

Preventive agreement n.1/2017

Tribunal of Paola

Bankruptcy section

The Tribunal of Paola meeting in chambers in the presence of the following magistrates:

Dott.ssa Simona Scovotto President

Doc. Franco Caroleo Judge

Dott.ssa Marta Sodano Judge rel.

Have decreed the following

DECREE

Considering the application submitted 9.11.2017 by Oleificio Sagario S.n.c. with which the applicant formulated a request for a preventive agreement with creditors in accordance with Article 161c. 61 fall.;

Considering the proposal and the plan submitted by the applicant;

Considering that the applicant has requested to enter the “procedure” for companies at risk of insolvency;

Considering the supplementary information deposited by the applicant;

Considering the territorial competence of the Tribunal of Paola, the legal headquarters of the company being located in the town of Praia a Mare (CS) Industrial Zone, Frazione Falconara;

With reference to Article 11. fall., entrepreneurs in the private sector are subject to the regulations on insolvency and the aforementioned preventive agreement;

Considering that, on the basis of the balance books submitted covering the three years of activity prior to the application for “arranged” insolvency, the company is deemed to qualify for acceptance in line with Article 11. fall.;

Considering the statements contained in the introductory application regarding the causes of the crisis;

Considering that article 161 1fall., in the 7th comma, states that request for preventive agreement is inadmissible when the debtor in the previous two years has presented another request which, with reference to the aforementioned comma, has not resulted in admission to the “preventive agreement” or application of the plan for debt restructuring;

Considering that this impediment does not apply to the case in question, since no such request had been presented;

Considering that the company has been subject to insolvency procedures;

Considering that the proposal and the plan put before the Court envisage an arrangement, ex Article 186 bis 1. fall., with cession of the goods in order to allow operations to continue and thus mixed cd.;

Considering that the application has been deposited by the Company at a date later than the Legal Decree n. 83/2015 that added art.163 bis to previous insolvency law pertinent to the case at hand, with regard to the rent and future acquisition of the business premises;

Considering that, in line with article 163 bis 1. fall., since the proposal for a preventive agreement includes an offer by an already identified party the aim of which is the transfer in favour of the said party, even prior to completion, for a monetary consideration, of control of the company or one or more parts of the company or specified goods, the Court has opened the competitive tendering process to find other persons interested in acquiring the company;

Considering that the purpose of the norm is to bring an end to preventive arrangements that are closed and binding, it has become obligatory to bring the proposal to the attention of the public in order to find a buyer through a competitive tendering process;

Considering that in the case in question the applicant has drawn up a plan on the location and sale of the premises in which the business operates to a determined party, thereby coming under the ambit of Article 163 bis 1 fall.;

Considering that the process must be initiated by a decree that opens the agreed process ex Article 163 bis c. 21. fall.;

THE COURT DECLARES

Open the preventive arrangement procedure proposed by Oleificio Sagario S.n.c. in person on behalf of/ the partners of unlimited responsibility

NOMINATES

Judge Marta Sodano

NOMINATES

Judicial commissioners Avv. Claudio Pio Acri and Dott.ssa Natalia Fuscaldo

ORDERS

The proposer to deliver to the judicial commissioners within seven days of the receipt of the present communication a copy, in writing or via computer, of the accounts and fiscal details

ORDERS

The convocation of the creditors to the hearing on 11.07.2019 at 9a.m

PROVIDES

That the decree of admission to the procedure is annotated at the end of the written accounts brought before the Court

PROVIDES

That the Court publishes the procedure in accordance with Article 17 1. fall.; re. Article 163 bis 1. Fall.;

ORDERS

The opening of the competitive tendering process the object of which is the letting and/or the sale of the Company Oleificio Sagario S.n.c. based in Praia a Mare (CS) Industrial Zone, Frazione Falconara P.IVA 00311920789 with a starting price of € 800,00 for rent, or € 400.000,00 starting purchase price;

The completion of the competitive procedure, laid down in articles 163bis-182-107-108 L.F. for the sale of assets belonging to the company party to the agreement (and thereafter also the tendering process or auction) will take place

on 9.05.2019 at 10.30 a.m. before the Judge Nominated, Marta Sodano at the Tribunal of Paola, Rione Giacontesi, n.11, First floor, Aula n.4;

Expressly excluded from the deal are all other Company's credits and debts which will remain in favour or against Oleificio Sagario S.n.c., bar the payment of TFR and any payments in arrears or other payments owing to the employees of the said Company, for which the purchaser will assume responsibility, thereby freeing the Company from any financial burden in this area. Also excluded are all the contracts not expressly specified in the transfer agreement.

