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The Supreme court of the Russian Federation has created a new precedent for the recovery of subsidiary liability from the debtor?

Author: Zhanna Zhigalova - junior associate GRATA International St. Petersburg.

"Termination of the bankruptcy procedure is not the basis for termination of proceedings on the application for bringing to subsidiary liability of controlling persons of the debtor" - this is the conclusion reached by the Supreme court of the Russian Federation considering the complaint of the creditor-applicant in the bankruptcy case.

"17" November 2017 completed the procedure of bankruptcy proceedings of the debtor LLC "Novaport", case A40-70634/2016.

Shortly before the completion of the procedure, or to be precise for one month, the Bankruptcy Trustee filed an application for bringing the controlling persons of the debtor to subsidiary liability, the application was accepted for production and the date of the trial was set.

However, due to procedural issues, the proceedings on the application were terminated. The court found that creditors were not deprived of the right to judicial protection, as they are entitled to apply for the imposition of vicarious liability beyond cases of bankruptcy proceedings (articles 61.19 bankruptcy Law).

"09" April 2018 Debtor-legal entity ceased to exist, he was excluded from the register.

In September 2019, the bankruptcy creditor's complaint against the decision to terminate the proceedings in the case reached the Judicial Board for economic disputes of the Supreme court of the Russian Federation. Having considered the complaint of the competitive creditor, the Supreme court considered the wrong conclusion of the lower courts and found the termination of the proceedings a violation of the right to judicial protection (article 46 of the Constitution of the Russian Federation), as the subsequent completion of the bankruptcy proceedings and the making of an entry on the exclusion of the debtor from the register had not prevented the consideration of the application on the merits, given that the controlling persons of the legal capacity retained.

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