

Obtaining Debt Payments by Statutory Demand

Harminder Sandhu, managing partner and head of Dispute Resolution at Hawkins Hatton provides some guidance on using insolvency procedures to obtain payment of contractual debts.

Business clients often find themselves taking debtors to the small claims court (without the assistance of lawyers) in respect of unsecured debts only to then face a convoluted and protracted process. In respect of undisputed debts of at least £750 an alternative route to the civil court process is to serve a statutory demand (“SD”) on the debtor for the monies due.

A SD gives the debtor 21 days from service to either pay the debt due or contact the creditor to arrange a payment plan for the monies outstanding. If the debtor fails to respond to the demand within 21 days, then the next step available to a creditor depends on the type of debtor.

If the debtor is an individual then a creditor can petition the court for his/her bankruptcy, whereas, if the debtor is a company a creditor can petition the court for the company to be wound-up. In the event that an individual is made bankrupt then he/she are likely to suffer serious financial consequences and irreparable credit issues. Similarly if a company is wound-up, all its assets will be liquidated in order to pay its creditors. The fact all other creditors of the debtor can join in the bankruptcy/winding-up petition is the downside of the process as there is seldom enough money to go around.

We find on behalf of creditors that the threat of bankruptcy/insolvency is usually enough to encourage a debtor to surface and agree payment of some if not all of the debt. In contrast, the small claims court process is drawn out and even once judgement is obtained, a creditor will have to take additional steps to enforce the payment of the debt incurring further costs.

Serving a SD in respect of an undisputed debt is often a relatively simple and cost effective way to “flush out” the position. A debtor intent on servicing its debts will wish to avoid insolvency at all costs and will immediately respond. Whereas a debtor who does not respond to a SD is probably likely to be facing insolvency in any event, hence a commercial view can be taken on whether to incur the costs of the insolvency process or to simply allow another creditor to do so.

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