

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
THE K CORPORATION,) CASE NO. 07-20935 JPK
) Chapter 11
Debtor.)

ORDER FOR HEARING/ORDER REGARDING
SUSPENSION OF CONFIRMATION OF PLAN PROCESS

This case was initiated by a voluntary petition filed on April 18, 2007. In the petition, the debtor – a corporation – stated that “Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51)(D)”. The Summary of Schedules filed on April 18, 2007 states total liabilities – of every nature – of \$407,237.42, while the Statement of Financial Affairs – also filed on April 18, 2007 – appears to indicate that the debtor is engaged in business activities, i.e., the operation of a tavern. 11 U.S.C. § 101(51)(D) defines a “small business debtor” as a “person engaged in commercial or business activities . . . that has aggregate non-contingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than 2 million dollars . . .”. The term “person” is defined by 11 U.S.C. § 101(41) to include a “corporation”. The Court does not comprehend why this debtor is not a “small business debtor” within the definition of 11 U.S.C. § 101(51)(D). Whether or not the debtor is a “small business debtor” has significant ramifications on the manner in which confirmation of a plan must be processed with the Court.

On February 9, 2008, the debtor filed a document designated as “Combined Disclosure Statement and Chapter 11 Plan of Reorganization”. This document is woefully insufficient with respect to financial disclosures required by 11 U.S.C. § 1125.¹

¹ For example, the disclosure statement does not contain any liquidation analysis for evaluation of the plan pursuant to 11 U.S.C. § 1129(a)(7), and contains no information as to financial aspects of the operation of the debtor’s business either pre-petition or post-petition, including any projection of financial operations necessary to sustain the viability of any plan.

To the extent that anyone can actually construe its meaning, 11 U.S.C. § 1129(e) requires at minimum that the Court schedule a confirmation hearing on a plan in a “small business case” within 45 days after the plan has been filed. As the record now stands, this case has not been designated by the debtor as a “small business case”, and thus the accelerated confirmation process required by 11 U.S.C. § 1129(e) has not been invoked. To the extent that the debtor may actually be a “small business debtor”, the Court invokes 11 U.S.C. § 105(a) to suspend any further proceedings with respect to confirmation of the plan filed by the debtor on February 9, 2008 in order to determine whether or not the debtor actually is a “small business debtor”.

IT IS ORDERED that a hearing will be held on **March 26, 2008, at 11:00 A.M.** to determine if the debtor is in fact a “small business debtor” as defined by 11 U.S.C. § 101(51)(D), and to discuss with the debtor’s counsel the deficiencies in the combined disclosure statement and plan which has been filed.

Dated at Hammond, Indiana on March 4, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
US Trustee
All Creditors
All Parties-in-Interest