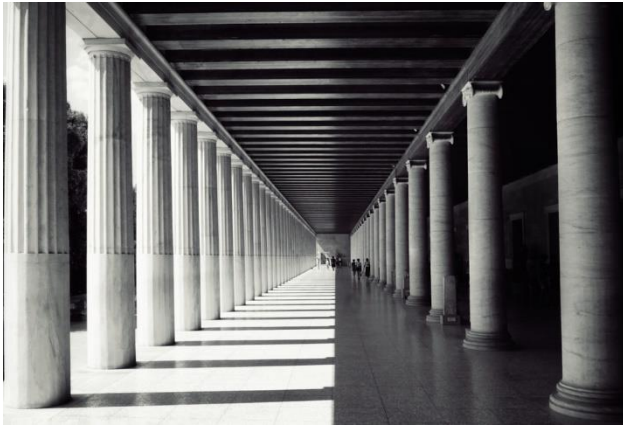




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BANKRUPTCY AND JUDICIAL LIQUIDATION: EFFECTS ON PENDING ARBITRATION



What happens if, pending arbitration proceeding, a party is placed under bankruptcy, now judicial liquidation as a result of the coming into force of the Crisis Code (“CCII”)?

The United Sections of the Italian Supreme Court, in ruling no. 5694/2023, tackled a case regarding an arbitration proceeding involving creditor claims arising out of a work/service agreement in which the debtor party had been placed under bankruptcy.

In addressing the issue, the Supreme Court, firstly, reiterated that it intends to grant continuity to the interpretation pursuant to which, under section 81 of the Bankruptcy Law (section 186 CCII), **the work/service agreement automatically terminates in the event that a contracting party be placed under bankruptcy/judicial liquidation**, without prejudice to the court-appointed liquidator's right to resolve within 60 days whether to succeed to the agreement itself.

Secondly, the Supreme Court clarified that **the arbitration clause necessarily follows the events that the contract, in which it is contained, suffers** as a result of the fact that one of the contracting parties being placed under bankruptcy/judicial liquidation.

Thus, the Supreme Court reached the conclusion that, since **the work/service agreement automatically terminates as a result of the bankruptcy/judicial liquidation**, then **from that moment also the arbitration clause ceases to have effects**, determining, in turn, the elapsing of the arbitral jurisdiction and/or the removal of the effectiveness of any award that may have been rendered.

According to the Supreme Court, this interpretation is consistent with, and is grounded in, the general principle of insolvency law according to which the enforcement of the *par condicio creditorum* requires that **all debt situations of a person placed under bankruptcy/judicial liquidation be determined in the specific proceeding for the assessment of debts**.

Moving forward from the above arguments, the Supreme Court came to affirm the principle that **an arbitration judgment** regarding the ascertainment of a debt arising from a work/service agreement **should be considered improper or the related award should be considered null and void if**, respectively, **during the proceedings or before the award is rendered, the debtor party is placed under bankruptcy/judicial liquidation**.

Following this judgment at stake, should one intend to initiate an arbitration proceeding on the basis of an arbitration clause contained in a work/service agreement, the utmost attention shall be given to the solvency situation of the counterparty, in order to prevent the latter's submission to judicial liquidation may frustrate the arbitration initiative previously undertaken.

Our professionals of the [International Litigation and Arbitration Department](#) remain available for assistance in both ordinary and alternative dispute resolution procedures in Italy and abroad.