilling assumptions for establishing the pre-bankruptcy settlement. This is the reason why it is not possible to examine the regularity of the implementation of Article 66 of the LPA.

In the explanation of the Resolution, it is stated that the proposal brought before the court by the same authorised persons, on April 26, 2013, was incomplete because it was issued without the proposal for pre-bankruptcy settlement. It is obvious from the file that the enforceability certificate was rescinded after filing the proposal, and notice of FINA from May 13, 2013 about it was submitted to the first instance court not earlier than May 27, 2013. Afterwards, on July 5, 2013 the debtor submitted to the Court notice of July 4, 2013, by which FINA notifies the court that the enforceability clause was issued on May 31, 2013. FINA sent this notice directly to the court not earlier than July 12, 2013. Therefore, although the debtor stated in their appeal that the Resolution on determined claims was, at the moment of filing the proposal, final, the rescinded enforceability certificate after the proposal being filed prevented the court to rule in the proceeding. The Resolution passed in the administrative proceeding is to be executed after it becomes enforceable. The Resolution on accepting the financial restructuring plan became enforceable when the Resolution on dismissing the appeal is delivered to the party. Whereas, some of creditors did file their appeals against the Resolution on accepting the financial restructuring plan, and these appeals have not been decided on at the moment of filing the proposal for establishing the pre-bankruptcy settlement, the competent administrative body mistakenly issued the enforceability certificate. Without the enforceability certificate, it is not possible to issue the proposal for establishing the pre-bankruptcy settlement. The term of 15 days within which the hearing for establishing the pre-bankruptcy settlement must be held is an instructive term, because there are no procedural-legal consequences if the action is not duly executed. In addition, if the case of the proposal for establishing the pre-bankruptcy settlement is messy, that is, it is not possible to act upon it, it is necessary to undertake action for remedying faults that prevent the court to rule, and this is exactly what happened in this case. Therefore, the debtor’s appellant statements regarding the conduct of proceeding in contrary to the prescribed term are unjustified.

When the Resolution, stipulated under Article 60 Paragraph 10 of AFOPS, became enforceable, assumptions for the court ruling has been fulfilled. The debtor, among other things, did not dispute that they failed to submit the proposal for pre-bankruptcy settlement, along with the proposal herein, based on which the court could have scheduled the hearing for establishing the settlement. Seemingly, they did not dispute that they corrected and supplemented the filed proposal for establishing the pre-bankruptcy settlement not earlier than July 17 and 18, 2013. It is also stated that the fact that the court firstly scheduled the hearing for establishing the settlement, and only afterward called the debtor to correct the settlement proposal has no significance at all, because the debtor did correct the proposal.

According to the provision of Article 66 Paragraph 3 of AFOPS, the debtor shall submit along with the proposal for establishing the pre-bankruptcy settlement following documents:

1. report on financial status and business operations of the debtor,
2. auditing report containing the opinion of the certified auditor,
3. financial restructuring plan or amended financial restructuring plan,
4. content of accepted financial restructuring plan (determined percentage of amounts to be paid to creditors and pertaining deadlines),
5. list of creditors whose claims have not been disputed, with a mark of determined and diminished amounts of their claims,
6. verified Minutes of meeting about voting performed, together with attachments (formatted forms – original),
7. list of guarantors with a mark of their joint responsibility against all creditors of the debtors, if the guarantee has been issued in the proceeding of pre-bankruptcy settlement.

The court can dismiss the debtor's proposal for establishing the pre-bankruptcy settlement, if the debtor failed to submit documents attached to the proposal according to the provision of Article 66 Paragraph 2 of AFOPS, or fails to submit them even after the court's invitation thereof.

It is not possible to examine if the proposal for the pre-bankruptcy settlement is identical to the content of the accepted financial restructuring plan, as it is stipulated under the provision of Article 66 Paragraph 9 of AFOPS. The preliminary issue for the court's ruling, that is, establishing the pre-bankruptcy settlement is the Resolution issued by the competent body, determining that the necessary majority of creditors voted for acceptance of financial restructuring plan, and that the proceeding is conducted pursuant provisions of AFOPS. This preliminary issue cannot be resolved by the first instance court itself, and in the dispositive thereof, it is stated that the court has not been competent to evaluate if in the procedure for recognition of claims the legality was infringed. In addition, some creditors filed their appeals against the Resolution herein, which the second instance body dismissed.

