

**THE FEATURES OF THE CLAIMS LODGED WITHIN THE  
INSOLVENCY PROCEEDINGS. THE RESPONSIBILITY OF  
PUBLIC INSTITUTIONS IN DEBT RECOVERY**

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**ABSTRACT:** *The present research aims to analyze the features of these special means used by creditors for recovering the debt within the insolvency proceedings. One of the means used by creditors within the insolvency proceedings for the purpose of recovering the debts is the lodgement of debt claims. These should be submitted within the term provided in the court judgement/ resolution ordering the opening of the proceedings, the creditor being thus informed on its right to lodge the claim through the notification issued by the judicial administrator / judicial liquidator. The submission time limit, the formal requirements and the evidence requested for submitting the application for the admission of debt will also be analyzed. In addition, the research will reveal the output of the debt claim, under the procedural conditions expressly provided by the law, namely the registration of the claims in the preliminary table of receivables. The responsibility for recovery of debts weighs hard on the shoulders of public institutions, which often make use of the debt claim, to the disadvantage of the alternative application for opening the insolvency proceedings against their debtor. Considering this prevalence, the lodgement of debt claims proves to be a useful instrument for the creditors as public institutions.*

**KEYWORDS:** *debt; insolvency; insolvency; claim; preliminary table of receivables*

**JEL CLASSIFICATION:** K22

**1. INTRODUCTION**

The creditors have the right to choose between the procedural means from the category of actions they can employ against a debtor in order to recover the debt, namely between the application for opening the insolvency proceedings, the request for payment order or prosecute the claims in accordance with common law procedure. The creditor chooses one of these means based on the characteristics of the debt, based on the documents supporting the debt, the guarantees instituted with regard to the respective debt. This multitude of hypotheses proves that the option of the creditor is made from the perspective of its finality. In our opinion, the regulations on insolvency proceedings, both those under

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Law no.85/2014<sup>1</sup> as well as those under Law no.85/2006<sup>2</sup>, the previous law on insolvency proceedings, consisting in the application for opening the insolvency proceedings by the creditor, represented *illo tempore* a means of putting pressure on the debtor which is more effective than the common law action for claims or the request for payment order. The efficiency of the insolvency proceedings, the advantages and disadvantages generated for the creditors are concisely presented in the doctrine (Turcu & Botina, 2013, p.298-300).

Although they are faced with the procedural option of lodging the application for opening the insolvency proceedings on the debtor for a certain liquid and enforceable debt, *de facto*, the public institutions proceed as follows: in most of the cases they are not the initiators of the application for opening the insolvency proceedings against the debtor. In general, the debtor has a number of creditors, some of which may be much more aggressive in their undertakings than the public institutions. Consequently, one of these other creditors will be the holder of the application for opening the insolvency proceedings, and the public institution will use the means for debt recovery instituted within the insolvency proceedings, practically by lodging its claim against the debtor. After the insolvency proceedings are open, irrespective of whether the application was submitted by the debtor or the creditor, any creditor has access to the procedural means of lodging its claims against the debtor. Both these procedural means will be brought under analyze in this paper, casting special attention to process of the claims lodged by creditors.

## **2. THE APPLICATION FOR OPENING THE INSOLVENCY PROCEEDINGS SUBMITTED BY THE CREDITOR**

The creditor who has the right to request the opening of the insolvency proceedings is the creditor whose claim over the patrimony of the debtor is certain, liquid, enforceable and it is unpaid for more than 60 days. The application for opening of the insolvency proceedings submitted by the creditor against a debtor presumed to be insolvent, (Dimitriu, 2014, p.50-51; Dimitriu, 2015, p.25-64; Nasz, 2014, p.328-331; Carp, 2017) will comprise the following, in accordance with art.70, para.1 of Law no.85/2014: the amount and proof of debt, the existence of a right of preference constituted by the debtor or instituted in compliance with the law, the existence of precautionary measures related to the debtor's goods, the declaration regarding the intention to participate to the possible reorganization of the debtor, in which case it must be indicated, in principle, the means in which the creditor intends to participate in the reorganization. The creditor will attach the documents representing the proof of debt and the preference clause.

The "dimensions" that designate the certain liquid and enforceable debt are relevant for opening the insolvency proceedings, in the following situations:

i) in drawing the application for opening the insolvency proceedings by the creditor, since only the creditor claiming a debt that is certain liquid, enforceable and unpaid for at least 60 days since falling due, has the right to request the opening of the insolvency proceedings. The debtor insolvency is presumed only when after more than 60 days as from the due date, the debtor has not paid the debt to the creditor. The presumption is

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<sup>1</sup> Published in the Off. Gazette no.466 din 25.06.2014, amended and supplemented, consolidated version of 22.04.2016, hereinafter called *Law no.85/2014*.

