

APPROACHES ON THE INSOLVENCY OF ECONOMIC AGENTS

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Abstract: For a good manager, the knowledge and especially the interpretation of financial and accounting statements must form the basis of forecasting and proposal of further strategies depending on the company's wellbeing. The manager has to identify and manage the threats that would prevent achieving the targets. The hardships of a company are identified by certain indicators, and if they are not identified in advance, the state of difficulty can be exacerbated by the manager's slow and late response. He is the one who plays a major role in pointing out the difficulties and also in the recovery of such adverse situations. Entry into insolvency is a dynamic process, determined both by the hardships occurred inside the company and the transactions conducted with third parties (suppliers, customers). This paperwork tries to show which are the reasons that cause the insolvency of a commercial company.

Keywords: insolvency, bankruptcy, asset, manager, risk, reorganization,

INTRODUCTION

Analysing the sources and actions that determine a company failure leads to a general idea on what caused this condition.

Through such an analysis it is indicated that there is a certain pattern in a company's evolution, a model that relates primarily to management inadequates and the inability of managers to collect timely critical information in the company he leads.

Delay or mismatch of recovery actions performed based on the critical needs of a company will cause its collapse. The failure or bankruptcy of a company is not defined clearly by the literature.

What is the failure of an enterprise, how it is produced and what are the consequences of its occurrence are elements about which there is still not a perfect agreement between the various

disciplines involved. For this state of organizations have been used different terms such as the organization leaving the market, organizational collapse, bankruptcy or decline.

MATERIAL AND METHODS

Our approach aims studying the state of insolvency. The research was focused on literature review. For the case study it was conducted a data analysis of the financial statements in order to detect the occurrence of insolvency due to both objective and subjective factors.

RESULTS AND DISCUSSIONS

According to The Law Dictionary, insolvency can be defined as: the inability/lack of means to pay the debt on due date during normal activity; relative condition in which a person has available its assets as immediate/liquid, but are not enough to cover the debt. It can also be defined by a cash flow test that measures if the liquidities and cash equivalents are sufficient to cover the debts.

Achieving a balance between supply and demand in a market economy makes some traders win and others lose. Losing in business is a normal risk, usually assumed by any merchant.

But when the losses for the trader become too high, the problem is in assuming responsibility before other aspects of the company be damaged due to negative results.

Facing this reality, trade legislation through collective proceedings, tried finding the most appropriate means to reduce the influences of losses on creditors as much as possible.

Over the past years, there was a tendency to amend the legislation in many European states regarding insolvency proceedings. This trend has resulted in some cases in adopting new legislation.

Countries like Germany, France, Great Britain or Finland have adopted laws and codes oriented on reorganization, emulating US law.

This procedure aims not to liquidate potentially viable companies, but to keep them operational. An effective insolvency proceeding is defined by its ability to reorganize companies in difficulty.

Reorganization is rare in cases of insolvency in Europe compared to the United States. Reforms in the European states, made in an attempt to boost reorganizations, had no significant

effects. The main reason is that the management of European companies is often dismissed or it resorts to having an external manager to take the lead.

Given the primary motivation to reform the bankruptcy proceedings, to encourage entrepreneurship, it should be understood that entrepreneurs and creditors may get better results by reorganization than through bankruptcy.

However, reorganization was often criticized, some authors claiming that firms unable to obtain results should not be saved because the costs of a lengthy reorganization are high.

In a developed economy, a plus might be obtained by selling the assets of a company. On the other hand, in times of economic crisis the prices obtained in such a procedure are quite low. A company will exit the trade environment through bankruptcy or voluntary liquidation by its ability to pay debts and honor contracts.

Across the European Union it has been and still is trying the standardization and harmonization of legislation by creating a European legislation.

The cultural differences between Member States do not allow the issuance of a single law which is applicable in all countries. However, to this end, the European Union issue regulations that each state may or may not implement by amending their laws and incorporate information in European norms.

German insolvency code prior to the 1994 amendment provided a great control power to creditors holding secured claims, which generates a major trend toward liquidation of companies. These creditors could easily come in possession of the goods that were secured claims, which quickly led them to liquidation.

