

The COVID-19 pandemic of 2020 and the globally increasing inflation exacerbate the challenges facing businesses and the frequency of insolvencies leading to an ever larger number of bankruptcy proceedings. These facts provide an incentive for the contractual party in good standing to protect its rights in order to secure its receivables from the assets of the insolvent business. An option in that regard is assigning assets against receivable after insolvency proceedings have been initiated.

In case of ongoing bankruptcy proceedings, the Commerce Act (CA) provides an opportunity for the creditor to secure its receivables by assignment of assets owned by the debtor. In that case, the sale price of those assets is set off against the creditor's claim leading to its reduction, in whole or in part, depending on its value.

In most cases where a creditor takes advantage of that opportunity, they have the benefit of a pledge, mortgage or other security on assets owned by the bankrupt business, instituted in their favor. The prepared distribution scheme determines what part of the price due needs to be contributed by the creditor assigned as the buyer towards satisfying the claims of the other creditors and what value has been set off against the amount of that creditor's receivable.

The creditor assigned as the buyer is required, within 7 days from the entry into force of the distribution scheme, to deposit the amounts necessary for satisfying the claims of other creditors, if such do exist according to the distribution scheme. If no other creditors of the bankrupt debtor exist, the creditor must deposit the amount by which the value of the sold asset exceeds the buyer's claim.

This opportunity for assigning assets against receivable provided by the law is increasingly applied in practice by creditors whose sphere of business is identical to that of the bankrupt debtor.

A common scenario in cases of a privileged claim is for the claimant creditor to enter into a cession agreement with a business of a similar sphere of activity to that of the bankrupt business; in that way, the interests of the buyer are most fully secured: their receivable is reduced while at the same time they receive an asset necessary for their business activity.

A common practice are cession arrangements with companies specializing in purchasing debts, thus acquiring the capacity of creditor, which through an established privilege satisfy their claims by assigning assets and then re-selling the assets thus acquired in bankruptcy proceedings.

The same option for the creditor/claimant is provided in the Civil Procedure Code (CPC) in cases of ongoing enforcement proceedings against a debtor. In that case the claimant to whom the asset has been assigned may reduce their receivable by its value. The claimant does not have to pay up the value of the asset but instead, they may set it off by commensurately reducing their claim or canceling it altogether.

Also applicable to the claimant-participant in the auctioning of assets will be the general provision, i.e., that they will not be required to make a deposit for participation in the auction if the amount of their claim exceeds that of the legally determined deposit (10% of the initial asking price of the asset being sold).

The CPC also provides an additional method of satisfying a creditor/claimant whereby the enforcement officer assigns the receivable for the collection of the claim or in lieu of payment. This method applies with respect to receivables of the debtor or movable assets in their ownership.

When the collection of the receivable is assigned, the claimant to whom it was assigned does not take possession of the receivable; it is solely the enforcement officer that authorizes the claimant to collect it. In that case the claimant who initiated proceedings has the law-provided privilege of having the receivable assigned to them. Solely in case where the initial claimant declines to do so, the collection of the receivable may be assigned to another claimant who must state explicitly their intention to collect.

When an asset is given to the claimant instead of payment, the claimant takes over from the debtor the right to receiving it from third parties. In that case, the preferential privilege for the initial claimant in the case of assignment of the collection of a receivable described herein above ceases to apply.

The methods for assigning assets against receivable provided by law are becoming increasingly common in bankruptcy and enforcement proceedings and are a convenient tool for creditors in cases where assets are hard to sell or receivables are hard to collect.