<sup>2</sup> Abrogated at the entrance into force of Law no.85/2014.

relative, therefore it can be overturned by proof to the contrary, but we notice that the enforceable character of the claim gains the greatest importance for the application for opening the insolvency proceedings to be admitted.

ii) in the evidence of the application for opening the insolvency proceedings, because the certainty of the debt may result from the deed of debt and/or from not notarised deeds issued by the debtor or recognised by the debtor. It should be mentioned that in the case where the creditor has submitted the application for opening the insolvency proceedings, the debtor may file appeal against it, and within the appeal only the written evidence is admissible, *per a contrario* not other types of evidence such as expert reports or testimonies. This legal solution was reached after taking into consideration extensive case law (Pivniceru, Susanu, Susanu, 2009, p.179-186) and the grounds set by Law no.85/2006, under which the debtors requested within the appeal, to administer the proof of the expert-accountancy, construction, etc, reports, which would generate a prolongation of the term necessary for solving the application on opening the insolvency proceedings and at the same time would hamper its timely settlement. Considering the limitations imposed on the types of evidence admitted in the appeal, the uncontested/certain character of the debt, as it results from the written evidence, gains utmost meaning for the admission of the application on opening the insolvency proceedings.

iii) in solving the case by rejecting the application for opening the insolvency proceedings submitted by the creditor, because the payment by the debtor of the certain, liquid, enforceable debt paralyses the judgement admitting the application for opening the insolvency proceedings, case in which will be applied rules on payment provided by the Civil Code. *Per a contrario*, if the debtor does not pay the debt owed to the creditor before the debates are closed and the syndic judge establishes that the debtor is insolvent, he/she shall admit the debtor's application on opening the insolvency proceedings, and will order through judgement the opening of the types of insolvency proceedings detailed by the doctrine (Turcu, 2015, p.115-119 and Cărpenaru, 2016, p.724-734).

Looking at the nature of the debt, in principle, the debt may result from the professional activity carried out by the debtor and may have a commercial, budgetary or salary nature as indicated above, as the judicial nature of the debt "is not of interest" (Cărpenaru, 2012, p.694). At the same time, it is important to mention that the debt "susceptible to set off the insolvency proceedings would be a monetary/ pecuniary debt, and "for the non-fulfillment by the debtor of the obligations having a different object than the payment of money, the common law regulations shall apply and not the insolvency proceedings", as the doctrine (Cărpenaru, 2012, p.693) indicates with regard to the provisions of Law no.85/2006, which are reiterated also by Law no.85/2014. This characteristic of the debt subsists independently of the type of person on which the insolvency proceedings are opened. The fiscal receivables represent according to Law no.85/2014 the debts consisting of taxes, contributions, fines and other budgetary revenues as well their ancillaries, and as the doctrine recalls, (Piperea et al, 2017, p.559 and Gherman, 2017, p.474) the "tax receivables represent the species in the field of budgetary receivables."

Without ignoring the other characteristics of the debt, which could fundament the submission of an application on opening the insolvency proceedings such as the requirements for certainty, enforceability for more than 60 days and the amount of the debt which must exceed the threshold of 40.000 lei, characteristics that were reestablished

in accordance with the provisions of Law no.85/2014, a first conclusion would be that regarding the essential feature of the debt – its monetary character which results from the obligation to pay an amount of money, a feature to which the other features mentioned above are subsidiary. We have also indicated previously that the debt shall have a threshold value, respectively a minimum threshold, in order for the application to be admitted. The threshold value is 40.000 lei, no matter whether the creditor or the debtor demands the opening of the insolvency proceedings. Including for the requests issued by the liquidator named within the liquidation proceedings provided by Law no.31/1990. For employees the threshold value amounts to 6 average gross wages / employee, respectively 3.131 lei, creating thus the possibility that the employee who was not paid the monthly wages owed by the employee resulting in a debt amounting to this value, to become creditor and be able to submit the application for opening the application for opening the insolvency proceedings against the employer, in accordance with art.16 of Law no.7/2017.<sup>3</sup> The creditor who holds a claim over the debtor's patrimony, claim that fulfills the requirements described above, is called "creditor entitled to request the opening of the proceedings".

Under procedural aspect, the application for opening the insolvency proceedings issued by the creditor, once submitted to the county court, shall be communicated to the debtor within 48 hours from the registration, and within 10 days from its receipt, the debtor may either appeal it or recognize the existence of the state of insolvency. Even if the insolvency of the debtor is presumed when after 60 days from the due date the debtor has not paid the debt owed to the creditor, the presumption is relative, hence it can be overturned by evidence to the contrary, the burden of proof falling on the debtor and from procedural point of view it means that within the appeal, the debtor must administer the evidence.