The changes to the German law adopted in 1994 involve measures in favor of the debtor company's existence and continuity. The opportunity of secured creditors to dispose assets became limited. Although adopted in 1994, provisions have been implemented with the start of year 1999. After 1999 Germany insolvency declaration could be made for the imminent insolvency also. However, compared to other countries, German insolvency application may be filed in the case of over-indebtedness.

Aiming to promote opening of insolvency proceedings in due time, the German law offers companies (those over-indebted or in imminent insolvency and apply voluntarily for a process of insolvency) a "protective shield" represented by a period of up to three months in which to prepare a restructuring plan before the actual start of insolvency proceedings.

The German insolvency law is continually criticized, not just nationally. Critics of the regulations exist from foreign specialists, who often make comparisons with countries like Great Britain or the United States, especially on the possibility for creditors to convert their claims into capital.

Austria has regulated insolvency based on the German model. In these two countries the first payed creditors are the guaranteed ones.

Another characteristic of the German legislation is that, during the course of the proceedings, the company management is not changed, considering this as a beneficial feature for the continuation of the company. It is believed that the managers already have information and knowledge about the company in general and about its financial situation and keeping them makes them to take a more cautious attitude.

The uniqueness of insolvency regulations in France is given by the involvement of the judicial authorities throughout the procedure. Consequently, they do not favor completely the debtor, but do not offer advanced protection to creditors either. However, more than in other countries, insolvency laws in France involves rescuing bankrupt companies in order to protect the employees.

Diminishing turnover, increasing debt and increasing the share of financial costs are the main characteristics of French companies that go bankrupt and the most affected sector by this phenomenon is the production one.

However, even while the number of bankrupt companies grow from year to year, the level of entrepreneurship represented by new firms rate increases at the same time in France.

French origin legislations are in effect also in Italy, Spain, Portugal, Belgium and the Netherlands. Unlike France, in all these countries the primarily secured are creditors, to whom the claims are covered.

Spain has opted for an insolvency system orientated towards the debtor. However, secured creditors enjoy some protection. The 2003 reform, as in Germany, made it possible to trigger the proceeding in case of imminent insolvency.

In the Netherlands resolving the financial difficulties of a company can be done in two formal ways: suspension of payments applied in order to reorganize the company and the insolvency procedure, used mainly for liquidation. Since the hold option is not well implemented in the Dutch system, it is not often used.

Of course there is the possibility of an informal restructuring, when the company reaches an agreement with its creditors without going through various legal formalities. Typically, the bank which is proposing such a procedure often has a major role in financing.

Sweden and Denmark have, as well as Finnish legislation, Scandinavian origins. In Finland there are two legislative rules governing the procedures in the event of financial difficulties.

In Sweden is implemented the confiscation of goods at the request of prohibition suppliers or creditors or the prohibition of an entrepreneur to carry on commercial activities when it is guilty of bankruptcy company.

Danish Bankruptcy Act is based on the following fundamental principles:

- Transfer of control of the company by creditors or by an external manager;
- Equality among creditors (however, differences in priorities from paying exist).

In Italy were made in 2012 significant legislative changes regarding VAT, sales regime and leasing, as well as those regarding bankruptcy by introducing changes to the current procedure, in particular in relation to the possibility of negotiating in times of crisis in order to save the company.

These amendments concern an agreement that can be achieved with creditors (the arrangement). Once completed the procedures for this process, the debtor company may seek funding to enable paying the debts to key suppliers and thus continuing work.

Central and Eastern European countries are countries with a developing economy that try to copy the models of developed countries in order to adapt to economic changes. Therefore, the regulations of these states were formed by reference to the law of other countries. We can show as the Romanian legislation as an example, which is based on the French model, or the Polish system which is based on the German insolvency legislation.

However, there are still elements of insolvency that do not discuss emerging regulations, and the state was too involved in introducing exceptions or special rules in the procedure.

In Bulgaria, the Czech Republic and Slovakia, the insolvency procedure applies only to commercial companies. Insolvency process is most often caused by the lack of liquidity.

However, some national laws add other criteria that may lead to the opening of a procedure.

