



The legal aspects of the debt supplementation rule in commercial companies

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Abstract

The liability of the holding company for the bankruptcy of its subsidiary company, has an objective impact that arises from its responsibility for the errors that caused disability of the subsidiary company, whereas it is possible that the responsibility of the holding company for the bankruptcy of the affiliated company, is relied on the general rules in the civil law, which is the tort liability, otherwise a rule has emerged concerning the application in cases of bankruptcy of the company, and its inability to pay its debts, which is the rule of debt supplementation, and accordingly, the holding company fills the deficit in the assets of the subsidiary company, in its capacity as a member of the board of directors.

Keywords: holding company - subsidiary company - bankruptcy - debt supplementation

Introduction

The rule of debt supplementation appeared as a way of expanding the responsibility of the company's manager, and it is a rule aims to protect the general guarantee of the creditors of the subsidiary company, whenever the holding company causes a decrease in this guarantee represented in the assets of the company^[1], and the rule first appeared in French law, in which it stipulates: "when the settlement or judicial liquidation of the company's funds shows a shortage of its assets or its insufficiency to pay its debts, and in case of mismanagement that led to this deficiency, the court may rule that all or part of the company's debts be charged to the legal or actual managers^[2]."

The rule of debt supplementation has its own uniqueness, as it deals with the civil liability of the holding company in its capacity as a manager of the subsidiary company or a member of its board of directors^[3].

According to what mentioned above, the following is required to apply the debt supplement rule^[4]:

1. The holding company made a mistake in managing the subsidiary company in its capacity as a manager or a member of the board of directors.
2. The insufficient assets of the subsidiary company to pay 20% of its debts with the Egyptian legislator, unlike the French one, which did not specify a specific percentage.
3. The holding company is the one who causes that deficit, through mismanagement, arbitrariness or gross mistakes that lead to failure of the subsidiary company.

If the three conditions are fulfilled, the holding company will be required based on the debt supplementation rule, starting with the first condition that deals with the error committed by the holding company in its capacity as a manager or a member of the board of directors in the subsidiary company. The assets of the subsidiary to pay 20% of its debts.

Thus, we see that this condition corresponds to the damage in the tort liability, but identifying that percentage is a matter of allocating the debt supplement rule for the tort liability.

Finally, that the holding company is the one that caused that deficit in the affiliated company through the error committed in the first condition, and thus the third condition

is the third pillar of tort liability, which is the causal relationship between the committed error and the damage, and the completion of the three conditions makes the holding company liable for bankruptcy the affiliated company.

However, when the holding company proves that it objected to the decision that caused the bankruptcy of the affiliated company, it will not be held accountable for it, except that it is required to state its objection to it explicitly in the minutes of the meeting, and its absence from attending the meeting that was issued in the decision is not considered a reason for exemption from responsibility unless it is proven Not being aware of the decision or not being able to object to it after recognizing it.

Accordingly, we will divide the research paper into two main branches, allocating the first to the substantive legal aspect, and the second to the procedural legal aspect, to identify the mechanism of application the debt supplement rule for commercial companies in comparative laws, as follows:

First branch

The objective aspect of the debt supplementation rule

The debt supplementation rule aims to access the holding company's funds to pay off the deficit in the affiliated company. If the court decides to apply the debt supplementation rule against the holding company, it is obligated to pay the debts of its affiliated company, and we will provide the mechanism of application other laws that stipulated the debt supplementation rule.

Whereas the debt supplementation rule first appeared in France, French law was the first law to stipulate it, stipulating that: "In case of a judicial settlement or liquidation of the legal person's funds, and an error was proven on the part of the manager of this legal person, the cause was the reason for the default of this legal person or an increase in his default."The court can convict the manager of all or part of the debts of this legal person"^[5], and the French legislator has specified the actions that result in the application of the rule of completing and extending bankruptcy period, which is^[6]

1. If the manager of the company carries out commercial activities for his own account under the name of the company.
2. If he disposes of the company's money as if it were his own money.
3. If he continues to pursue losing exploitation, which would only lead to the company suspending payment, provided that this continuation is in a deviation and in his personal interest.
4. If he uses the funds of the legal person in a manner that conflicts with the interest of this person, whether it is to accomplish personal interests or for the benefit of another legal person or a project in which he has a direct or indirect interest.
5. If he holds fictitious accounts or conceals the accounting documents of the legal person, or if he does not comply with the legal rules that regulate the accounting principles of the legal person.
6. If he smuggled or concealed all or some of the assets or increased the debts of the legal person by fraud.

The French legislator granted the right to request the application of the debt supplement rule to each of the agent of the creditors, the specialized person in implementing the settlement plan, the liquidator, and the attorney general, as well as to the court on its own^[7].