The debtor may request the syndic judge to order the creditor to put up security, which can represent up to 10% of the debt, but not exceeding 40.000 lei. This measure is to be imposed under the sanction of the rejection of the application on opening the insolvency proceedings submitted by the creditor, in case the security is not registered as required. If the debtor does not pay the debt to creditor until the debates are closed and the syndic judge establishes that the debtor is insolvent, the latter not having filled appeal or having appealed but without succeeding to overturn the presumption of insolvency, then, the application on opening the insolvency proceedings will be admitted and the appeal rejected, following that through court order one of the types of insolvency proceedings is opened, respectively the general proceeding or the simplified proceedings. The responsibilities and activity of the syndic judge are treated in extenso in the doctrine (Piperea et al, 2017, p.312-323 and the doctrine cited therein; Turcu, 2015, p.142-162; Bufan, 2014, p.130-150; Cărpănu, 2016, p.745-747; Groșaru, 2013, p.205-258)

It can be noticed that the application on opening the insolvency proceedings issued by the creditor is judged in a procedure that is to a high degree contentious, having as main procedural component the referral to court, the act potentially setting off the insolvency proceedings, respectively the creditor's application and another procedural component left exclusively to the option of the debtor, namely the appeal. By finding reunited within the

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<sup>3</sup> published in the Of. Gazette no.128 of 17.02.2017, <http://www.mmuncii.ro/j33/images/Documente/Legislatie/L7-2017.pdf>, accessed on 25.09.2017

same pending file both these major procedural acts – the application for opening the proceedings submitted by the creditor and the debtor’s appeal, it arises the possibility of a complete analysis regarding the claim held by the creditor and the state of the debtor. If only the application for opening the proceedings is submitted, the contentious character of the application is maintained, this character being given by the summoning of the parties in view of having the application cross-examined. The date of the opening of proceedings represent the date on which the syndic judge issues the judgement through which he/she settled the application of the creditor by admitting it and by rejecting a possible appeal requested by the debtor.

### **3. NOTIFICATION OF THE CREDITORS REGARDING THE OPENING OF THE INSOLVENCY PROCEEDINGS**

One of the first measures ordered by the syndic judge once the proceedings are open is the notification of the creditors with regard to the new status of the debtor, action that will be carried out by the judicial administrator / liquidator. Necessary for the notification of the creditors, within 10 days from the opening of the proceedings by the creditor, the debtor is obliged to lodge to the file a series of documents and information, these being similar in content with those that are requested when the debtor requests the opening of the proceedings. For the purpose of lodging the documents, the debtor is notified by the interim judicial liquidator/administrator, because his/her first obligation is to notify all creditors mentioned in the list lodged by the debtor, a list to be lodged to the file, that identifies all creditors and their debts. The legal nature of the position held by the judicial administrator/liquidator as the doctrine reveals (Bufan, 2014, p.153-154) is similar to that carried out based on a contract of mandate.

The notification shall be communicated to the creditors immediately, in any case at least 10 days before reaching the due date for the registration of the claims through which the creditors wish to capitalize their debts within the proceedings and must comprise: the due date for registering the claim against the debtor’s patrimony, which is of maximum 45 days from the opening of the proceedings, as well as the requirements for the claim to be considered valid; the term for verifying the claims, the term for drawing-up and publishing the preliminary table of receivables in the *Insolvency Proceedings Bulletin*<sup>4</sup>, which will not exceed 20 days for the general proceedings, respectively 10 days in the case of simplified proceedings, calculated from the expiry of the 45 days; the term for concluding the table of receivables, which shall not exceed 25 days for the general proceedings or the simplified proceedings, from the expiry of the term corresponding to each proceedings; the place, date and time of the first hearing of the creditors' assembly.

The creditors that have not been notified in accordance with art.99, para.3 of Law no.85/2014 are considered to have been lawfully notified within the term for lodging the claims, and by lodging an application for the claim to be admitted on the statement of assets and liabilities, these creditors will enter the proceedings at the stage it reached at this point. It is presumed that the creditors who have registered claims are aware about the terms established for the proceedings and will no longer be summoned in accordance with art.42, para.8 of Law no.85/2014, hence no summoning procedure will be carried out for

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<sup>4</sup> Hereinafter called BIP.

them. Also, within the proceedings, the parties will not be summoned, unless there arises a matter of dispute involving the respective party, such as the request to waive the right of administration or appeals against the preliminary table or the final table, all being procedures in which the creditor is a party. Consequently, the capacity of creditor entitled to participate in the insolvency proceedings can be gained only if a claim was lodged and accepted, at least partially, as resulting from the name of the claim. If the claim is included in the statement of assets and liabilities, the capacity of creditor is acquired and all the creditor's rights can now be capitalized within proceedings. If the claim is a fiscal one, the capacity of fiscal creditor accepted in the statement of assets and liabilities is acquired.

