Research on bankruptcy reorganization of township partnership enterprises under the background of common prosperity *

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Abstract. Township partnerships are one of the important driving forces for the development of mountainous counties. The existing bankruptcy reorganization system is mainly applicable to legal person enterprises, and township partnership enterprises cannot realize self-rescue through the reorganization system. To help rural coprosperity effectively, this paper analyses the practical difficulties of bankruptcy reorganization of rural partnership enterprises in 26 mountainous counties and proposes corresponding countermeasures and suggestions.

Keywords: bankruptcy reorganization, township partnership enterprises, common prosperity.

1. Background

The report of the 20th National Congress of the Communist Party of China pointed out that achieving common prosperity for all the people is the essential requirement of Chinese-style modernization. In the Zhejiang high-quality development and construction of the common prosperity demonstration zone, the key, difficult and breakthrough points are the mountainous 26 counties. Township partnership enterprises play an important role in narrowing the regional gap and stimulating the new momentum of strengthening the village and enriching the people. However, township partnership enterprises are easily affected by the economic environment and experience management difficulties.

2. Current situation

In the first half of 2022, fixed asset investment in 26 counties in the mountainous areas of Zhejiang increased by 13.1% year-overyear, 2.8 percentage points higher than the provincial average. The per capita disposable income of all residents in 26 counties in mountainous areas increased by 5.7%, 4.9% and 6.8%, respectively, higher than the provincial average. At the same time, the land area of 26 counties in the mountainous area is approximately 45% of Zhejiang Province, and the population is close to 24% of the province, but the level of economic and social development has been lower than the average level of the province for a long time. It can be concluded that the development of the 26 mountainous counties of Zhejiang Province is closely related to the advancement of the process of common prosperity in the whole province. Therefore, under the background of high-quality development and construction of demonstration areas of common prosperity in Zhejiang Province, it is necessary to conduct in-depth research and discuss related issues of development breakthroughs in 26 counties in the mountainous areas of Zhejiang Province to make solid preparations for promoting common prosperity.

3. The necessity of reorganization of township partnership enterprises

3.1. Creditor perspective

The partners bear unlimited joint and several liabilities for the debts of the partnership, so some people believe that this provision is sufficient to protect the interests of the creditors of the partnership, and there is no need to protect them separately through bankruptcy reorganization. However, the

partners of distressed partnerships often face financial difficulties, and it is difficult to meet the expectations of creditors for full compensation. If the enterprise directly ceases operation, due to the loss of hidden value and other reasons, it will lead to a substantial shrinkage of the property, and through the reorganization process, it can maximize the integrity of the company's assets to facilitate the realization of creditors' claims.

3.2. Debtor perspective

The most direct effect of restructuring is to save the enterprise that is insolvent and unable to operate, so that the enterprise can continue to operate and create profits, from this level, although the protection of creditors is the logical end point, but the debtor will be the direct beneficiary of restructuring. From the perspective of the change of bankruptcy concept, from creditor supremacy to taking into account the interests of debtors and then to the balance of social interests, the interests of debtors are closely related to the interests of creditors. The reorganization system can establish a common interest relationship between creditors, debtors and debtors' investors so that they can work together to save the enterprise.

3.3. Court perspective

As the traditional national judicial organ to settle disputes, the most important task of the court is to resolve disputes. The failure of an enterprise is followed by a large number of different types of cases, such as labor disputes, sales contracts, and financial loans. These cases are concentrated in the court in a short period of time, which undoubtedly brings no small pressure to the court. Helping enterprises to achieve restructuring can effectively coordinate the handling of such derivative cases and better resolve disputes in the embryonic stage.

