



GRATA
INTERNATIONAL

Local Knowledge
for Global Business

www.gratanet.com

On the bankruptcy. The tax authority now must estimate the economic feasibility of a bankruptcy procedure before appealing to a court.

Economic feasibility of a bankruptcy procedure

The Constitutional Court of the Russian Federation has obliged a tax authority to check the relevancy of the claim to recognize a debtor as a bankrupt in terms of prospects and economic feasibility of initiating such dispute.

The Constitutional Court in its Resolution of March 5, 2019 No. 14-P checked the regulations of the Civil Code and the Law on the Bankruptcy according to which legal expenses of the initiator of the procedure shall be required from the head of the debtor organization who did not file in due time the bankruptcy petition. In the case under consideration, an initiator was the tax authority.

The applicant of the complaint believed that Article 15, Paragraph 1 of Article 200 and Article 1064 of the Civil Code, the subparagraph of Paragraph 1 of Article 31 of the Tax Code, the second subparagraph of Paragraph 1 of Article 9, Paragraph 1 of Article 10 and Paragraph 3 of Article 59 of Federal Law No. 127-FL of October 26, 2002 "On the Insolvency (Bankruptcy)" in total are not constitutional as on their basis the initiator of the bankruptcy procedure can recover from the head of the debtor organization the legal expenses incurred by him, in the violation by the latter of an obligation for the independent application with the statement to recognize the organization as a bankrupt.

The Constitutional Court came to the conclusion that the duty of the head of a debtor of submitting the application on the bankruptcy cannot violate constitutional rights of citizens as in its turn it is directed to protect the creditors' rights.

A set of the norms challenged by an applicant is designed to prevent the bankruptcy and to restore the solvency of a debtor organization, and the recognition of the debtor as a bankrupt to ensure the creditors' interests.

Meanwhile, the Constitutional Court reflected in the definition that the initiator of the bankruptcy procedure initially has to expect a reasonably economic success, meaning that an opportunity to recover a debt from the organization head cannot stimulate the launch of the bankruptcy procedure under insufficient property of the debtor, and the initiator's emergence of the expense procedure shall not be recognized as a consequence of actions of the head automatically.

Contacts for additional information:

Vladimir Komarov

Legal Studio Managing Partner, Associate Office of GRATA International in St. Petersburg

Tel.: +7 (812) 384 48 38

Байршил