#### 4. LODGING THE CLAIM

In principal, the creditors who hold claims against the debtor's patrimony, dated before the opening of the proceedings, irrespective of whether the opening of the proceedings was requested by the creditor or the debtor, and the application was admitted, the first ones will lodge their claims within the term established through the judgement ordering the opening of the proceedings. The creditors are notified on the opening of the proceedings and in return they can lodge their claims, thus becoming creditors entitled to participate in the proceedings. This capacity is acquired by the creditor holder of a claim against the debtor's patrimony, and who registered a claim that was accepted in full or partially, and following the acceptance, the creditor acquires the rights and obligations regulated by Law no.85/2014 for each stage of the proceedings indicated in the doctrine (Bufan, Deli-Diaconescu, Moțiu, 2014, p.269-276).

The holder of the claims arisen previously to the opening of the proceedings who does not lodge the claims before the expiry of the term provided in the notification, except for the case in which the the holder of the claims was not notified or the notification was not carried out in compliance with the legal provisions indicated above, will be waived the right of being included on the list of creditors and will not acquire the capacity of creditor entitled to participate in the proceedings. Hence, the sanction applied to the creditor who did not lodge the claim is the loss of capacity. The creditor will not have the right to materialize the claims against the debtor or the legal person's members or associates with unlimited liability, after the procedure is closed, on condition that the debtor was not convicted for simple bankruptcy or for bankruptcy fraud and that the debtor was not held liable for making payment fraud or transfer fraud. The loss of capacity will be acknowledged by the judicial administrator / liquidator, who will not include the creditor in the list of creditors.

There are certain exceptions to the principle of materialization of rights held by the creditors, exclusively by lodging the claims, respectively certain categories of debts in relation to which the creditors do not have the obligation to lodge a claim and consequently for which the sanction indicated *ut supra* will not be applied.

The claim starting from which the insolvency proceedings were opened is registered by the judicial administrator based on the proof of debts documents attached to the application for opening the proceedings and following their verification. If the creditor calculates the ancillaries up to the date of the opening of the proceedings, the claim for ancillaries will also be lodged. The law maker provides expressly the obligation of the

fiscal creditors to register the claim within the term established through the judgement ordering the opening of the proceedings, which is calculated from the date of the notification, and within 60 days from the publication in the BIP of the notification on the opening of the proceedings, also they are obliged to publish even an appendix to the claim if it is the case. The debtor's employees hold the capacity of creditors without having to personally lodge claims. The notion of worker's "wage claim" is relevant for registering the debt in the preliminary table of receivables, because for registering these debts it is necessary to lodge the claims within the term set through the judgement ordering the opening of the proceedings. The workers' claims shall be registered by the judicial administrator/liquidator in accordance with the debtor's accounting records.

The fiscal debts acknowledged through a fiscal report that was put together following the opening of the proceedings, but which targeted the preceding activity of the debtor, are assimilated to the debts dated before the opening of the proceedings, namely fiscal debts. Within 60 days from the publication in the BIP of the notification on the opening of proceedings, the fiscal inspection bodies will carry out a fiscal inspection and draw a fiscal inspection report. These fiscal creditors will carry out an initial registration of the claims, following that within 60 days from the date of notification publication in the BIP, they would register an appendix to the application to the initial claim, if applicable.

The lodgement of claims will comprise, according to art.104 of Law no.85/2014, the following elements: the name of the creditor, the place of residence / registered office, the amount of debt, the grounds of the claim, mentions regarding possible clauses of preference. On demand, the evidence of debt indicated by the doctrine (Piperea, G. et al, 2017, p.568-571) and the documents grounding the clause of preference can be annexed, latest within the term established for the lodgement of claims. In conclusion, the lodgement of a claim is like a true action through which the creditors capitalize the claim held against the debtor's patrimony, within the insolvency proceedings, provided that the existence of a certain, liquid and enforceable debt arisen before the opening of the proceedings, is unchallengeable.

The legal provision under art.102, para.3 of Law no.85/2014, according to which claims must be lodged even if they are not established through a debt instrument, maintains that the regulation in the field of insolvency aimed for the proceedings to capitalize all the rights of the creditors. The main duties of the judicial administrator / liquidator are stipulated in art.58, para.1 letters a-q, respectively in art.64, para.1, letters a-l, of Law no.85/2014, and the ones relevant for the lodgement of claims are in principal the following: verification of claims and if applicable, submission of objections to claims, the notification of creditors in case of partial or non-lodgement of claims, as well as setting-up the table of receivables. At the same time, the claims shall be registered in a registry that will be kept by the registrar of the county court.

## **5. THE VERIFICATION AND REGISTRATION OF CLAIMS IN THE PRELIMINARY TABLE OF RECEIVABLES**

The preliminary table of receivables comprises all the due or not due debts, conditioned or under dispute, born before the date the proceedings were open, accepted by the judicial administrator/ liquidator following the verifications. In the table the following will be mentioned: the amount claimed by the creditor; the amount accepted and the

degree of priority. In case the simplified proceedings are opened, in this table will be registered also the claims arisen after the opening of the proceedings and until the beginning of bankruptcy. In the table will be mentioned the amount claimed by the creditor, as well as the amount accepted and the degree of preference. Hence, in case the bankruptcy proceedings is opened after the period of observation or reorganization, the creditors will request to be included in the additional table meant for the claims arisen after the opening of the insolvency proceedings.