3.4. Common Prosperity perspective

Common prosperity emphasizes not only the total wealth of the members of the society but also the average amount of wealth. Promoting interregional coordinated development, especially the development of rural areas, is the only way to achieve common prosperity. As an important pillar of the rural economy and one of the important components of the national economy, township partnership enterprises, on the one hand, develop commodity production and increase the effective supply of society, reflecting the development of common prosperity; on the other hand, the emergence of township enterprises to absorb rural surplus labor, promote agriculture and rural modernization, reflecting the shared prosperity of common prosperity. Compared with bankruptcy liquidation, the reorganization of township partnership enterprises can obviously respond to the requirements of the construction of a common prosperity demonstration area.

4. The practical dilemma of bankruptcy reorganization of township partnership enterprises

4.1. The scope of application of existing legislation is narrow

On the one hand, township partnership enterprises cannot apply the Enterprise Bankruptcy Law. In the process of legislation, there is a great dispute about whether to include township partnership enterprises in the scope of bankruptcy reorganization. In view of the fact that the legislation was enacted at the time of the reform of state-owned enterprises, domestic bankruptcy practice was late, legislative technology was immature, and the bankruptcy reorganization system in China was mainly applicable to state-owned enterprises and did not consider unincorporated organizations. Since the implementation of the Enterprise Bankruptcy Law, bankruptcy trials have developed professionally, the supporting mechanism has been continuously improved, and bankruptcy practice has become increasingly mature. Coupled with the complex and changing market environment at home and abroad, the living space of enterprises under the epidemic has been severely squeezed, and the

operation risk of township partnership enterprises has increased sharply. It is urgent to compensate for the legal gap and build an effective rescue mechanism. On the other hand, the personal bankruptcy system cannot be applied to township partnership enterprises. In 2018, the courts in Wenzhou, Taizhou, Suichang and other places continued to explore the pilot work of personal bankruptcy, but whether to extend the application of the personal bankruptcy system to partnership enterprises has not yet formed a unified regulation.

4.2. The bankruptcy reorganization procedures of enterprises are cumbersome

First, the township partnership enterprise has a small scale of operation, a small number of shareholders, and a simple relationship between creditor and debt. The existing bankruptcy reorganization procedures do not distinguish the type and scale of enterprises, which are too cumbersome and inefficient for township partnership enterprises. Second, the bankruptcy reorganization process of enterprises takes a long time. At present, the average time spent on bankruptcy and reorganization of enterprises is approximately 2-3 years, and 20% of mountainous 26 county township partnership enterprises last less than 3 years, of which Wencheng County, Songyang County, and Suichang County are as high as 50%. There are practical difficulties in applying the existing reorganization procedures. Third, the cost of bankruptcy reorganization procedures is high. The reorganization cost includes the direct cost based on the reorganization and the indirect cost caused by the loss of investment opportunity cost and profit loss due to the reorganization. Township partnership enterprises are usually less profitable, and the application of existing enterprise restructuring procedures will excessively increase the economic burden of troubled enterprises.

4.3. Joint and several liabilities of partners are difficult to clarify

The governance structure of township partnership enterprises is weak, the enterprise management system and financial system are not perfect, and there are often mixed accounts and no clear records of cash transactions between partners and partnership enterprises. When the assets of the enterprise are insufficient to pay off the debts, the partners shall be jointly and severally liable for the debts of the partnership. On the one hand, the enterprise management system and financial system are not perfect, there are often mixed accounts between partners and partnerships, cash transactions are not clearly recorded and other property confusion problems, the content and nature of partners' joint debt cannot be accurately distinguished. Even a forced breakup would inevitably cost a great deal of time, making the bankruptcy reorganization process stalled for a long time. On the other hand, there may be conflicts in the settlement of the joint and several debts of the partners. When both the partner and the township partnership meet the conditions for bankruptcy reorganization, the creditor of the partner and the creditor of the enterprise claim to realize the creditor's right at the same time, there will be a contradiction. In addition, in the case that the partners are also creditors of the township partnership, it seems to be against substantial equity to participate equally with other creditors in the distribution of the bankruptcy property of the enterprise.