Finally, contracts for sales and services with clients undertaken and signed by the Tenant and still in force at the time of the settlement will in any event be honoured by the latter after the transfer.

The successful bidder relinquishes the right to raise exceptions of whatsoever nature, or to undertake any action or claim to compensation for damages or any reduction in the purchase price, exonerating both the Procedure and the Company of all responsibility for any discrepancy, quibble, or loss regarding the purchase. Similarly, neither the Procedure nor the Company will assume any guarantee or responsibility in the event of minor discrepancies of the building, or for payments owing (credits) at the time of signing the contract before the notary, other than what has been declared in the agreement.

In order to take part in the tender bidders are required to deliver an offer that cannot be withdrawn (model available from the Judicial Commissioners, Claudio Pio Acri and Natalia Fuscaldo), in a sealed envelope before 12 a.m. on the day preceding the opening of the tendering process, i.e. before 12a.m. on 8.05.2019, to the Paola Tribunal (Cancelleria dei Fallimenti del Tribunale di Paola). The following information and only this information should be written on the envelope: the date of the sale indicated in the notification, i.e. 9.05.2019; the name of the arrangement procedure (Oleificio Sagario S.n.c. IN CONCORDATO PREVENTIVO); no other indication, not the name of the parties, nor the offer nor any other information is to be written on the envelope.

Clearly each offer will concern the cession of the credits and/or the cession of the building.

Contained inside the envelope must be found:

- a photocopy of the bidder's valid and up-to-date identity document or company registration (or similar documentation should the bidder be based outside the Italian Republic) and in the case of a company, a photocopy of a valid identity card of the person legally representing the said company is required;
- a non transferrable money order as a deposit, made out to 'Oleificio Sagario S.n.c. IN CONCORDATO PREVENTIVO' equal to 20% of the total amount of the offer, not including related expenses and taxes, indicated in the notification.

Failure to comply to the above will result in exclusion;

-the explicit declaration by the bidder to have seen the relevant documentation, found online in Data Room, or on the portal, at www.portalcreditori.it and to consider the information contained therein to be comprehensive and fully in accord with the requirements of due diligence.

The choice of residence in Paola is in accordance with Article 582cp.c., in the absence of such information notifications and communications will be available from the Tribunal of Paola (la Cancelleria del Tribunale di Paola).

In the case in which the offer does not respect the indications above-mentioned, or in the event of the offer being subject to conditions, the said offer will be considered ineligible and excluded. The offer once presented cannot be withdrawn, and any such act would automatically lead to exclusion from the tendering process as well as forfeiture of the deposit. The tendering process will begin with the opening of the envelopes before the Nominated Judge.

The Judge will carry out an evaluation of the different bids received that conform to the above-mentioned regulations for the sale. Note that the offers received will be evaluated on the basis of selecting the highest offer which must be at least equal to PCOMM from which, should the option be expressed, it will be possible to deduct the accumulated debt-redundancy money (TFR), salaries and other payments due to the employees of the Company, who would subsequently be taken on by the successful bidder.

Furthermore:

-in the event of there being just one valid offer the tender will be awarded to the only bidder; in the case of more than one valid offer, the tender will be awarded to the highest bidder, and in the event of an auction the minimum amount for an increased bid is of no less than € 5.000,00;

-should there be more than one valid bid of the same amount, and none of the bidders desires to raise their offer, the tender will be awarded to the bid received first;

-the tender can still be awarded to a bidder, even in the event of their absence from the proceedings. Offers received after the deadline shall not be considered;

-should there be no valid bids in the tendering process, the original offer will be considered valid, and will be adjudicated the winner;

Article 572 cpc does not in any way apply to the discipline governing the transaction described here in;

Adjudication will not imply for the Company in the preventive agreement, nor for the Judicial Commissioners and/or the proceedings, any obligation in the stipulation of the said agreement, not does it determine for the adjudicated bidder any authorisation, nor any right to compensation for damages in the absence of stipulation for any reasons not dependent on the above.