In order to have the receivables registered in the preliminary table of receivables, the following types of receivables will be taken into consideration, based on the claims lodged by the creditors and accepted in full or partially: - the guaranteed receivable or the receivables which benefit from a preference cause are those receivables which have attached a privilege and/or a mortgage right and/or other rights assimilated with a mortgage, according to art.2347 of the Civil Code, and/or a pledge over the assets in the debtor's patrimony, irrespective if in question is a principal debtor or a pledger in relation to the beneficiaries of the preference clauses; - the unsecured creditor is that creditor of the debtor who is listed on the table of receivables and does not benefit from a clause of preference. In the category of unsecured creditors are included also the creditors that benefit from a clause of preference, but those whose receivables are not fully covered by the value of the privilege, because this part of pledges or mortgages, for the part of the debt remained uncovered.

Therefore, the regime of receivables for which claims are lodged will be the following: the claims presented to be accepted and registered in the registry of the county court shall be presumed valid and correct unless contested by the debtor, the judicial administrator / liquidator or creditors, however, they will be verified in accordance with the provisions of art.105, except for the debts acknowledged through enforceable court judgements as well as through enforceable arbitral judgements.

In accordance with the provisions of art.106 of Law no.85/2014, the judicial administrator/liquidator will immediately proceed to verify each claim and the attached evidence and will carry out a thorough evaluation, establishing the validity, the exact value and priority of each claim. In order to fulfill this duty, the judicial administrator/liquidator will be entitled to request explanations from the debtor, will be able to discuss with the debtor and further request additional information and documents, if necessary. The verification procedure is not applicable for the fiscal receivables resulting from an enforceable title uncontested within the terms provided in the special laws. Consequently, if it wasn't contested by the debtor within the term provided in the special law, the enforceable title which attests the fiscal receivable, it will be included in the table such as it was declared by the public institution, hence a particular situation may arise in case the enforceable title attesting the fiscal debt was contested by the debtor.

Through Decision no.11/2016 of the High Court of Cassation and Justice<sup>5</sup> developed by Piperea et al (2017 p.517-518), it was analyzed the intimation of the Alba Iulia Court of Appeal – civil department II, for the delivery of a preliminary ruling on how to interpret art.105, para.1,2 and art.106 of Law no.85/2014, namely to clarify whether the judicial administrator/liquidator has the right to verify the fiscal receivables acknowledged through enforceable titles, contested within the legal term, and what are the limitations to

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<sup>5</sup> Published in the Off. Gazette no.436 of 10/06/2016.

this verification, considering the fact that these receivables are acknowledged by a fiscal documents issued by a public authority. The HCCJ admitted the intimation made by the Alba Iulia Court of Appeal and established that in interpreting the provisions of art.105, para.1,2 and art.106 of Law no.85/2014, the judicial administrator/liquidator does not have the responsibility to verify on the matter the fiscal receivables acknowledged through enforceable titles, contested within the legal term before the specialized court. In issuing the decision the HCCJ determined that “In the case where the fiscal receivable resulting from an enforceable title was contested within the special term, before the administrative court, therefore the debtor chose the path of administrative appeal provided by art.205-218 of the Code of civil procedure, such as in this case, the judicial administrator/liquidator does not have the competence of analyzing the fiscal receivable on the matter, because the administrative documents that acknowledge it – the notice of assessment and the fiscal inspection report, were contested within the legal term before the the court which has jurisdiction. Otherwise, it would have been disregarded the jurisdiction of a specialized court by the judicial administrator/liquidator, a thing that would affect the constitutional guarantee provided by art.126, para.6 from the Constitution of Romania.” Another ground on which the intimation of the HCCJ was admitted was that “the judicial administrator/liquidator cannot rule out the documents issued as a public authority, but can only analyze the receivable in a formal way, respectively to check whether it was paid in full or partially, whether it is time-barred or contested, mentioning this aspect according to art.58 para.1, letter. k of Law no.85/2014. A fiscal debt resulting from an enforceable title contested according to the provisions of the special law shall make the object of the verification procedures stipulated by art.111 para.6 of Law no.85/2014, but this verification is limited, because the existence of the right of claim will be established in the administrative fiscal procedure.”

