

Do you have a non-paying client? May your company have debts? The position of the Curia on the conditions for ordering liquidation proceedings

The Curia in its decision of 2016 examined the date when the debtor may dispute the claim and the invoicing obligation of the creditor, and drew essential conclusions in connection with the fact as to when liquidation can be ordered against the debtor.

The debtor's dispute

The most essential rule in liquidation proceedings is that if the debtor disputes the creditor's claim, namely s/he substantially disputes the legal title of the debt in writing and will inform the creditor accordingly prior to the final notice before the liquidation, then the liquidation may not be ordered against the debtor. The Bankruptcy Act only specifies the final deadline of the debtor's dispute (till the date of the receipt of the creditor's notice); however, the law does not provide for the date from when the statement of dispute can be made. The Curia declared in its last year's decision that the debtor, prior to the notification of the quantified claim made against it, is entitled to inform the creditor about that s/he does not acknowledge the debt under the legal title indicated by the creditor. It means that the debtor may also dispute the claim which the creditor intends to enforce against him/her in order to avoid the liquidation even before the due date of the claim.

Invoice or no invoice

Another very essential condition of the liquidation to be ordered is that the creditor may only send the final notice to the debtor before the liquidation - after the date of which receipt the debtor may no longer dispute the creditor's claim - if s/he informs the debtor of the correct invoice, at least the factual ground, the legal title, the amount of the claim and the payment notice including the date of performance of the claim in a provable way and the deadline required by the law for the debtor to dispute the claim has expired. In the last year's decision, the courts had to take a position on the question whether the creditors are required to send an invoice to the debtor or it is sufficient if s/he sends a notice summarizing the factual ground, the legal title, the amount and the date of performance of his/her claim.

The Curia clearly stated that economic operators required to issue invoices under the VAT Act (Áfa tv.) may not avoid their invoicing obligations. If the creditor required to issue invoices fails to duly do so to his/her debtor, the creditor requests the debtor to pay his/her debt in vain, no



liquidation may be ordered against his/her debtor in case of default either. This is explained by the fact that if the creditor is required to issue an invoice for his/her claim arising from the provision of service, then the debtor will not be in default until the invoice is issued, and in the absence of the invoice, it cannot transfer the amount claimed by the creditor in compliance with the Accountancy Act even if s/he wants to.

What should the creditor do?

The first step is to issue an invoice and to send it to the debtor in a provable way. If the debtor does not dispute the creditor's claim within twenty (20) days after the payment deadline stated on the invoice (and had not disputed the legal ground of the claim earlier), then the creditor must send a regular payment notice which meets the formal requirements of the Bankruptcy Act to the debtor. If the debtor has received such final payment notice, s/he can avoid liquidation only if s/he pays the claim of the creditor or agrees with the creditor on the settlement of the debt.