4.4. Not attractive enough to investors

On the one hand, the particularity of township partnership assets increases investors' concerns about capital injection. The registered capital of the township partnership is usually low, and the value of the enterprise assets is not high. There are 1,661 county and township partnership enterprises with registered capital of more than 10 million yuan, 694 with registered capital of 5 to 10 million yuan, and 5,532 with registered capital of less than 5-million-yuan, accounting for more than 70%. Among them, Yongjia County, Wencheng County, Xianju County, and Yunhe County accounted for more than 93%. At the same time, many partners in township partnership enterprises contribute property rights and labor services, which causes difficulties in realizing and circulating assets in bankruptcy reorganization. On the other hand, debtors' loss of control reduces investors' incentive to invest. In judicial practice, the principle of corporate restructuring is usually the manager management mode, and the debtor management mode is an exception. Township partnership enterprises are mostly

individual entrepreneurs or family managers, with ownership and control of a high degree of unity. The partner's business ability and business resources are strongly dependent, and the "loss of control" restructuring mode easily causes the enterprise to lose its operation and existence of the foundation, restricting the investment power of investors.

4.5. Improper handling of derivative issues in bankruptcy reorganization

In bankruptcy reorganization cases, judicial power is mainly involved in the relationship between creditor rights and debts and deals with the litigation problems derived therefrom and does not have the ability to solve the resulting problems, such as employee placement, property rights transfer, and tax reduction, which is highly likely to affect social stability. For example, in the Pingyang County Taiyu housing company bankruptcy reorganization case, the largest creditor, the Anxin trust, was involved in the security rights issue, causing 139 buyers to be dissatisfied, and the successive collective to the local county compounded to protect their rights, greatly increasing social risks. On the other hand, the role of the government has not been effectively played under the bankruptcy reorganization mode dominated by judicial power. The existing market-oriented bankruptcy system is closely centered on the bankruptcy trial of the court, dominated by judicial power and supplemented by the intervention of a third party in the administrator system, while the role positioning and functional scope of the government are not clearly defined. In the process of participating in bankruptcy reorganization cases, the government may interfere excessively, resulting in the loss of judicial leadership in bankruptcy reorganization proceedings, or it may be passive and idle in administration, resulting in the failure to properly deal with the derivative issues of bankruptcy reorganization, resulting in the difficulty of effectively advancing the reorganization proceedings.

5. Countermeasures and suggestions

5.1. Improving legislation on enterprise bankruptcy reorganization

The first is to introduce the township partnership reorganization system in the Enterprise Bankruptcy Law. To help strengthen the village and enrich the people, the township partnership enterprise should provide the basis for the bankruptcy reorganization of the enterprise at the legislative level. Many countries, such as the United States and Germany, have already incorporated township partnerships into the field of bankruptcy reorganization and have produced good practical results. We should make use of the opportunity of revising the Enterprise Bankruptcy Law, combine our country's national conditions and policy orientation, and bring more market entities such as township partnership enterprises into the scope of application of the Enterprise Bankruptcy Law. The second is to construct the specific rules of bankruptcy reorganization of township partnership enterprises through judicial interpretation. The bankruptcy reorganization work of township partnership enterprises should take into account the factors of different regions, different industries, creditor and debt relations, enterprise scale and structure. Based on the coordination of the legal system, the relevant provisions of bankruptcy reorganization of township partnership enterprises can be detailed by means of judicial interpretation under the framework of the Enterprise Bankruptcy Law to provide a basis for judicial

