

BANKRUPTCY PRACTICE AND CURRENT PROBLEMS AND THEIR SOLUTIONS

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ANNOTATION

Bankruptcy practice is carried out after debt collection is completed. This, in turn, involves the collection of debts from individuals who are unlikely to be collected and who have lost their ability to pay. Liquidation of legal entities and individuals on the basis of bankruptcy requires a certain amount of expenses from the state budget or creditors. Therefore, cost effectiveness requires a mechanism to raise or recover debt through other means. In the article, these directions have been studied, and proposals have been developed as a result.

Keywords: bankruptcy, judicial liability, budget, business entities, indebtedness, liquidation manager, debt settlement, liquidation proceedings; fake bankruptcy, cover up bankruptcy, willful bankruptcy, lawsuits, court orders.

INTRODUCTION

In our republic, the inability of a legal entity to meet the demands of creditors and (or) fulfill the obligation to pay mandatory payments, if the relevant obligations and (or) payment obligation has not been fulfilled by the debtor within six months from the date of its occurrence, is recognized as a sign of its bankruptcy.

In this case, bankruptcy cases are considered by the commercial court and bankruptcy cases are carried out by liquidators in a general procedure or in a simplified procedure.

The following procedures are used when considering the bankruptcy case of a debtor-legal entity under the general procedure:

settlement agreement;

external management;

termination proceedings;

other aspects of bankruptcy provided for by law.

The following procedures are used when considering the bankruptcy of a debtor-natural person:

settlement agreement;

termination proceedings;

other aspects of bankruptcy provided for by law.

In the event that the debtor-natural person or the head of the debtor-legal entity that has practically ended its activity is not present and it is not possible to determine his whereabouts, the application to declare the debtor bankrupt regardless of the amount of the creditor's debt shall be submitted to the creditor, the state body for bankruptcy cases, the tax authority or another competent body. , it is also noted that it can be issued by the prosecutor.

All categories of work are financed by the state budget or by creditors. Therefore, it is necessary to use these funds wisely and efficiently.

In addition, taking into account the write-off of receivables for debts to the budget, it is necessary to widely establish the practice of collecting these debts in a subsidiary manner.

REVIEW OF LITERATURE

Although foreign scholars have different opinions about bankruptcy, their common features are to protect the interests of creditors and at the same time prevent the liquidation of debtor enterprises. That is, it is intended to ensure macroeconomic balances by protecting the interests of creditors and debtors.

V.V. Stepanov noted that the purpose of bankruptcy legislation is not only to protect the interests of creditors (bankruptcy proceedings are, of course, the basis of the bankruptcy law and process), but also to solve macroeconomic problems that ensure the vital activity of human society.¹

Accordingly, a new tendency appeared in the developed bankruptcy legislation to strengthen the role and importance of procedures aimed not at liquidating the debtor's (property), but at preserving his enterprise, restoring his solvency and, on this basis, settling debts with creditors.²

RESEARCH METHODOLOGY

Statistical analysis, factor analysis, survey, selective observation analysis methods were used in the research process.

More than 1000 bankruptcy cases were studied in this article. Decisions of the courts on subsidiary collection were studied on the basis of selective observation through the site exsud.uz.

ANALYSIS AND DISCUSSION OF RESULTS

Due to the fact that the minimum amount of debt is not determined in this practice, even for the write-off of small amounts of debt (10,000 soums and less), budget funds are spent in the amount of 7.03 times the minimum amount of payment. As a result of this, until today, the funds that should be paid to the court administrators are not paid on time.

In our country, in order to improve the quality of corporate governance, to increase the responsibility of their managers and owners for the stability of the economic situation of economic entities, as well as to identify cases of false bankruptcy, concealment of bankruptcy, and intentional bankruptcy, the rules for identifying the symptoms of false bankruptcy, concealment of bankruptcy, and intentional bankruptcy have been established.

In Article 48 of the Civil Code, the inability of a legal entity is classified as its bankruptcy. In addition, if the insolvency (bankruptcy) of a legal entity was caused by the illegal actions of a person as a founder (participant) who has the right to issue binding instructions for this legal entity or the owner of the legal entity's property, in the event that the legal entity's property is insufficient, such a person shall be responsible for his it is noted that subsidiary liability can be imposed on the obligations.

It is stipulated that the liquidator shall analyze the activities of the debtor in the period up to 2 years prior to the initiation of the bankruptcy proceedings in order to determine the signs of fraudulent bankruptcy, concealment of bankruptcy and intentional bankruptcy.

¹ Stepanov V.V. Bankruptcy in Russia, France, England, Germany. M., 1999. S. 23.

² Kolinichenko E.A. Priznaki bankruptcy in Great Britain, USSR, Germany, France and Russia (comparative analysis) // Vestnik VAS RF. 2000. No. 8. S.103.

In practice, this period coincides with the process of debt recovery from enterprises (petition, lawsuit, court proceedings, enforcement based on a decision). Therefore, it limits the ability of liquidation managers to identify signs of false bankruptcy, concealment of bankruptcy, and intentional bankruptcy in the analysis of the debtor's activities in the period up to 2 years prior to the initiation of bankruptcy proceedings.

For example, the debt of "A" LLC of 1.2 billion sums was liquidated in 2020 on the basis of banking. In 2016, a criminal case was initiated against the heads of the enterprise under Article 184, Part 3 and Article 227, Part 2, Clause "a" of the Criminal Code. The plaintiff filed a lawsuit to bring the head and founder of Corona to subsidiary liability.

