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Bankruptcy procedure as the tool of the reorganisation - how can we conclude a bankruptcy agreement ?

A well-designed and well-managed bankruptcy procedure can be an excellent tool for reorganisation, for many companies, even those facing financial difficulties due to the viral situation, to be a means of survival and even innovation!

Our writing draws attention to important aspects of bankruptcy agreement.

The bankruptcy agreement shall be concluded under the principle of good faith, and it may not contain provisions and conditions which are clearly and manifestly unfavorable or unreasonable from the point of view of creditors on the whole or certain groups of creditors.

The question often arises as to what the court can actually examine in approving a voted bankruptcy agreement?

The Curia has addressed in a number of decisions the question of **whether and to what extent a court may investigate an abuse of rights.**

The Bankruptcy Act provides only an exemplificative list of what constitutes a manifestly and grossly unfavorable or unfair provision for all creditors or for certain groups of creditors. The Bankruptcy Act considers this to be the case in particular, if the ratio of satisfaction provided for the claims of creditors on the whole is deemed abnormally low relative to the debtor's divisible assets, or if the claims of a particular group of creditors are satisfied at an abnormally lower ratio or under unreasonably discriminative conditions by comparison to another group of creditors.

It is important to know, however, that the listing in the Bankruptcy Act does not mean that the agrrement cannot contain another provision that constitutes an abuse of rights to be examined by the court in the context of approval.

In one of the frequently cited decisions, the Curia found an abuse of rights on the grounds that the agreement did not contain specific deadlines for the satisfaction of creditors' claims, and did not state in each class in the time available to satisfy creditors (3 years), that how the creditors are satisfied - by proportional partial satisfaction of all creditors or individually, at the discretion of the debtor -.

According to the facts, the debtor undertook in the agreement to pay the principal and then the 65% of the interest claim in the secured creditor class and 2% of the principal in the unsecured creditor class within 3 years of the publication of the final court order approving the bankruptcy agreement in the Gazette.

Why the agreement was wrong, according to the Curia?

The Curia found an abuse of rights in the regard, that the content of the agreement would place creditors within each group relative to each other in a grossly unfavorable and unfair position, given that the agreement does not specify when the agreement will take place within that 3-year period and whether the creditors who receive satisfaction later receive some compensation compared to what was paid earlier.

The Curia justified its decision on the grounds that under the agreement the debtor can pay some creditors already in the first year, while others can only get the amount determined under the agreement at the end of the third year, so with a claim for money acquired within a short period of time, the creditor is much better off economically than the creditor who later obtains his claim.

Accordingly, notwithstanding the fact that the arrangement lays down the same conditions for all creditors, some creditors may be placed in an unfair position in the absence of precise deadlines for performance.

The case cited is also a good example of how detailed, well-thought-out, in all aspects a bankruptcy agreement must be prepared and concluded!

It is important to note that from the point of view of enforceability, the court must also examine whether the implementation of the reorganization plan will allow the payments promised by the debtor in the bankruptcy agreeement proposal, as no formally appropriate bankruptcy agreement can be approved if the agreement proposal and the outcome of the reorganisation as set out in the reorganization plan are not on line.

Thus, if a formally correct bankruptcy agreement, which cannot be properly enforced will also not be accepted according to the court..

If your company is experiencing either temporary or structural financial difficulties, there is a solution! We have nearly 30 years of serious international experience in the field of reorganisation, we have prepared and implemented many successful bankruptcy proceedings, thus enabling many companies not only to survive, but also to develop dynamically.

Feel free to contact us with your unique consulting needs or visit a new,

to our e-service interface, where we are at your disposal with our fixed-price Company Rescue service, which can be used online from anywhere, anytime!

We are also waiting for you on www.ekrs.hu!