Moreover, the Tribunal and/or the Nominated Judge reserves the right to suspend the competition, or not to authorise the drawing up of the contract of sale for any reasons relating to Article 108 1.f.

The successful bidder must complete the purchase by paying the remainder of the offer price, plus any related expenses, minus the deposit that will be deducted from the total price before the stipulation, which will take place within and not beyond 60 days from the adjudication, at the studio of a notary designated by the Judicial Commissioners.

In the event of failure to stipulate the purchase contract by deed or fault of the adjudicated bidder, or failure to stipulate the contract for the cession of credits for the same reason, the said party would be excluded from the sale and the deposit forfeited, aside from the right to any further damages.

In such a case the Court would then undertake to arrange a new tendering process, or adjudicate the sale in favour of the second highest offer with respect to the hitherto successful bid. The sale price could thereby be reduced as a result of the new successful bidder taking on the debts for the employees' salaries, redundancy pay and other outstanding sums (IRPEF, INPS and INAIL), and the payment by the adjudicated party would definitely settle the matter both for the Court and the Company.

The minutes of the auction do not have any contractual value. The contractual effects (including those concerning the transfer of ownership) will come into force only at the time of the signing of the purchase agreement before a notary to take place within 60 days of the date of adjudication. The bids will still be considered valid and irrevocable for a period of 90 days following the date of adjudication. The expenses, including those relating to legal fees, notarial acts and the transfer of the property will be charged to the buyer and must be paid by the latter at the time of the signing of the title deeds. The Company party to the preventive agreement will be responsible for the cost of the cancellation of any mortgage payments and/or foreclosure. It should be noted, moreover, that the transfer of the goods in the tendering process will be subject to registration fees if legally required.

At the end of the tendering process the deposits will be returned to the unsuccessful bidders.

Note that these regulations, also translated into English, will be published in full on the internet portal of the competitive tendering insolvency site of the Tribunal of Paola (<http://www.fallimentopaola.it/>) DATAROOM, and on the site of the Tribunal of Paola (<http://www.tribunale.paola.it/>) VENDITE GIUDIZIARIE, as well as a reduced version, the notification, which will be found not only on the same portals, but also on sites providing information pertaining to court ordered sales at national level (www.astalegale.net) as well as in specialised reviews. The notification will also be sent directly to the most important agents operating in the sector.

The Judicial Commissioners will provide notification of the tendering process to creditors and pledgees and all those with an interest in the case.

In accordance with Article 13 of the Legal Decree (D.Lgs.196/2003) with reference to the proceedings set in motion by the present official notification it is declared that:

- all relevant information is necessary for the comparative evaluation of the bids;
- participants are obliged to furnish such information;
- refusal to do so will lead to exclusion from the competition or in the event of an adjudicated winner refusing to supply information the offer would no longer be considered valid;
- subjects and categories thereof entitled to the information are: the organs of the proceedings of the preventive agreement and competitors participating in the hearings;
- the rights of the interested parties are found in Article 7 of the Legal Decree 196/2003- the Court is responsible for data collection.

P.Q.M.

After having seen Articles 163 bis; 182,105, 107, 108 l.f.

I) The bidding process is declared open for the assets belonging to Oleificio Sagario S.n.c. as identified in *ratio decidendi* and at the conditions outlined therein;

II) the hearing for the sale is set for 9.05.2019 at 11am before the Nominated Judge Marta Sodano

III) the hearing for the assembly of creditors to take place on 11.07. 2019 at 9am To be communicated to the judicial commissioners, the creditors and to the public magistrates (PM) in situ.

Paola 31.01.2019

President
Simona Scovotto

Nominated Judge
Marta Sodano