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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM" "Ye who judge the earth, give diligent love to justice"

Mexicana's Bankruptcy: The Expected Conclusion of a Sad Story.

by Antonio Vázquez.

On April 4th 2014 last, the final judgment in the bankruptcy proceedings of Mexicana was published. The resolution dated on April 3rd ruled on the formal bankruptcy of Mexicana and its affiliates (except for the Maintenance Repair and Operations (MRO), which was not considered in this legal status). This decision is however still not the final one, since it has been challenged by the Unions, and it will therefore be reviewed by a superior court. It represents however the formal termination of the legal procedure, which from the start was full of wrong, illegal and even criminal conduct. It represents the end of a shameful story in which the oldest and most important Mexican aviation company has been involved for the last four years, but which unfortunately and due to the current conditions, no different ruling was expected, other than bankruptcy.

In order to understand the merits of the judgment that will be summarized in this article, it is necessary to remember some relevant aspects which were involved:

On August 10, 2010 Mexicana submitted before the 9th District Court in Mexico City a formal petition of Concurso. This same petition was filed by its affiliates, Aerovias Caribe S.A de C.V and Mexicana Inter S.A de C.V. The petition of Concurso is a legal and valid action for any company which tries to face a difficult financial situation and it can be a useful legal procedure if the company which takes the decision to initiate it, acts seriously by concentrating its efforts on dealing with its creditors and generating income to revert the crisis situation. Usually this is the normal conduct of a company subject to Concurso. Mexicana's case was different, as will be briefly described below.

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In the beginning, the filing of the petition of Concurso was received by the competent Judge and this Judge formally admitted the procedure and ordered a list of cautionary measures which were intended to protect the company's interest (e.g.: The Court ordered Mexicana to maintain the assets of the company during the course of the proceedings, including the aircraft then operated by these airlines). However, and by an astonishing decision, on August 27, 2010 Mexicana and its affiliates announced the cessation of all operations. The message was sent to all creditors including the employees and the Unions: The shareholders did not care about the future of the company and were ready to go into a tough negotiation, which may include bankruptcy as a potential foreseeable scenario. Since that date, two clear positions inside of the company went into shock: The shareholders' position which was not to make any new efforts to save the company and the position of the employees, including the workers of three Unions, which according to the shareholders' version never were flexible in the negotiations of its economic expectations and which now with the worst scenario in front of them, a potential bankruptcy, were ready to make all kind of efforts to continue the operation of the company. A third position in this case also came into the game: Since the very beginning of the legal proceedings, the Government's position was clear: No rescue from the Government could be expected: Mexicana, a private company would not be subject to any kind of rescue, which was a different

position than the usual one taken by the Mexican Government since the decades of 70's, up to the 90's. However, this cessation of operations initiated a political and social discussion about the way the Mexican Government conducted its participation in the process and the way it reacted with this delicate decision, due to the importance that the airline had not only in the history of Mexican aviation, but also within the Mexican aviation industry of that time and in the number of employees who worked in these companies. Since that date, the Concurso of Mexicana and its affiliates became not only a commercial and legal procedure, but also a political and social issue within Mexico.

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In addition to the cessation of operations, some months later it was revealed that 95% of the shares of the companies involved in the proceedings were transferred from the original shareholders to a third party named Tenedora K which never seemed to care about the future of the companies. With this decision, the original message sent by the shareholders was confirmed. They were prepared to be outside of the problem and left the companies and its employees to face the difficult situation by their own means. Given this scenario and since that date (2011), the legal procedure came into a clear end: With a company with no operation, with no interest of its shareholders on investing money on it, the Concurso went into a shameful search with the employees trying to find an investor, which was never found. And basically this new investor was never found due to the number of issues and risks that the interested party had to face to invest in Mexicana: A heavy debt with creditors, including the employees, no legal certainty in respect the ownership of the shares of the company and the transparency of the current shareholders, no legal certainty in the status of the authorizations originally given to the company (e.g a large number of slots started to be used by other airlines with the Government's consent due to the urgency to reactivate the air connections both domestic and foreign). The result was very simple: Mexicana needed a lot of money to be reactivated and there was a high risk involved in this investment. Notwithstanding, an important number of creditors signed the agreement proposed by the conciliator in the Concurso, but once again this agreement was subject to the finding of an investor, which never occurred. In addition and based on different arguments sustained by the former Judge, the bankruptcy judgment was postponed in violation of the legal term for this kind of procedure, giving the employers false expectations as to the future of the company.