The first instance court, in its dispositive, states that in the proceeding before FINA, inadmissible conducts occurred, because the affiliated companies claimed not genuine receivables, which the debtor admitted. The court considers that joint debtors could not be creditors of the debtor, because at the time of initiating the proceeding for the pre-bankruptcy settlement they did not have a proprietary claim against the debtor; therefore, by admitting their claims, real claims were multiplied several times. Such claims occupy almost one-half of all determined claims, according to court's opinion. The court understands that by admitting aforesaid claims basic constitutional principles of equality before law were infringed, as well as

breached constitutional provisions on the proprietorship inviolability principle, and principles of the entrepreneurs' equal legal position in the market. Court considers that banks acquired positions that they were not entitled to. Creditors exercised rights that they were not entitled to, according to the Constitution of the Republic of Croatia and law, and thus they acted contrary to the sense of AFOPS, which was the reason for inadmissibility of the pre-bankruptcy settlement.

Previously mentioned statements are contrary to the consideration of the first instance court that it has not been competent to evaluate if in the proceeding for determining claims of the debtor's creditors occurred some illegality. The court is not able to rule differently in relation to admitting the claims, because it is not competent to do so under provisions of AFOPS. According to provisions thereof, creditors are entitled to protection by appealing against the Resolution of FINA according to Article 60 of AFOPS, or by initiating the administrative dispute. Therefore, reasons for dismissing the proposal do not represent inadmissible conduct due to which the court settlement is not possible to be established before the court. Inadmissible conducts due to which the court would not allow the settlement cannot be related to the proceeding before FINA, which was conducted according to the rules of an administrative proceeding, during which the claims of creditors were determined and financial restructuring plan was accepted by appropriate majority of votes.

Based on the provision of Article 66 Paragraph 10 of AFOPS, the Resolution on approving the established pre-bankruptcy settlement must (especially) contain the content of the established pre-bankruptcy settlement, and based on the provision of the same Article 66 Paragraph 9, the content of pre-bankruptcy settlement must be identical with the content of the accepted financial restructuring plan; therefore, without any doubt the Resolution on acceptance of the established pre-bankruptcy settlement must contain elements of the accepted financial restructuring plan. So, the pre-bankruptcy settlement may have these elements of the plan herein only if the financial restructuring plan, the percentage determined for amounts to be paid to creditors and pertaining deadlines, preliminary existed and has been accepted by creditors in the proceeding conducted at FINA.

The financial restructuring plan, among other things, comprises: the proposal for the pre-bankruptcy settlement, that is, analysis of claims per their sizes, categories, settlement expectation levels, and proposal for settling deadlines, as well as the comparison with expected settlements in case of bankruptcy (Article 43 Paragraph 1 Line 7 Sub-line 1 of AFOPS).

The provision of Article 66 Paragraph 3 Line 4 of AFOPS defines the content of the accepted financial restructuring plan. According to this provision, the content of the accepted financial restructuring plan represents the determined percentage of payments towards creditors and pertaining deadlines.

It should be pointed out the fact that during the proceedings for the pre-bankruptcy settlement, AFOPS itself has been amended several times. The Act came into force on the day when announced in Official Gazette, and pursuant its provisions the debtor issued the proposal for initiating the proceeding for the pre-bankruptcy settlement. The Resolution of initiating the proceeding for the pre-bankruptcy settlement, the competent body passed on December 20, 2012, when it was published at the website of FINA, and creditors were invited to file their claims. However, the Government of the Republic of Croatia by its Regulation on amendments to AFOPS, altered AFOPS on December 20, 2012, only 3 months after the effective day thereof. The Regulation herein, came into force by the day when published in Official Gazette, on December 21, 2012. It is not clear if the Regulation may be retroactively applied on proceeding initiated before its effective day. It seems that by applying the principle of protection, acquired rights of creditors should be assessed according to the regulations that came into force at the

moment of initiating the proceeding hereunder, and new procedural provisions may be applied even on proceeding in progress, unless they are contrary to already established procedural-legal relationships. By later Law on amendments to AFOPS in June 2013, some provisions of AFOPS were altered, but by transitional provisions it has been established that all proceeding of the pre-bankruptcy settlement initiated before this Act came into force, will be finalised according to the Act On Financial Operations and Pre-bankruptcy Settlement that was in force on the day of initiating thereof, as well as that particular provisions will be applied to proceeding in progress, unless some actions related to these provisions started on the day when this AFOPS came into force. By new Regulations of the Government of the Republic of Croatia adopted in September 2013, AFOPS was changed once again.

The first instance court correctly stated in its explanation that in this proceeding the provisions of AFOPS are applied, and partially amendments to AFOPS adopted after the Regulation on the first amendment to AFOPS from December 2012. Therefore, it was unnecessary to expose the comparative analysis of particular provisions of AFOPS during the certain period, and criticise and put in question the constitutionality of the *Novelle* from the June 2013, which has not been applied to the concrete case hereunder, in the part of the explanation of the rebutted Resolution.

