

Bankrupt port is operating in the Primorsky region

One of the largest creditors of Nakhodka Sea Fishing Port thinks that bankruptcy of the company was imitated.

Last week Arbitration Court of the Primorsky region commenced a monitoring procedure for Joined Stock Company "Nakhodka Sea Fishing Port". Limited Liability Company "Alliance container" filed a bankruptcy petition in October 2013 and now it resulted in monitoring procedure.

However, the port operates and accepts ships on daily basis. Official website says that the port is looking for new customers and presents Nakhodka Sea Fishing Port as an innovative transport company that provides full range of stevedoring, forwarding and warehousing services. According to the company website Nakhodka Sea Fishing Port provides high-speed container trains formation and dispatch, using Far Eastern Transport Group rolling equipment. Talking about Far Eastern Transport Group we should take into consideration that the port is the part of this group. The company also provides handling different types of vessels, maintenance and storage of refrigerator containers.

There is another quotation from the website: "The management of Nakhodka Sea Fishing Port is well aware that keeping a position in the competitive market is really challenging nowadays. That's why company works with their partners in an extremely open and honest manner. This contributes to maintaining mutually beneficial relationships with loyal customers of the port and allows setting up new business relationships."

Company decides to go bankrupt

All this doesn't really fit the picture of bankruptcy. However, according to representatives of Nakhodka International Terminal, one of the largest creditors of the port, bankruptcy was simulated. It was initiated by an affiliate of the port structure in a very specific purpose: to suspend the collection of port's debts, confessed earlier. It looks like company decided to go bankrupt. There are some facts that can prove this theory.

For example, during the court hearing representatives of Alliance Container, bankruptcy petition applicant, and representatives of Nakhodka Sea Fishing Port, the debtor, communicated a lot and consulted each other about court documents. We also need to mention the fact that both companies are parts of Far Eastern Transport Group and CEO of Alliance Container, the bankruptcy initiator, is the member of the board of directors of the bankrupt port. The fact that the parties, who are supposed to be rivals, were unanimous about the court-appointed manager candidate also indicates affiliation. As for Nakhodka International Terminal, the largest creditor of the port, it faced a lot of obstacles that made it difficult for company to participate in the court hearing.

Business newspaper "Zolotoy Rog" (Golden Horn) several times wrote about the failure of collaboration between Nakhodka Sea Fishing Port and Nakhodka international terminal. This collaboration concerned the construction of a container terminal in Nakhodka fishing port and was initiated by Chinese and Korean investors. For this purpose in 2010 Nakhodka Sea Fishing Port received 76 million rubles (\$ 2.5 million) interest-free loan from Nakhodka International Terminal.

On the internet you can still find optimistic descriptions of this project. "Large transaction to raise funds was approved at the annual shareholders' meeting of JSC "Nakhodka Sea Fishing Port" ... Following companies will take part in the project: Far Eastern Transport Group (participates as the owner of the port), "Mudanjiang City Investment Group" (China), management company of the port of Busan (South Korea) and a number of South Korean transport and logistics companies ... Integrated development program of Nakhodka port includes increasing berths capacity and development of the internal infrastructures such as roads and railways. Reconstruction includes several stages. As a result of reconstruction the terminal will be able to process up to 400 thousand TEU (equivalent of 20-foot container) per year".

JSC "Nakhodka international terminal" planned to participate in this project by investing in the port infrastructure. This project aimed at the development of the transport and logistics industry in the region, which is one of the priorities for Primorsky region. But as far as construction of the terminal wasn't launched Nakhodka International Terminal demanded the return of the investment. The company filed a petition in tribunal and won a lawsuit. Cassational instance ruled that JSC "Nakhodka Sea Fishing port" should return 85 million rubles to Nakhodka International Terminal.

Did you win in court? Now try to collect the debt

It seemed that this is the end of the story about failed international project. Foreign investors were quite surprised to know that loud statements of officials about openness to foreign investment and real situation are very different. Russian partners do not necessary keep their word, and foreign investors face shameless dishonesty.

Foreign shareholders were even more surprised when they understood that court decision is just the beginning of the story. Next step is court and execution proceedings. After a few days it became clear that despite the court decision nobody is going to return the debt.

Kseniya Rubets, the lawyer from the law firm "Inmar", that represents the interests of JSC "Nakhodka international terminal", commented about this situation. "We, as representatives of the claimant, together with the bailiffs have been trying to collect Nakhodka Sea Fishing Port debt for two years. Despite the fact that the port operates and maintains financial and economic activities we were able to collect only 7 million. Nowadays debt of the port is 78 million rubles. During all this time representatives of the port were trying to delay the process. They filed numerous complaints against the actions of the bailiff and were trying to suspend enforcement proceedings.