Consequently, the judicial administrator/liquidator does not have the right to verify the fiscal receivables resulting from an enforceable title, not even in the situation where they are not contested and neither in the situation where they are contested through the common law procedure. In this last situation the verification of the fiscal receivable falls on the fiscal administrative court, an aspect that results from the considerations expressed in decision no.11/2016. Moreover, even if we would accept that the judicial administrator/liquidator holds the responsibility of verifying the contested fiscal receivable, this verification would overlap the verification carried out by the fiscal administrative court, an aspect that also results from the grounds exposed in the same decision. But the case law of the national courts in the matter analyzed by Decision no.11/2016 reveals also the rulings of these court regarding the procedure for registering the contested fiscal receivable on the preliminary table of receivables. Under this aspect it was shaped the ruling in accordance to which the fiscal receivable shall be temporary registered in the preliminary table of receivables, with the effects indicated by the doctrine (Piperea et al 2017 p.610-612) until the definitive settlement of the fiscal administrative action, considering that there exists the possibility for the contested debt instrument to be annulled by the fiscal administrative courts. Following the settlement of the case by this court, the preliminary table of receivables would have to be modified in accordance with the ruling delivered by the court. But this solution of temporarily registering the fiscal debt was understood differently in the practice of certain courts. More precisely, it was considered that the temporarily registration of the fiscal debt should be done only if, being

contested, the enforceable title that incorporates the fiscal receivable, at the same time was ordered by the administrative court the stay of its enforcement. This would have had to be decided based on the consideration that if not stayed, the enforceable title may be enforced, and the distribution of certain amounts to the creditor would represent a form of enforcement. Being suspended, the enforceable title that incorporates the fiscal receivable, the debt loses its enforceable character, and the judicial administrator/liquidator may register the receivable in the preliminary table of receivables, temporarily until the settlement of the administrative action, following for the registration to be carried out in accordance with the ruling delivered.

The object of case C-212/15 judged by CJEU<sup>6</sup> is related to the fiscal receivable within the insolvency proceedings, in the case where the receivable was not registered in the open insolvency proceedings, and it is subject to forced execution in another Member State. CJEU was requested to determine whether EC Regulation no.1346/2000 on insolvency proceedings precludes a national regulation that provides for the forfeiture of the right of a creditor to pursue an unregistered claim or for the suspension of the enforcement of such a claim and whether the national legislation applicable to the insolvency proceedings opened in another Member State can regulate also the effects of the opening of the insolvency proceedings on the forced execution of the same debtor but in another Member State. *De facto*, in this case the defendant The Regional Directorate General of Public Finance Brasov even though being aware the insolvency proceedings were still pending at the time, did not lodge any claims in the insolvency proceedings, but instead issued a tax notice concerning liability to value added tax (VAT). The defendant The Regional Directorate General of Public Finance Brasov initiated in Romania forced execution proceedings on the grounds of the tax notice mentioned above. The tax notice was not appealed by the claimant and the insolvency proceedings opened on it, carried out in Hungary, was closed. Consequently, the Court ruled that "1. Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that provisions of national law of the Member State on the territory of which insolvency proceedings are opened which provide, in relation to a creditor who has not taken part in those proceedings, for the forfeiture of its right to pursue its claim or for the suspension of the enforcement of such a claim in another Member State come within its scope of application. 2. The fiscal nature of the claim pursued by means of enforcement in a Member State other than that on the territory of which the insolvency proceedings are opened, in a situation such as that at issue in the main proceedings, has no bearing on the answer to be given to the first question referred for a preliminary ruling."

In the situation where by derogation from the provision of art.2512 and the following from the Civil code, the judicial administrator/liquidator determines that the prescription period affects the receivable, he/she shall notify the creditor in this regard, without further verifying the claimed debt on the matter. When the table of receivables is published in the BIP, the judicial administrator/liquidator immediately sends notifications to the creditors whose receivables or rights of preference were partially included in the preliminary table of receivables or eliminated, specifying at the same time the grounds of such registration. The judicial administrator/liquidator will put together and register at the

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<sup>6</sup> ENEFI Energiahatékonyági Nyrt vs. Regional Directorate General of Public Finance Brasov. Accessed on <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-212/15#> at 14.10.2017.

county court the preliminary table within the term established through the judgement ordering the opening of the proceedings, comprising all the claims against the debtor's patrimony, and the table will be published in the BIP. After publication, the registered creditors will be entitled to participate to the creditors' assemblies. All the claims presented to have been admitted and registered at the county court will be presumed valid and correct unless they are contested by the debtor, the judicial administrator or the creditors.

