

## Bankruptcy disputes: an overview of the positions of the Supreme Court for 2022



On 26 April 2023, the Supreme Court of the Russian Federation approved an overview of judicial practice in resolving bankruptcy disputes for 2022 (hereinafter the "**Overview**")<sup>[1]</sup>.

The overview highlights the relevant positions on holding the debtor's controlling persons subsidiarily liable, explanations related to the challenging of a bankrupt's transactions on the grounds provided for by the Federal Law No. 127-FZ dated 26 October 2002 "On Insolvency (Bankruptcy)" (hereinafter the "**Bankruptcy Law**"), as well as procedural law clarifications.

### **Subsidiary Liability**

#### **1. Delegation of functions to employees does not exempt an executive from subsidiary liability in the event of the bankruptcy of the company (Clause 27 of the Overview)**

An executive who has delegated certain managerial functions in the company to subordinate employees may not abdicate from supervising the performance of these functions by the employees.

When deciding on the subsidiary liability of the executive, one should consider the nature and scope of the debtor's business activities and the degree to which the executive could or could not have been aware of the committed breaches.

When considering a particular case, the Supreme Court pointed out that, based on the nature of the debtor's principal activity and the scope and repeated nature of the violations, the executive could not have been unaware of the violations of the administrative laws. Therefore, the executive may not formally refer to the fact that they had delegated the functions of determining waste disposal sites to the environmental engineer, the deputy general director for ecology and the landfill foreman as a ground for being exempt from liability, as the executive is in any event responsible for inaction resulting in its failure to supervise the actions of these employees.

## **Challenging the debtor's transactions**

### **2. A purchaser who acquires property at an understated price, without a substantiated justification for such a price understatement, acts imprudently (Clause 11 of the Overview)**

From the perspective of a bona fide and reasonable participant in civil law relations, the repeatedly understated value of the property should cause the purchaser to doubt the lawfulness of the alienation of the property.

Any other reaction may indicate that the purchaser has direct or indirect knowledge of the unlawful purpose of the withdrawal of the debtor's asset or that management has acted unlawfully in violation of the debtor's economic interests. In such a case, the transaction may be challenged based on Clause 2 of Article 61.2 of the Bankruptcy Law.

## **Financing the bankruptcy proceedings**

### **3. The costs of bankruptcy proceedings initiated by the debtor itself may be charged to the debtor's founders/participants (Clause 9 of the Overview)**

Whether the costs of bankruptcy proceedings may be charged to the debtor's participant does not depend on the participant's guilt in driving the debtor into bankruptcy.

### **4. Before termination of bankruptcy proceedings due to the lack of funds, the court must check creditors' references to other possible sources to finance the bankruptcy proceedings (Clause 3 of the Overview)**

One of the grounds for the termination of bankruptcy proceedings is the lack of sufficient funds to cover the legal costs of the bankruptcy proceedings, including the payment of remuneration to the insolvency receiver of the debtor.

The Supreme Court pointed out that the court may not terminate bankruptcy proceedings unless it has verified that a creditor's reference to the existence of a source to cover the costs of the bankruptcy proceedings has been substantiated.

Such a source could potentially be the property returned to the debtor's bankruptcy estate following a challenge of a transaction of the debtor.

## **Procedural issues**

### **5. A bankruptcy creditor is entitled to refer to the fictitious nature of a transaction between the debtor and another creditor, even if the fictitious debt was previously confirmed by a court ruling (Clause 5 of the Overview)**

If there are proofs that their rights and legal interests have been violated, bankruptcy creditors are entitled to appeal against a judicial ruling forming the basis of another creditor's claim against the debtor (Resolution No. 35 of the Plenum of the Supreme Commercial Court of the Russian Federation dated 22 June 2012).

The Supreme Court noted that if a creditor appeals against a judicial ruling with reference to the fictitious nature of the legal relationship between the debtor and another creditor, the court of appeal must assess this argument and admit new evidence for consideration.

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<sup>[1]</sup> The full text of the Overview is available on the official website of the Supreme Court of the Russian Federation:

<https://vsrf.ru/documents/thematics/32372/>.

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