In the United States Bankruptcy Court

for the Northern District of Iowa

IOWA IRON WORKS INC. *Debtor(s).*	Bankruptcy No. 94-11378KW Chapter 11

ORDER RE DISCLOSURE STATEMENT

On November 28, 1995, the above-captioned matter came on for hearing on Debtor's Motion for Approval of Disclosure Statement and Claims Report. Objections were filed by various creditors to both the Disclosure Statement and the Claims Report.

Appearing at hearing were Dan Childers and Melanie Fisher for Debtor. Debtor was represented by Ms. Sherry McGill. Assistant U.S. Attorney Martin McLaughlin was present representing the IRS. Wesley Huisinga was present representing Creditor Cedar Rapids, Inc. Also present was Assistant U.S. Trustee Janet Reasoner. Creditor Central States was not present at the hearing. The matters were argued after which the Court took the matter under advisement.

DISCLOSURE STATEMENT

The requirements concerning adequacy of a Disclosure Statement are set forth in 11 U.S.C. § 1125. A Disclosure Statement may not be approved by the Court unless the Court, after notice and hearing, determines that the Disclosure Statement contains adequate information.

The Bankruptcy Code does not define the term adequate disclosure though it is clear from case law that the Disclosure Statement must contain sufficient information to satisfy the basic purpose of requiring a Disclosure Statement. This Disclosure Statement must contain adequate information to enable a hypothetical reasonable investor to make an informed judgment about the Plan. 11 U.S.C. § 1125(a)(1). The entire purpose of the disclosure procedure is to provide creditors with sufficient information prior to balloting in order for them to be able to make an informed judgment as to the adequacy and feasibility of the Plan.

While the Code does not define the term "adequate disclosure" in precise terms, case law has developed which utilizes various criteria to help the Court in evaluating the adequacy of disclosure statements. Various cases and various criteria have been listed in numerous cases. One such case is In re Metrocraft Public Services, Inc., 39 B.R. 567 (Bankr. N.D. Ga. 1984). This case sets out approximately 19 criteria as suggested areas for examination in determining whether the entire statement contains adequate information to properly inform a creditor.

One of the important criteria in evaluating the adequacy of a Disclosure Statement relates to financial information including financial projections relating to the future income of Debtor. The U.S. Trustee has objected that the first Plan payments under the Plan are to be made 547 days after the confirmation. The U.S. Trustee objects that there is no explanation as to why these payments are to commence so long after the confirmation of the Plan.

Second, the Plan provides that if no buyer is found for Debtor within 1 years after confirmation, Debtor anticipates a potential liquidation. The U.S. Trustee also objects to the Disclosure Statement as the U.S. Trustee asserts that inadequate information is contained in the Disclosure Statement regarding the potential liquidation sale.

The U.S. Trustee also objects that the Disclosure Statement does not contain sufficient information relative to any potential environmental hazards. One of the criteria for evaluating the adequacy of disclosure information is the extent that any litigation is likely to arise in a nonbankruptcy context. The file does provide indications that there has been past experience with environmental clean-up at Debtor's premises.

In addition to the objections by the U.S. Trustee, the Health and Welfare Fund, to which Debtor is bound to contribute on behalf of its employees through a collective bargaining agreement with the teamsters, asserts that its prepetition claim of approximately $22,000 should have priority treatment under § 507(a)(4) whereas the Debtor's Plan treats this obligation as an unsecured claim.

The IRS has filed an objection to the Disclosure Statement. The IRS asserts that the Disclosure Statement inaccurately categorizes its claim. The IRS asserts that its claim includes secured, priority and unsecured tax liabilities. Debtor asserts that the IRS tax liens are avoidable because the notice of tax lien was filed less than 90 days prepetition. The IRS states that the statutory liens may not be avoided and further asserts that Debtor may not object to its claim in this proceeding but must determine the validity of any lien in an adversary proceeding.

The Court has evaluated the Disclosure Statement of Debtor Iowa Iron Works, Inc. It is the conclusion of this Court that the objections made by the Health and Welfare Fund and the IRS are really objections to the Claims Report. Ultimate determination as to the proper categorization of the claim will resolve any issues which presently exist under the Disclosure Statement. However, the Court has also considered the objections made by the U.S. Trustee. The Court finds that these objections are valid and in those areas raised by the U.S. Trustee, the information provided in the Disclosure Statement is noticeably deficient. Based on this Court's analysis, it finds that the Disclosure Statement is deficient in that:

1. It does not provide sufficient financial information and other explanation as to why payments under the Plan will not commence for such an extended period of time after confirmation.
2. The Court finds the Disclosure Statement inadequate in that it does not contain sufficient information concerning Debtor's potential liquidation 1 years after confirmation if no buyer is found.
3. The Court concludes that the Disclosure Statement is inadequate in that it does not discuss past experience with environmental hazards and environmental clean-up nor does it discuss future potential litigation arising out of potential environmental hazards on business premises.

As such, based on the entire record, the Court concludes, after reviewing the Disclosure Statement and the objections made, the Disclosure Statement does not provide adequate information to inform an adequate reasonable hypothetical investor so that such creditor could make an informed decision concerning feasibility of the Plan.

As such, approval of Debtor's Disclosure Statement must be and is hereby denied as it lacks sufficient information. However, the Court also concludes that it should allow Debtor time to amend and cure the specific defects noted.

WHEREFORE, the objections to Debtor's Disclosure Statement are SUSTAINED in the particular set out herein.

FURTHER, for the reasons set out in this opinion, Debtor's Disclosure Statement is DENIED.

FURTHER, Debtor shall have 14 days from the date of this Order within which to amend the Disclosure Statement to address those areas denominated as deficient by the Court.

SO ORDERED this 27th day of December, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge