

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

RANCO COMPANY,

DEBTOR

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CASE NO. BK82-320

MEMORANDUM

The matter now before the Court involves whether or not the amended plan proposed by Ranco Company, the debtor, may be confirmed in view of the nonacceptance by its Class 8 creditors, those being the unsecured creditors with claims of more than \$500.

Under the provisions of this amended plan, the debtor proposes that current equity security holders' rights be terminated under the plan but that those equity security-holders have the option to purchase new shares of stock in the corporation for the sum of 10 cents per share and that option must be exercised prior to 30 days after the order of confirmation.

A threshold question is whether Iowa Des Moines National Bank, (Bank), the objecting creditor, should be allowed to vote, and I conclude that they should be allowed to vote. The fact that there is some question about the Bank's solicitation of other rejections of the plan, whether that solicitation was done appropriate or in bad faith, does not, in my view, affect their right to vote their claim, which I believe to be voted in good faith, and I separate the two for the purpose of this decision.

Turning now to the merits, the Bankruptcy Code was amended in its reorganization provisions to prohibit a specific type of reorganization--the type of reorganization permitted under the old Act in which a corporation in Chapter 11, given the exclusive right to file a plan and given the right in an old Chapter XI to have a plan confirmed if the Court concluded that the plan provided for not less to be paid to unsecured creditors than they would receive in a straight liquidation, could have its plan confirmed by the Court, despite objection by certain creditors.

The evil that Congress sought to remedy under the 1978 amendment was the equity security holders' retaining their interest in the corporation while throwing, in effect, a bone to the unsecured creditors and buying them off, leaving the equity security-holders in place with full value. The design of the new Chapter 11 was that if a class dissented and refused to accept less than full value, that class had a right to stand by the fair and equitable rule

and demand full value before any junior class was paid anything. It had the right, of course, to waive that right, but was granted the option of whether or not it would give it up.

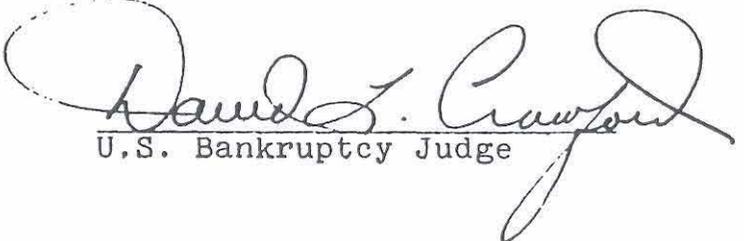
The effect of the plan now before me is to give to present equity security holders a valuable right, if the plan is confirmed. That valuable right is an exclusive right to buy shares of stock in the corporation, to the exclusion of the rest of the world. That right may or may not have significant value. However, it does appear to have value in and of itself, because it prohibits other parties, such as Iowa Des Moines National Bank, from purchasing stock in this corporation. To this, the debtor responds that the provisions of the plan are confirmable because the terms of the plan provide that stockholders must pay fair value for the new stock. The fallacy of that position is evident to me in this example. If a debtor is wholly insolvent and present stock is worth zero, then a plan which proposed to give current stockholders the right to purchase new stock in the corporation for fair value, in this example, zero dollars, would be confirmable, leaving current stockholders in exactly the same position they were prior to confirmation while giving to a previous class less than full value. That, it seems to me, is impermissible and precisely what new Chapter 11 is designed to prohibit, where there exists objection of a dissenting class.

I therefor conclude that this plan, because it proposes payment of less than 100 percent or full value to Class 8 cannot be confirmed, because it reserves to current equity security-holders something of value, that being the exclusive right, exclusive of other creditors, the public, and Iowa Des Moines National Bank, the right to purchase stock in the new corporation. Because of that reservation the plan cannot be confirmed.

Accordingly, confirmation is denied.

DATED: March 11, 1985.

BY THE COURT:

  
U.S. Bankruptcy Judge

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