On the other hand, the Egyptian legislator agreed with his French counterpart in the text on the rule of debt supplementation, but the Egyptian legislator was distinguished by stipulating a specific percentage of the deficit, as it stipulated that^[8] "If it appears that the company's assets are not sufficient to fulfill at least 20% of its debts, it is permissible The court may, based on the request of the bankruptcy judge, order to compel all or some of the members of the board of directors or managers, jointly or severally, to pay all the debts of the company.

From that, it becomes clear to us that both the French and Egyptian legislators have left the court the discretionary power to apply the debt supplement rule, whether by obligating all or some of the members of the board of directors, according to what the court deems appropriate^[9].

Second branch

The procedural aspect of a debt supplementation lawsuit

A debt supplementation lawsuit^[10] is identified as a lawsuit filed against the members of the board of directors or the manager of a legal person subject to settlement or judicial liquidation procedures, by charging him with part or all of the debts of the company he manages, as a result of the error he committed in management^[11], whereas this lawsuit is based on compensating the creditors of the subsidiary company and fulfilling its obligations, due to the occurrence of damage represented in the existence of a deficit in the assets and assets of the subsidiary company; Hence, its inability to fulfill all payable rights to the parent company's fault or arbitrariness.

The French legislator granted the competent court to hear the subsidiary company's bankruptcy case the right to apply the debt supplementation rule to the holding company, in its capacity as a board member or manager of the subsidiary company, and the bankruptcy agent in the subsidiary company can apply for its application, as well as granting the Public Prosecutor the right to request its application This

is in the event of bankruptcy crimes such as fraudulent bankruptcy.^[12]

The truth is that the judicial application of this case, despite its facts, is not considered spread because of the possibility of analogy with it, and there is some privacy in it, as we notice the interest of the European side in it^[13]; In particular, the French legislator, who had the lead in implementing it and approving its regulations^[14], including identifying who has the capacity to file this lawsuit, as stated in Article (183) of the French law (25 January 1985), which identified the jurisdiction of the court on its own or At the request of the bankruptcy agent^[15]; The creditors' agent, who is responsible for executing the settlement plan, as well as the liquidator and the attorney general.

The creditors of the subsidiary company are not allowed to raise it directly^[16]. As well as the French law also included defining the jurisdiction of the case. In detail on the authority concerned with its consideration; and restricting the period of limitation^[17], to contribute to its accurate regulation.

The Egyptian legislator also took good steps towards detail and specificity in this field, as he identified the amount of the shortage in the assets of the company due to the establishment of the company's responsibility, which is a trend towards allocation by combining the error and the supposed effect on the budget and financial position, to say that the liability is based on the effect of error or arbitrariness^[18].

The debt supplement suit differs from the liability in terms of the capacity of the suitor, whereas in the tort suit, it is filed by the victim as a result of the committed mistake by the board member or the manager, and in the debt supplement suit, it is filed by the bankruptcy agent or the attorney general, as the case may be, and is not filed by the aggrieved party, and the tort suit covers damage in a manner generally, that is, material damage, moral damage, lost profits, and losses, while the debt supplement lawsuit covers the deficit in the company's assets, that is, the material damage only that appears in the bankruptcy ruling.

The jurisprudence has differed in the permissibility of combining the claim of tortious liability and the claim of supplementing the debt to two trends:

The first trend: The permissibility of combining the two claims

The supporters of this view held the permissibility of combining the two lawsuits based on their different nature, as the debt supplement lawsuit cannot be applied, except in the case of bankruptcy, while the liability lawsuit aims to compensate the company for the damage it sustained, and the unity of error in the two lawsuits does not prevent combining them as it may be one mistake arises in many damages^[19].

The second trend: The inadmissibility of combining the two lawsuits

The proponents of this approach held that it is not permissible to combine them as long as the conditions for the debt supplement suit are met. In the event that there is a special text that defines the mechanism for compensating the injured party and can be applied, then the injured party cannot follow the path of the general rules of compensation or to combine them, as the specific restricts the general^[20].

And we agree with the second approach that it is not permissible to combine the two lawsuits, as it is sufficient for one of them, so it is not possible to combine two compensations for one mistake, even with the multiplicity of damages in it.