An analysis of the applications for opening insolvency proceedings, both the ones filed by the creditor(s) and those filed by the debtor, containing the applications registered on the docket of the Specialized Tribunal in Cluj, revealed the following data in relation to the subject of the present study:

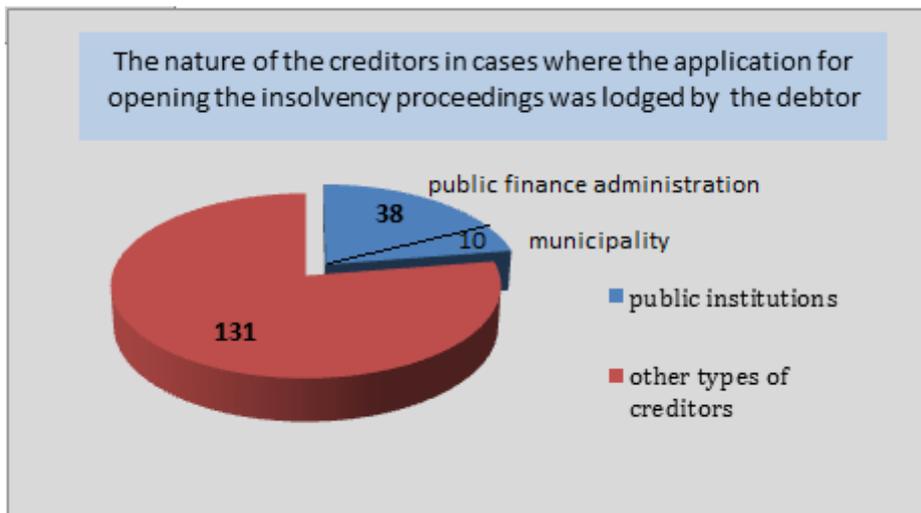
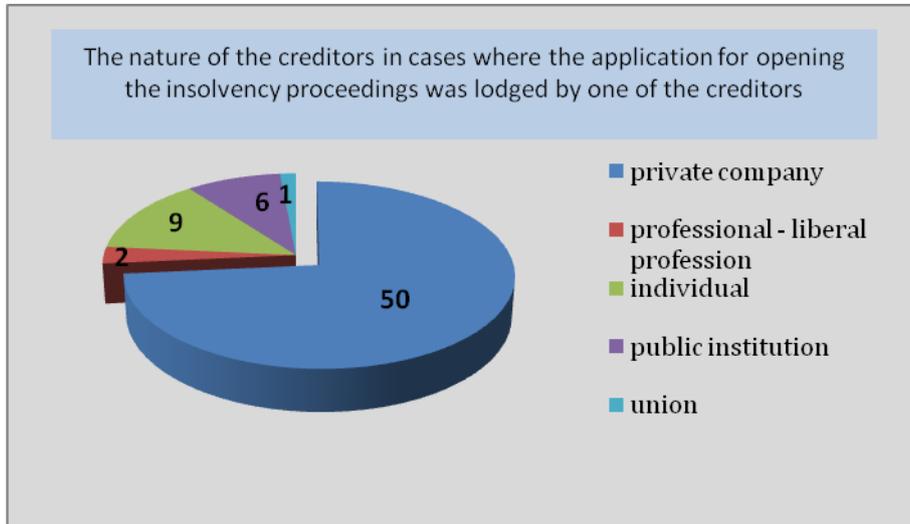
Between 1 January 2017 and 14 October 2017 a number of 724 cases were registered, excluding the associated cases.<sup>7</sup>

1. A number of 68 cases are on insolvency proceedings, the application for opening the proceedings being filed by the creditor. In 50 of the 68 cases, the creditor was a private company, and in 2 of the cases the creditor was a professional carrying out activity of a liberal profession, while in a number of 9 cases the creditor was an individual, in one case the creditor was the union (...) and in 6 other cases public institutions were creditors. Of the latter 6 cases, one application was filed by the township (...) as creditor, 4 applications were filed by the municipality (...), and in one case the application was filed by the creditor the Directorate General of Public Finance / The County Administration of Public Finance (...). After the proceedings were opened, in 8 of the 68 cases, the Directorate General of Public Finance / The County Administration of Public Finance (...) lodged claims. Additionally there was one claim lodged by the ministry (...) and one claim lodged by the municipality (...).

2. A number of 169 cases were registered on insolvency where the application for opening the proceedings was filed by the debtor. In these cases, a number of 38 creditors are public institutions, and in each of these cases one of the creditors is the Directorate General of Public Finance / The County Administration of Public Finance (...). In 10 of the 38 cases one of the creditors is the municipality (...).

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<sup>7</sup> The data was collected from the website [www.portaljust.ro](http://www.portaljust.ro)



**6. CHALLENGING PRELIMINARY TABLE OF RECEIVABLES**

Even if the public institution lodged a claim, its responsibility does not stop here. In accordance with the provisions of art.111 of Law no.85/2014 the active legal standing necessary for contesting the preliminary table is held by the debtor, the creditors and any other party interested in the registered receivables and rights or, in those unlisted by the judicial administrator/liquidator in the table. The term for lodging the contestation is 7 days from the publication in the BIP of the preliminary table. The fiscal creditor has the

obligation to lodge the contestation to the preliminary table, developed in the doctrine (Bufan, Deli-Diaconescu, Moțiu, 2014, p.465; Cârpenaru 2016, p.788-790) if his/her claim was not included in the tabel with the right amount and right of preference. Under the sanction of annulment, the contestation will be accompanied by the original proof of payment of the stamp duty, as well as all the documents that could be used to prove the statements, presenting any evidence that may be requested, except for those which are not in the possession of the party or are unknown to the party at the moment the contestation is lodged. The party that submits the contestation sends, with confirmation of receipt, a copy of the contestation and the documents accompanying it, to the judicial administrator/liquidator, the creditor whose claim he/she is challenging, as well as to the special administrator. In case this obligation has not been fulfilled, the syndic judge can apply, by default, a fine according to the provisions of the Code of civil procedure.