The court rejected the claim, noting that the liquidation administrator did not issue a conclusion on the signs of intentional bankruptcy based on the decision of the Cabinet of Ministers dated August 14, 2013 No. 224.

Note: Clause 4 of this decision stipulates that the court administrator shall analyze the activities of the debtor in the period up to 2 years prior to the initiation of bankruptcy proceedings. The enterprise did not operate during this period.

In addition, "circumstances caused by illegal actions" are interpreted differently by the courts in practice. For example,

- Non-application of criminal or administrative punishment;
- Not being accused of intentionally causing bankruptcy under Article 181-1 of the Criminal Code;
- On the basis of the decision of the Cabinet of Ministers dated August 14, 2013 No. 224, it is noted that the liquidator did not issue a conclusion on the signs of intentional bankruptcy.

Also, in cases where the debt arises as a result of violation of the law by the head of the enterprise or other responsible persons related to this enterprise (according to the current regulations, it is established that only the founders who are at fault should answer), the legislation does not provide for subsidiary recovery of the debt from them.

For example, the debt of "B" LLC of 1.1 billion sums was liquidated on the basis of bank notes. A criminal case was initiated against the head of the enterprise under Article 189, Part 3, Article 205, Part 2, Clauses "a" and "b" of the Criminal Code. The claimant filed a lawsuit to bring the head of the enterprise to subsidiary liability. According to Article 48 of the Civil Code, the court indicated that subsidiary liability can be applied to a person as a founder (participant) or to the owner of the property of a legal entity, and the claims were rejected.

Note: If the head of the enterprise performs all illegal operations, the defendant will not be held liable. Due to the fact that the insolvency (bankruptcy) of the legal entity was not caused due to the illegal actions of the person as the founder (participant) or the owner of the property of the legal entity, he is not held liable. For this reason, no one was held subsidiarily liable for the debt.

CONCLUSIONS AND SUGGESTIONS

Based on the above, it is proposed to make changes to the following regulatory legal documents:

1. Introduction of the procedure for the centralized liquidation of debtors whose tax debt is less than 40 times the basic calculation norms through the State Service Centers without court practice. In this,

- The fact that the execution notices about the non-existence of the property were returned to the collector by the enforcement bureau;
- As a result of the tax authorities conducting a chamber tax audit of the debtor, a conclusion is drawn up on the fact that fixed assets and goods are not sold through non-bank transactions;
- To provide that the recovery of creditor debt of a legal entity by the decisions of civil courts is aimed at its founder (participant), owner or the persons who caused the debt to arise in a subsidiary manner.

2. The sentence "insolvency (bankruptcy)" of a legal entity shall be replaced by the sentence "insolvency (bankruptcy) of a legal entity (bankruptcy or when executive documents are returned to the collector due to the ineffectiveness of all measures taken by the state executive within the scope permitted by law)";

- ".If it was created due to the illegal actions of a person as a founder (participant) who has the right to give instructions or the owner of the property of a legal entity..." if the property of a legal entity was created due to the illegal actions of the owner, head of the enterprise or other responsible persons related to this enterprise...", by changing the sentence to expand the scope of debt recovery from the guilty persons.

4. By court administrators, if the insolvency of a legal entity was caused by the illegal actions of a person as a founder (participant) who has the right to issue binding instructions for this legal entity, or the owner of the legal entity's property or the person managing the debtor's affairs, the property of the legal entity in case of inadequacy, to impose subsidiary liability on such person for his obligations.

5. The practice of allocating funds from the budget for the monthly salary to liquidation managers in simplified bankruptcy cases, and introducing the practice of payment along with filing a claim by the plaintiff.

6. If the price of the transaction and (or) other conditions in it significantly worsen the situation of the debtor when compared to a similar transaction, the contracts for the donation of the debtor's property and the petition for the initiation of insolvency proceedings concluded by the debtor legal entity within thirty-six months , introducing the fact that the debtor's participant has left the debtor's participants, the transaction related to the payment (separation) of his share in the property will be declared invalid by the court upon the application of the court administrator or creditor, and the consequences of the invalidity of the transaction will be applied.

7. Establishing the practice of applying the bankruptcy practice in relation to the insolvency of individuals.

SOURCES AND REFERENCES

1. Bankruptcy Law of the Republic of Uzbekistan
2. Civil Code of the Republic of Uzbekistan
3. Tax code of the Republic of Uzbekistan
4. Decision of the Cabinet of Ministers of the Republic of Uzbekistan on approval of the rules for identifying the symptoms of fake bankruptcy, concealment of bankruptcy and intentional bankruptcy
5. Aliev B. Kh., Musaeva Kh. M. Development of tax federalism in the context of Russian

reforms // Taxes and Financial Law. 2012. № 3.

6. Animica P.E. Real estate taxation: foreign experience and Russian prospects // International Accounting. 2015. № 47.
7. Pardaev U. Improvement of the methodology of forecasting the state budget. Abstract on the PhD dissertation. – Tashkent, 2018. – 25-26 p.
8. Decree of the President of the Republic of Uzbekistan N 4947 “On Action Strategy for the further development of the Republic of Uzbekistan” as of February 7, 2017.
9. Decree of the President of the Republic of Uzbekistan N 54468 “On the concept for improving tax policy of the Republic of Uzbekistan” as of June 29, 2018.