To properly treat the phenomenon, Hungary issued several laws that govern bankruptcy and liquidation, accounting and registering these processes at the same time. The Law of bankruptcy and liquidation proceedings, the Law of Companies, the Act of public information about companies, of involved court proceedings and liquidation of insolvent companies, the accounting Law and the Regulation of accounting regarding the liquidation are regulations that apply in situations of bankrupt companies.

According to the legislation, if no agreement was reached between the debtor and creditors, the company will be liquidated.

Insolvency law in the Czech Republic entered into effect on January 1st, 2008. It introduced two new ways to resolve the inability to pay debts: a reorganization of companies and debt cancellation for personal insolvency case.

Romanian insolvency regulations aim to solve legal issues of this procedure which has a number of features which we will develop below. Given that in recent years the number of companies that have gone into insolvency rose

The case study was conducted at the company ROMCARM PROD DISTRIBUTION LLC which has as main activity the production, processing and preserving of meat and meat products.

In order to establish the causes that led to a state of insolvency (shortage of funds available to pay outstanding debts), the official receiver has conducted research on several levels, which relate to financial performance and patrimonial situation.

Analysis of profit and loss account has the role to present, in a summary form, the financial performance of the work undertaken by the company in the period under review. The operating activity is of utmost importance in the analysis based on the profit and loss account.

Turnover from the structural point of view was supported almost exclusively from sales of meat. Operating expenses represent the total expenditures of the analyzed company's activity.

The main operating expenses that the company recorded during the current activity were: meat processing expenses, personnel expenses, salary contributions.

Being on a downward trend over the analyzed period of income and expenditure indicators show deficiencies on the management level (turnover increases but also a strong growth of debt is registered).

The first step in analyzing the financial position is the overall picture of the balance situation of the heritage in which are highlighted developments and structural changes in assets, liabilities and equity based on the information provided by the financial situation of the last three years.

Claims are amounts receivable from various debtors. Claims have the highest share in the total current assets of the year 2013 and follow a strong upward trajectory and are represented mainly by receivables from customers and customers in dispute.

At the present moment, the most significant receivables are from the sale of goods.

Treasury follows a strong descending trajectory at the level of year 2012, falling by about 50%, clearly indicating a lack of permanent liquidity needed to repay the due debts and completing the started investments, hence a limited level of business activity. The treasury becomes unbalanced with threats of overdrafts and monetary imbalances.

Upward evolution of total assets over the period is determined both by developments in current assets and fluctuation of fixed assets, consisting of alternating periods of increases and decreases from year to year.

Shareholders' equities are negative in the year 2013 with a special mark on earnings. Retained earnings are the result of previous years whose division was deferred by the associates. During the period under review, the result of the activity represents the difference between income and expenses, which is unfavorable.

The company recorded an increase in turnover, but at the same time, a significant increase in leverage by not collecting the receivables, which led the company ROMCARM PROD DISTRIBUTION LLC, in the medium term, defaulted.

During 2013, the company was significantly affected on the market by changes produced along with the global recession, recording operating losses and accumulating struggling debts.

Guaranteed tax liabilities recorded a considerable value in the analyzed period, and are composed of VAT, payroll tax, income tax, revenues from fines, VAT interest and penalties, health insurance contributions, work accidents, unemployment compensations, guarantee fund, employer health, leaves and indemnities.

CONCLUSIONS

When it comes to when the insolvency started, as it is defined in Law 85/2006: "the state of the debtor's assets, characterized by the evident failure of payment of the debt due to the amounts of money available", we appreciate that this has occurred since 2013, due to the fact the society did not collect receivables, which led to a state of insolvency.

The causes that led to the insolvency, based on the accounting documents available to the public receiver, we have established that the ROMCARM PROD DISTRIBUTION LLC has failed to achieve its objectives since it lacked a medium and long term business plan; this condition led to deficiencies in the company's management, which were embodied in the medium term. Thus, while the indebtedness generated considerable costs, and return on the one hand and non-recovery of receivables on the other hand led irreversibly to an insolvent state. Lack of available liquidities and affected irreversibly the company's ability to meet its obligations for payment. To sum up, the main causes that led to the insolvency are obviously poor business management, business that was backed mainly by commercial loans contracted with third parties, such as leasing companies.

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