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LEGAL EFFECTS OF THE WRONGFUL APPOINTMENT AS PROVISIONAL JUDICIAL ADMINISTRATOR AFTER THE MOMENT WHEN THE CREDITORS HAVE CONFIRMED THE SAME PERSON AS THE DEFINITIVE JUDICIAL ADMINISTRATOR

Alexandru BLEOANĂ¹

Abstract

The creditors who hold more than 50% of the total value of the claims with voting right can decide the appointment of a judicial administrator, establishing the fee, which represents the application of the principle regulated by art. 45 paragraph (2) of Law no. 85 of 2014 on the procedures for preventing insolvency and for insolvency (Romanian Parliament, 2014) (further referred to as "the Insolvency Law"), according to which the duties of the syndic-judge are limited to the judicial control of the activity of the judicial administrator and to the judicial processes and requests related to the insolvency procedure, while the opportunity of the operations is controlled by the creditors.

Consequently, when the creditors have established that it is appropriate to confirm as definitive judicial administrator the same person in whose provisional designation an irregularity has been committed, the rectification of this irregularity, in the sense of finding its wrong appointment as provisional judicial administrator, can no longer have legal effects.

Keywords

Provisional judicial administrator; definitive judicial administrator; insolvency procedures.

By the decision no. 137/2015, the Vrancea County Tribunal opened the general insolvency procedure of the debtor CO SA and appointed CII BS as judicial administrator of the debtor.

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In order to decide this way, the court held that the creditor B S.A. requested the opening of the insolvency procedure for the debtor CO SA and proposed the insolvency practitioner AI IPURL as the provisional judicial administrator. But the creditor didn't indicate a natural person as representative of the insolvency practitioner, which is a professional company, and thus ignored the condition imposed by art. 45 paragraph (1) lit. d) and art. 57 paragraph (1) of the Insolvency Law, corroborated with art. 1-2 of Government Emergency Ordinance no. 86/2006 regarding the organization of the activity of insolvency practitioners.

The creditor B S.A. filed, at the Galați Court of Appeal – Second Civil Section, an appeal against the decision of the Vrancea County Tribunal. The creditor asked for the change of the decision in the sense of appointing AI IPURL as provisional judicial administrator. It argued that the interpretation given by the syndic-judge to the legal text is wrong, as the professional companies may also be designated as judicial administrators of debtors.

In its analyze, the Court stated that, according to art.476 of the Code of civil procedure, the appeal provokes a new trial on the merits, the court of appeal ruling both in fact and in law. From this perspective, the Court noted, in fact, that at the meeting of the creditors held on 21.12.2015 it was decided to confirm CII BS as the definitive judicial administrator of the debtor, the same practitioner appointed provisionally by the syndic-judge.

In law, according to art. 57 paragraph (2) of the Insolvency Law, at the first meeting of the creditors' meeting, creditors who hold more than 50% of the total value of the claims with voting rights may decide to appoint a judicial administrator, establishing the fee.

This is an application of the principle regulated by art. 45 paragraph (2) of the Insoveny Law, according to which the duties of the syndic-judge are limited to the judicial control of the activity of the judicial administrator and to the judicial processes and requests related to the insolvency procedure, while the opportunity of the operations is controlled by the creditors, through their legal bodies.

In this case, the creditors have established that it is appropriate to confirm CII BS as definitive judicial administrator of the debtor, so that the correction of a possible irregularity in the designation of the provisional judicial administrator can no longer produce legal effects. Accordingly, the Court dismissed the appeal as ill founded.

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