Federal Bailiff Service of the Primorsky region reports about this accident. In April 2013 bailiffs arrested five cars of Nakhodka Sea Fishing port. Earlier, to meet the requirements of the court, bailiffs arrested warehouse buildings and berthing facilities. According to the bailiff, during the period of arrest procedures, the debtor was trying to prevent the execution of the judgment in all possible ways. For example, the head of the port never attended appointments with the bailiff. In addition, when the bailiff arrested bank accounts, the management of the debtor organization immediately opened new accounts and transferred all financial transactions to another bank.

Bailiff Service even tried to initiate criminal proceedings against CEO of the port (the Article 315 of the Criminal Code stipulates criminal liability for non-compliance with the court order), but Sergei Marchenko, the head of "Nakhodka Sea Fishing port" since April 2012, left the company when annual contract expired. Next temporarily acting General Director of JSC "Nakhodka Sea fishing port" was Alexander Palekh, then Denis Gladkoff. Only in September 2013 Vasily Maximov was elected as General Director of Nakhodka Sea fishing port for one

year. Obviously all of them were somehow affiliated with Far Eastern Transport Group. The fact is that such personnel turnover made it impossible to initiate criminal proceedings against CEO.

At the same time all bailiffs' actions to institute enforcement proceedings and to seize property were appealed to the court by the debtor. However these attempts didn't bring any results, court denied all numerous appeals from Nakhodka Sea Fishing Port. Now, when all obstacles to collect debt are eliminated, all of a sudden, JSC "Nakhodka international terminal" got a message about bankruptcy of the port. Legal experts from the law firm "Inmar", that represents interests of "Nakhodka International Terminal", and Nakhodka International Terminal itself analyzed the actions of the port during last few years and now they have all reasons to believe that this bankruptcy was imitated.

This is a trick used by Far Eastern companies during turbulent years of primary accumulation of the capital. According to the Bankruptcy Law when court introduces bankruptcy monitoring procedures, all enforcement proceedings, including enforcement proceedings on the previous court decisions, are suspended. According to Ksenia Rubets, all restrictions, including restrictions on property use, are removed and the port receives all rights to dispose its assets. JSC "Nakhodka international terminal" and its final judicial decision go on a fourth-priority basis. Obviously this situation minimizes chances of foreign investors to return their money.

Bad conditions for investors

It is clear that the management of Nakhodka International Terminal and lawyers, offering legal support to the company, are not satisfied with this situation.

"We think that obviously this is a fictitious bankruptcy, that intended to divest assets and avoid payment of liabilities. We believe that the situation needs to be considered from the perspective of criminal law" — says the lawyer from the firm "Inmar". — "We have sent a letters to the regional prosecutor office, to the prosecutor office of Nakhodka city and other regulatory authorities. We hope that these letters will result not only in formal reply but also in court proceedings".

This situation affects not just a particular company that decided to participate in the business process in the Far Eastern region, but also whole image of our country, which is still considered as an area of high business risks. And no matter how convincing is President Vladimir Putin talking about the importance of business contacts with Asia-Pacific countries for the Far East development, no matter how convincing is Governor Vladimir Miklushevsky, when he characterizes Primorsky region's investment climate as very favorable for foreign direct investment, this particular fact indicates that a foreign investor is still in danger, even when Russian law is on his side.

"Do you know what the most surprising thing for foreign investors, whose interests are represented by our law firm, is?" — Commented Ksenia Rubets. — "They are not surprised that one law firm tried to cheat another (business in our country is considered to be very risky). They are not surprised that their careless Russian partner is not the kind of a small firm, but one of the largest Far Eastern ports, the member of the Far Eastern Transport Group. They cannot understand the fact that legal entities ignore the requirements of Russian legislation, demands of judicial authorities and public officials, including bailiff service. As for official representatives of the government they do not ignore the problem, but somehow accept this situation and find excuses for inaction of authorities.

If we really want to attract foreign investment, not only in words but in fact, if we want foreign companies to work here and if we don't want foreign businessmen to be afraid of the Russian investment field, we need to provide them with effective protection mechanisms and legal guarantees. However even Russian businesses need clear laws and strict rules, so no one will try to "forgive" their partners' debts or even to go bankrupt in order not to return these debts".