Finally, on last April 4th the bankruptcy judgment was ruled. The merits of this resolution are based in three basic arguments:

1. Analysis of the conciliation period and the authorized extensions of this period in the course of the proceedings.

In accordance with the Law of Insolvency Precedent (*Ley de Concursos Mercantiles*) the conciliation period should last 185 calendar days since the last publication of the judgment of Concurso (September 6th , 2010). A first extension of 90 calendar days may be authorized if it is requested by the two thirds of the creditors or by the conciliator. A second extension of an extra 90 calendar days may be authorized if it is requested by 90% of the creditors. In accordance with the Commercial Concursos Law, the Concurso procedure should last no more than 365 calendar days. In this specific case, the proceeding lasted more than three and a half years due to the controversial decisions taken by the former judge of the procedure, who authorized the extensions based on business days, in an evident discrepancy with the legal provisions. However, the analyzed judgment does

not include a special analysis for this (maybe because these are final resolutions taken in the course of the procedure), it just mentions the specific dates on which the Concurso Judgment was ruled and the specific dates of the authorized extensions.

2. Study of requirement for an investor, which in this specific case came suddenly as a novel and necessary element.

The judgment includes a specific important section which analyses the needed of a third party investor as an important and essential element for the company to impede the bankruptcy status. A large list of actions taken by the conciliator, the Unions and the Court are contained in this section to justify the search for this investor, with no results. However, no mention in the judgment is included in respect the reasons (mainly legal and financial) which caused this bankruptcy. There was no mention of the lack of effort by the shareholders of the company to look for this investor. From our point of view and due to the importance of this bankruptcy resolution, a detailed explanation (or brief, at least) would have been very important as a significant element that the Court could give to initiate a potential criminal prosecution (if it is required). No mention of this is given. However, this section of the judgment is an important element related to the next one to be analyzed.

3. Analysis if the Agreement proposed by the conciliator complies with the main legal purpose to preserve the Company.

The District Judge recognizes that the conciliator proposed an agreement which was subject to the participation of an investor with enough and proven economic capacity. Due to the lack of an investor as a necessary element for the Company to reactivate operations, the Judge did not approved the proposed agreement, and as consequence declared the bankruptcy of Mexicana and its affiliates, except for the MRO, as its specific legal status is different and which will continue in operation.

“Unfortunately, the bankruptcy decision lasted more than expected and the whole process was subject of controversial decisions, not only form the Court, but also from the parties involved (the shareholders, the conciliator, the Federal Government as grantor of the authorizations under the companies operated, the Unions).”.

As said before, this judgment has been challenged by the Unions so it will be reviewed by a superior court (Unitary Court). However, due to the circumstances discussed, it seems difficult to change this decision. In the meanwhile a liquidator has been appointed. Mr. Alfonso Ascencio has been appointed for this important activity. He is a well-known lawyer in the aviation industry with financial experience, so at least this is good news for the workers who are the largest and privileged creditors, although is evident that not enough assets will be available to pay even to them.

This a brief summary of the judgment subject to analysis. Unfortunately, the bankruptcy decision lasted more than expected and the whole process was subject of controversial decisions, not only form the Court, but also from the parties involved (the shareholders, the conciliator, the Federal Government as grantor of the authorizations under the companies operated, the Unions). However, with no new investors and due to the large amount of money requested to reactivate the companies, no other foreseeable scenario different than the bankruptcy could be expected. Is the conclusion of a sad story.

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National Electoral Institute.

The Mexican Federal Electoral Institute has disappeared. The IFE, for its initials in Spanish, which was a major catalyst for the openness of democratic elections in Mexico at the end of the 20th century, was reformed and closed. The new Institute that is to replace the IFE will be called the National Electoral Institute. (INE for its initials in Spanish.) Many members of the former IFE, were destitute and a complete set of professionals was set to hold the administration of the re-baptized organization. *Aristegui Noticias. 04/04/2014.*

New Appointments for Financing Rural Sector Institutions.

