

The Provincial Court of Zaragoza has ruled on an appeal lodged by the General Treasury of Social Security against a Mercantile Court decision approving a liquidation plan that considered the transfer of the insolvent company as a productive unit and exonerated the buyer from social security debts.

The legal issue to consider was whether the magistrate of the Mercantile Court had the power to declare the buyer of an insolvent company exempt from paying the social security debts acquired prior to said transfer, as it did.

In light of the foregoing, the Provincial Court considered the following:

- Although it is true that article 149.2 of the *Bankruptcy Law* establishes the legal rules governing insolvencies, it seems to consider a situation of company succession, therefore enabling the insolvency magistrate to exempt the acquiring party from the responsibility of a number of labour debts. This precept does not include social security debts or the possibility that these may be assumed, and only allows for the possibility of exonerating the buyer from part of the debt, for labour credits subrogated by the FOGASA (Salary Guarantee Fund).
- In accordance with the *Bankruptcy Law*, the scope of action of the insolvency magistrate within insolvency proceedings can extend, among others, to property issues and those of a labour nature when these are directly related to the insolvency or whose resolution is necessary for the proper development of the insolvency proceedings.

However, the *Bankruptcy Law* itself, in article 9 sets forth that these issues, which in principle would not fall within his powers but on which the magistrate may decide as part of insolvency proceedings and seeking the successful completion thereof, shall not be effective outside of the insolvency proceedings in which they arise.

- *The General Social Security Law* in articles 15, 104 and 127 establishes a system of responsibility for the social security debts of a joint and several nature for the buyer.

Thus, the Provincial Court explained that although the magistrate in the insolvency proceedings may approve the transfer of a production unit wherein which the prior debts with social security are not assumed, the Magistrate does not have the power to exclude third party responsibility for such debts in regard to social security and, if he does so, the decision should be limited to the strictest terms of the creditor arrangement.

The Court therefore concluded that although the transfer of a production unit as part of insolvency proceedings may consider the non-assumption of the social security debts generated, the responsibility of a third party (the buyer) exceeded the competence of the insolvency magistrate and should not be effective outside the realm of the insolvency proceedings.

Finally, the Provincial Court clarified that the parties involved in a transfer (in this case, the insolvent company and the buyer) may always agree that the buyer does not subrogate to the social security debts, which may be accepted by the insolvency magistrate, but this agreement will be limited to said insolvency proceedings.