The statement of defence shall be submitted within 10 days from the date of communication of the appeal and the attached documents, and a copy of it must be communicated with confirmation of receipt, by the challenging party to the challenged party, to the judicial administrator/liquidator and to the debtor. The contestations will be settled by the syndic judge all at once, through one ruling, even if for the settlement of some of them it would be necessary to administer evidence. Having in view the evidence to be administered, the syndic judge may admit, in whole or in part, the temporary registration of the respective claims on the final table. The claims registered temporarily will have all the rights provided by the law, except for the right to collect the amounts proposed for distribution.

## **7. THE FINAL TABLE OF RECEIVABLES. CHALLENGING THE FINAL TABLE**

After all the contestations have been settled and the guarantee evaluation report is delivered, the judicial administrator/liquidator will immediately register at the county court and will publish in the BIP, the final table containing all the claims against the debtor's patrimony, indicating the amount, the priority and the status of each claim, benefiting or not from a preference clause. The claims benefiting from a preference clause, in accordance with the provisions of art.103 shall be registered in the final table until reaching the market value of the guarantee established through the evaluation, disposed by the judicial administrator or by the judicial liquidator, carried out by an evaluator.

In the situation where the capitalization of the assets affected by the preference clause is realized at a price higher than the amount registered in the final table or in the consolidated final table, the favorable difference will be collected also by the secured creditor, even if a part of his/her receivable had been registered as unsecured receivable, as far as to cover the principal debt and the ancillaries that will be calculated in accordance with the documents from which the debt results, until the capitalization of the asset. This provision is applicable also in case the reorganization plan fails together with the sale of the asset within the bankruptcy proceedings.

*The final table of receivables* is the table that comprises all the claims against the debtor's assets at the date the proceedings are opened, accepted in the preliminary table and which have not been challenged as well as the claims admitted after the settlement of

challenges, or the claims admitted temporarily by the syndic judge. In the case of the simplified proceedings, the final table of receivables comprises, besides the debts arisen previously to the opening of the proceedings also the debts arisen within the period of observation, which were admitted on the statement of assets and liabilities. This table shows the amount claimed, the amount admitted and the degree of priority.

*The final consolidated table of receivables* comprises all the receivables that are listed as admitted in the final table of receivables and the unchallenged receivables from the additional table, as well as the receivables resulted after the contestations to the additional table. In the situation where after the confirmation of a reorganization plan, it is decided the entrance into bankruptcy, the final table will comprise : all the claims listed as admitted in the final table of receivables, those in the additional table of unchallenged claims, those resulted after the settlement of contestations to the additional table, from which are deducted the amounts paid during the ongoing reorganization plan.

After the registration of the final table, only the holders of the claims registered in the final table may participate to the vote on the reorganization plan or any other distribution of amounts in case of bankruptcy in the simplified proceedings. After the expiry of the term for lodging contestations to the preliminary table until the closing of proceedings, any interested party may lodge contestation against the registration of a claim or a right of preference in the final table of receivables or in the updated tables, in case of discovery of a fraud, deceit or essential error, that determined the admission of the claim or the right of preference, as well as if any determining titles, unknown up to that point, are discovered. The contestation shall be lodged within 15 days from the date on which the party became aware or should have been aware of the situation that determines the admission of the contestation. Until the final trial of the contestation, the syndic judge can declare the contested claim or the right of preference as being admitted only temporarily.

## 8. CONCLUSIONS

The lodgement of the claim represents an obligation for the public institutions, considering as the doctrine (Fodor, 2017, p.52) mentions that “the managing element derives from the capacity of legal person held by the administrative authorities, which have their own distinct patrimony they manage in accordance to the needs of the community. The autonomous authorities of the local public administration have the right to institute and collect taxes and project and approve local budgeting.”

The responsibility of public institutions includes the recovery of debts from their debtors. One of the procedural means commonly used for this purpose is the lodgement of debt claims within the insolvency proceedings, with the landmarks and effects analyzed *ut supra*. From a functional point of view, within the public institutions, the department responsible for recovering the debts needs to be organized in such way as to ensure the proper carry out of undertakings related to lodging the debt claims in the term established by the law. Also, in the undertakings related to the admission of the claim is included also the stage of the contestation to the preliminary table of receivables, in order for the amount and possible clauses of preference over the receivable to be capitalized within the proceedings, in accordance with the evidence held by the public institution.

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