References

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3. Dr. Qadri Mohi. Previous reference, 120, 121.
4. Dr. Sulaiman Alaa. Previous reference, 437.
5. Article (180). Law No. (98) dated January 25, 1985- Settlement and liquidation law. France. Quoted from Dr. Sherif Ghannam, *The International Bankruptcy of a Group of Multinational Companies*, Alexandria: New University House, 2006, 84.
6. Article (182). Law No. (98) Dated January 25, 1985 AD. Settlement and liquidation law. France. Quoted from Dr. Irfan Khaled, *The responsibility of the members of the board of directors or managers for the debts of the bankrupt private shareholding company, a comparative study- Egypt- Al-Mahalla Al-Kubra: House of Legal Books*, 2017, 64.
7. Article (183). Law No. (98) Dated January 25, 1985. Settlement and liquidation law. France. Quoted by Dr. Irfan Khaled, previous reference, 56.
8. Article (704). *Egyptian Trade Law (S. 17 of 1999)*. Egypt.
9. Dr. Mohammed Harb, *The responsibility of the members of the board of directors for the bankruptcy of the joint-stock company (a legal study)*, Giza: Center for Arab Studies, 2016, 353.
10. The meaning of this lawsuit can be clarified as follows: "The debt supplementation lawsuit is one of the special applications of civil liability in the field of collective actions, and it is a lawsuit filed against the manager of the legal person who is subject to a judicial settlement or liquidation procedure with the intention of charging him with all or part of the debts of this legal person. This lawsuit assumes an error in management on the part of the manager, resulting in damage to the company he manages and its creditors, and then charging the manager a part of the debts of this company comes as a result of the error he committed in management- see Dr. Sherif Ghannam, previous reference, 89.
11. Dr. Halima Koussa, *The Holding Company's Responsibility for the Bankruptcy of its Subsidiary*, *Researcher Journal for Academic Studies*,2020:7(1):251-270:263.
12. Qadri Mohi. Previous reference, 128.
13. Among the European agreements that took this case (the bilateral agreement concluded between France and Austria on February 27, 1979). Dr. Sherif Ghannam, *ibid*, 91.
14. One of the judicial applications on this in the field of group companies is what was issued by the French Court of Cassation, in which it was stated: "When the companies are linked to each other by legal ties and the conditions for the debt supplement suit are available, so that the parent company has the status of legal or actual manager, it is obligated to cover the insufficiency of the company's assets." affiliate". Referred to the judgment of: Amal Zaidi, *the legal system for the association of commercial companies (comparative study)*, Ph.D. thesis, Faculty of Law, University of Constantine, 2014, 281.
15. The bankruptcy agent was known by the term (bankruptcy trustee, trustee, or syndicate in commercial custom). The Egyptian Court of Cassation clarified in its judgment of appeal No. 4698 of the year 84 BC, issued in session 1/3/2022, the effect of the bankruptcy declaration ruling and the tasks assigned to the bankruptcy trustee, as well as the effect of the termination of The bankruptcy trustee is defined by a decision from its judge (and the bankruptcy trustee is defined as the representative of the group of creditors and entrusted with handling, in its name, all his money related to the bankruptcy funds. He represents the group of creditors in the lawsuits filed by or against him, and he has the right to claim the rights of the group of creditors and to demand the cancellation of the rights acquired by others on the money of the bankrupt debtor. These rights to the bankruptcy funds are to protect the rights of the creditors).
16. Article (163) of the French Decree-Law issued on (December 27, 1985) stated that: "The court competent to adjudicate in the cases stipulated in Articles 180, 181 and 182 of the Law of January 25, 1985. It is the court competent for the judicial settlement of the legal person." To learn more about the capacity requirement in filing a lawsuit; The competent court to consider it, see in this regard: d. Ali Shehab Al-Sabahi, *The Responsibility of the Multinational Company for the Investment Activity of its Nascent Company*, First Edition, Jordan: Dar Academicians for Publishing and Distribution, 2019, 143-147.
17. The debt supplement lawsuit is subject to its own statute of limitations, according to what was stated in Paragraph (4) of Article (185) of the French Law (January 1985). Where the paragraph stipulates that the lawsuit statute of limitations has passed by three years, starting from the date of issuance of the judgment related to the termination of the settlement plan, in the case of a judicial settlement. In the absence of this ruling, it starts from the day of issuance of the judicial liquidation ruling. This period shall be subject to suspension and interruption, and then shall be suspended in case of resumption of settlement or conciliation. In the event of the director's death, it can be filed against his heirs. This was presented extensively by: Dr. Sherif Ghannam, previous reference, 101.
18. Article (704/2) *Egyptian Trade law Issued in (1999)* stipulates that: "If it appears that the company's assets are not sufficient to pay at least 20% of its debts, the court may, upon a request from the bankruptcy judge, order obligating the members of the board of directors or managers All or some of them, jointly or not, to pay

all or some of the debts of the company." For more information, see: D. Ali Shehab Al-Sabahi, previous reference, 114.

19. Dr. Hani Abdel-Razzaq, *The Responsibility of the Board of Directors of the Joint Stock Company in the Case of the Company's Bankruptcy*, Third Edition, Cairo: Dar Al-Nahda Al-Arabiya, 2010, 335.
20. Dr. Hani Abdel Razak, Previous reference, 336.