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Corporate groups in France: Difficulties with related actions against foreign parent companies





Former Judge, Court of appeal of Colmar

Other actions appear to be more appropriate and more effective than the extension of insolvency proceedings

he extension of insolvency proceedings provided for under French law allows the effects of those proceedings to be extended to another company or to an individual, if the court considers that there has been a confusion of assets or abnormal financial relations (C. com., art. L 621-2 al. 2).

This extension derives directly from the procedure and is closely linked to it. It naturally falls within the jurisdiction of the courts of the State where the insolvency proceedings have been opened (Reg. (EU) No 2015/848 of 20 May 2015, art. 6(1)).

In the instant case, a French liquidator filed a petition before a French court with the aim to apply this provision against the parent company of the insolvent French company, because the two companies were run by the same person and the subsidiary company was located in premises belonging to the parent company. The extension of the insolvency proceeding would have been possible if, for example, the subsidiary company paid excessive rent to the parent company or if all decisions were taken in the sole interest of the parent company.

However, there was an obstacle in this case: the parent company was established in Germany. The Court of Justice of the European Union held that the extension of insolvency proceedings had the effects of an opening judgment on the assets and liabilities of the company concerned and ruled that the jurisdiction rule of the European Insolvency Regulation, based on the criterion of the debtor's centre of main interests (Reg. (EU) No 2015/848 of 20 May 2015, art 3), should prevail over domestic rules

In that case, an additional condition should therefore have been met: the location of the centre of main interests of the targeted company in France (CJEU, 15 Dec. 2011, C-191/10, Rastelli). Having failed to demonstrate this, the liquidator's request was rejected in compliance with EU rules (Cass. com. 13 Sept. 2023, no. 22-12.855).

What possible solutions remain for insolvency practitioners?

Other actions appear to be more appropriate and more effective than the extension of insolvency proceedings to ensure that the liabilities of an insolvent company would be borne by its foreign parent company:

a liability action against the parent company, if it can be considered as a de facto

- manager;
- the opening of secondary proceedings, for which insolvency does not have to be demonstrated; in this regard, the CJEU already clarified that secondary proceedings may be opened even if the registered office is located in the State where those proceedings are opened (CJEU, 4 Sept. 2014, C-327/13, Burgo Group). It would be then efficient to coordinate both proceedings in the interests of the creditors of the main proceedings opened against the subsidiary;
- Finally, an avoidance action targeting specific preferential payments or transfers of assets that may have been made prior to the opening of insolvency proceedings to the detriment of that insolvent company for the benefit of its parent company without consideration or other valid grounds.