

Sale of assets in special circumstances during insolvency proceedings

In cases where the assets of an insolvent debtor cannot successfully be sold off in accordance with the standard procedure under article 717 *et seq.* of the Bulgarian Commerce Act (CA), the insolvency proceedings allow the option of liquidation via sale of assets in special circumstances as provided under CA article 718.

To carry out this kind of sale of a debtor's assets, the creditors' assembly must pass a resolution. In the absence of such a resolution adopted by the creditors' assembly, a decision to that effect may be made by the trustee, who should have submitted a motion to the bankruptcy court seeking an authorization to sell in accordance with the procedure referred to above. The trustee also has the option of proposing to the court to convene a creditors' assembly with the agenda of determining the method and procedure of selling off the debtor's assets, whether in direct negotiation with a prospective buyer or through an intermediary. There is no procedural option for this type of sale to be initiated by the court itself.

In either case, the trustee is required to support the motion to the court with evidence that a sale in accordance with CA article 717 *et seq.* has been unsuccessful.

A sale of assets under CA article 717 *et seq.* starts with a sealed-bid auction; however, if bids of identical value are found to have been submitted, the sealed-bid auction will transition into an open auction. In the absence of any bids, or in case a buyer declines to acquire the assets, the sale is declared unsuccessful and a new one is scheduled, this time to be conducted solely as an open auction. If the second auction is also unsuccessful, the procedural option remains to sell the assets either in direct negotiation with a prospective buyer or through an intermediary.

The court is mandated by law to rule on the trustee's motion on the day of its filing or on the next business day at the latest.

While the bankruptcy court allows the sale of assets in special circumstances to proceed, it has no competence in determining the asking price for the assets. The Commerce Act prescribes that the asking price can be lower than the initial price under CA article 717g, namely, less than 80% of the appraised value of the asset.

Negotiations with potential buyers are to be conducted by the trustee, who is also a party to the sale agreement, in the capacity as seller of the assets. The form of the transaction is the one required for the relevant type of asset. It is common practice for the trustee to enter into a preliminary agreement with the buyer. The sale procedure is finalized with the execution of a final sale agreement and the payment of the agreed price.

One type of sale of assets in special circumstances is the sale of equity held by the debtor in other companies. A mandatory provision is that such equity be offered to be bought out by the other partners within one month. This provision is intended to protect the interests of the partners of the defaulting debtor. If the debtor's stake is not paid for by the partners, the company must transform said stake into a liquidation share. Receivables for a liquidation share can be sold freely.

In cases where a debtor owns all equity of a sole proprietorship limited liability company, the winding up of an insolvent debtor results in termination of his membership, therefore his equity is transformed into a receivable for a liquidation share, which the trustee is bound by law to sell. The case law is ambivalent regarding the trustee's rights to initiate liquidation proceedings in respect of a company where a defaulting debtor is the sole owner of all equity.

Where a debtor has a stake in a general or limited partnership, said debtor's membership of such a company is likewise transformed into a liquidation share, provided that the remaining partners wish to keep the company as a going concern. If a decision is made to wind down the company, this should be done by way of liquidation whereby the liquidation share of the defaulting debtor is determined.

The procedure for sale of assets in special circumstances as per CA article 718 is a quick and effective method of liquidating assets from the bankruptcy estate that makes it possible to repay the receivables of the creditors of the defaulting debtor.