In order to establish inadmissible conducts, that is, conducts of parties, which are contrary to compulsory regulations and rules of public moral, it would be necessary to determine if in the preliminary proceeding such breaches occurred. It is not obvious if the first instance court considers that such breaches occurred, except it finds that claims were multiplied and allegedly constitutional provisions breached. However, the constitutionality of provisions of AFOPS has not been yet examined by the Constitutional Court of the Republic of Croatia. Regarding the fact that the first instance court is not competent to examine if during the proceedings of establishing claims and acceptance of the financial restructuring plan occurred some inadmissible conducts, because it is the preliminary issue decided on by the competent body, it seems that examination regarding inadmissible conducts that prevent establishing the settlement may be referring to the period after that, and the proceeding for establishing pre-bankruptcy settlement in its narrower sense,

Therefore, reasons for dismissing the proposal for establishing the pre-bankruptcy settlement are unjustified, as the court considers that inadmissible conducts appeared in the proceeding before FINA.

Appellants justifiably state that the first instance court could not exclude the implementation of provisions of AFOPS, declaring that this was the Act contrary to the Constitution of the Republic of Croatia, and directly change the Constitution, because the preliminary proceeding was executed contrary to the Constitution. Provisions of Article 37 Paragraph 1 of the Constitutional Law on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49, an integral text) specifically determine that the court if the law, which should be applied, or its particular provisions, does not comply with the Constitution, the proceeding will be put in stay, and the petition for evaluation of the compliance thereof to the Constitutional Court filed. As the Constitutional Court assessed, the acting judge of the first instance court filed the proposal instead of the request for evaluation of the constitutionality, and, therefore, he could not put the proceeding in stay as well as directly apply the Constitution. According to the provision of Article 31 Paragraph 2 of the Constitutional Law, all government bodies must observe decisions and resolutions passed by the Constitutional Court within the framework of their constitutional and legal scope of actions.

Appellants unjustifiably declare that the rebutted Resolution was passed by the judge who should have been excluded. The debtor had filed two petitions for the exclusion thereof. In the first one, the debtor pointed out, as they stated in the appeal, that in the period from filing the proposal until July 5, 2013, the judge did not pass any decision whatsoever regarding the content of the proposal, although AFOPS prescribes the term from the date of filing the proposal to the first hearing scheduled for establishing the pre-bankruptcy settlement, and that the judge put the proceeding in stay because he applied the proposal for evaluation of the constitutionality, and that the judge appeared in media, which was contrary to the Law on Courts (Official Gazette no. 28/13). The debtor considers appearances in media unauthorised as well as reasons that justify the exclusion. The debtor deems that the lady-president of the court erroneously dismissed the petition for the exclusion thereof. According to Article 89 of the Law on Courts, the judge must conduct himself/herself in a manner to preserve his/her reputation and dignity of judicial government, and not to put into question his/her impartiality and independence in conducting trials, as well as independence of judicial government. Moral principles necessary for exercising judicial duties are defined under the Judicial Ethics Codex. Observing the Codex is an obligation of a judge. Therefore, in the conducted proceeding it is established that there are no circumstances that put in question impartiality of the judge, taking into consideration also his appearances in media. Inappropriate appearances in media could be understood to be the infringement of the provisions of Codex, but not circumstances that put in question his impartiality, because in the appeal it is said that his appearances in media were focused on expressing his own attitude toward the constitutionality of particular provisions of AFOPS. It is not possible to determine how much the judge was personally involved, when opposed to the proposal for the exclusion, nor based on his expressed personal opinion regarding the proposal for evaluation of the constitutionality of particular legal provisions. Therefore, this court passed the decision as stated in the Line II. of the dispositive of this Resolution, pursuant Article 380 Line 2 of LPA.

Pursuant the provision of Article 380 Line 3of the LPA, appeals of the debtor and creditors should be accepted, and the Resolution rescinded, as well as the case returned for repeated proceeding as in the Line I. of the dispositive. In continuation of the proceeding, the first instance court will determine if all assumptions for establishing the pre-bankruptcy settlement are fulfilled pursuant provisions of AFOPS, which are to be applied in this concrete case, and conduct the proceeding pursuant the provision of Article 66 of AFOPS. If the court finds that these assumptions are not fulfilled, it will undertake actions firstly to correct and supplement the proposal for establishing the pre-bankruptcy settlement, if possible. If the court assesses that establishing the pre-bankruptcy settlement cannot be allowed, it will pass the Resolution pursuant the provision of Article 321 Paragraph 4 of LPA, and in the explanation thereof state what is stipulated by the provision of Article 338 Paragraph 4 of LPA.

Pursuant the provision of Article 371 of LPA, it is resolved as under the Line III. of the dispositive hereunder.

In Zagreb, November 25, 2013

THE JUDGE

RAOUL DUBRAVEC, Acting Judge

For the accuracy of this official copy
Authorised Officer:
BRANKICA CURMAN