Last April 1st, the Minister of Finance, by presidential instruction, nominated two new General Directors in financing institutions that handle funds for the rural sector. The Minister of Finance, Luis Videgaray Caso appointed Juan Carlos Cortés García as Director General of the institution Financiera Nacional de Desarrollo Agropecuario, Rural, Forestal y Pesquero (formerly Financiera Rural), and Dr. Luis Alberto Ibarra Pardo as Director General of the Fondo de Capitalización e Inversión del Sector Rural (FOCIR). The mandate given by the president was that both institutions work together as a team, with an effective coordination with other government areas related to the rural sector, but especially with organizations of producers, organizations of the public and private sectors and with the legislative power. During the nomination, the Minister of Agriculture stated that Mexico needs to eliminate bottlenecks in the agricultural sector and financial instruments are vital for agricultural programs and public policies. Therefore these institutions will be very important for agricultural reforms and improvement. *Agri News Mexico. 15/04/2014.*

Rural Extension Services.

The Ministry of Agriculture of Mexico will invest in the creation of rural knowledge extension and innovation. This new infrastructure is aimed at developing capacities that allow people, groups and organizations to solve problems make decisions and reach objectives related with productivity and competitiveness in the rural sector. Jorge Galo Medina Torres, Director General of Capacity Development and Rural Extension of the Ministry of Agriculture explained that these centers will be located in the states of Chihuahua, Tabasco, Michoacán, Nuevo León, Oaxaca, and Colima. He also mentioned that they will create centers of extension and innovation specialized in irrigation, community development and the policy national crusade against hunger, among others. *Agri News Mexico. 15/04/2014.*

Google buys drone heavyweight Titan Aerospace.

Google has bought Titan Aerospace, a maker of solar-powered drones, saying it could help bring Internet access to remote parts of the world as well as solve other problems. Financial terms have not been disclosed. Google said on Monday that atmospheric satellites could also be used in disaster relief and assessing environmental damage. Titan's atmospheric satellites, which are still in development and not yet commercially available, can stay in the air for as long as five years, according to reports. Before it was updated Monday to reflect the acquisition, Titan's website cited a wide range of uses for the drones, including atmospheric and weather monitoring, disaster response and voice and data communications. *The Guardian. 15/04/2014.*

Internet regulations unleash civilian anger.

The Mexican reform on telecommunication that was approved last year, brings new protests from among Mexican intellectuals and civilians in general. The bylaws and regulations that are to be issued by the President, and revised by the Congress, for further implementations on the already existing reform has upset many, as it foresees the possibility of internet restriction. The proposed bylaw suggests the possibility of censorship of social networks and internet connection on matters of national security. The protests were heard immediately in the streets of Mexico City, Guadalajara and other major cities in Mexico. Many intellectuals have classified the bylaw initiative as "ridicule" "indigestive" and "absurd". Several Mexican congressmen have clearly stated that they will not vote in favor of such regulation. *Aristegui Noticias. 21/04/2014.*

Inter-American Commission on Human Rights praises Mexico.

The Inter-American Commission on Human Rights in their 2013 Annual Report, praised the efforts made by Mexico in the area of human rights. Particularly the Commission praised the reforms carried out in the areas of constitutional law and administrative law tending towards providing a better protection of human rights in people immersed in the context of human mobility in Mexico, such as emigrants, refugees, people in need of complementary protection and for the victims and survivors of human trafficking. Mexico has also shown compromise at an international level by ratifying all of the international treaties for the protection of human rights. *El Universal. 24/04/2014.*

Senate approves a reform which limits the Military's legal authority.

The reform which limits the Military's legal authority in the cases when soldiers commit crimes against civilians was finally approved in the Senate after 8 years of international human rights organizations and civil organizations requiring them to do so. The changes made to the Military Justice Code establish that the soldiers who commit any type of crime which affects civilians must be prosecuted by civil justice, and not by Military Tribunals, which is how it currently happens. *CNN. 24/04/2014.*

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