5.2. Improving bankruptcy reorganization procedures

The first is to construct the simple procedure of bankruptcy reorganization of township partnership enterprises. The bankruptcy pattern of township partnership enterprises is different from that of enterprise legal persons, so the procedure burden of township partnership enterprises should be reduced. We can learn from the practice of the Wenzhou court, do not require the establishment of a creditor committee, simplify the method of announcement and service, shorten the trial period to 6 months or 3 months, and reduce or waive the acceptance fee. The second is to use digital means to improve the efficiency of bankruptcy reorganization. We can learn from the results of the digital reform of the bankruptcy trial of the Nanhu Court, open up the data interface of the court's case

handling platform and government service platform, realize the network investigation of bankruptcy matters, promote the efficient cooperation of bankruptcy work across departments, across businesses and across regions, and realize the one-click handling of bankruptcy matters. The third is the introduction of the preorganization mode. By moving the core matters of the reorganization process to the judicial process, the preorganization can save the crisis of the township partnership enterprise with lower cost and shorter time. The government should play a leading role, formulate policies to attract investors to join, coordinate the completion of voting matters, and address early risks. At the same time, the court should also take into account the actual situation and formulate practical and feasible preorganization operation guidelines and other documents.

5.3. Innovating partners' joint and several liability rules

First, we will simultaneously advance the bankruptcy reorganization of enterprises and individual bankruptcy procedures. We can learn from the practice of the Taizhou court introducing a personal bankruptcy system into enterprise bankruptcy liquidation, merging township partnership enterprises and partners into bankruptcy reorganization, and conducting joint trials by the jurisdiction court of township partnership bankruptcy reorganization, sharing a collegial panel and a bankruptcy administrator. The second is to adhere to the principle of double creditor rights priority to coordinate the conflict of creditors. The property of the township partnership enterprise has priority in paying off the debts of the enterprise, and the property of the partner has priority in paying off the debts of the individual to protect the interests of the creditors. Third, it is clear that the partner's credit is regarded as the subsequent credit. In the bankruptcy of a partnership, if the partners are also creditors of the partnership, the other creditors of the partnership shall have priority over the partners in obtaining payment.

5.4. Improving the financing environment for partnerships

First, we will protect the rights and interests of investors. New investors can be provided with collateral guarantees, and the priority status of new financing can be confirmed. Risk asset compensation and disposal systems can also be established. For example, in the establishment of a risk compensation fund, the fund consists of government grants, enterprise deposits and risk asset recovery and disposal income. Once the enterprise cannot pay off debts, new investors can obtain compensation from the risk compensation fund to solve the worries of investors. The second is to retain the debtor's control. In bankruptcy reorganization, the partners should still participate in the operation and management of the enterprise to encourage the enthusiasm of the debtor to apply for bankruptcy reorganization and the new investors to join. At the same time, according to the actual situation of the case, creditors can be allowed to participate in the operation of the enterprise, check important reorganization matters, improve scientific operation and management decisions, and enhance the investment confidence of investors.

5.5. Deepening the linkage mechanism between governments and courts

The success of bankruptcy reorganization of township partnership enterprises requires the leading of the court and the assistance of the government to form an effective linkage mechanism between the government and the court. First, we will improve the design of the linkage mechanism between governments and courts. In the "Enterprise Bankruptcy Law", the role positioning, power and responsibility boundaries of the government and its functional departments are clearly defined to ensure the effective and moderate participation of the government in the bankruptcy reorganization of township partnership enterprises. Second, a regular working mechanism should be established. The government can set up a special working group for the bankruptcy reorganization of township partnership enterprises, establish a regular joint meeting system for bankruptcy work, set up a joint meeting office, and strengthen the coordination of the whole process of the derivative issues of bankruptcy reorganization cases. At the same time, government departments should include the bankruptcy reorganization of enterprises in the important agenda and form a joint force with the court

to improve the success rate of reorganization. The practice of Qingtian County can be learned from, and the court and relevant tax departments will jointly issue documents to standardize the handling of tax-related matters in bankruptcy and tax relief policies. Third, strengthen the data sharing research and judgment mechanism. Led by the government, regularly organize courts, industry and commerce, taxation, labor and other departments to hold information research and judgment meetings, share township partnership enterprise data and information, and establish classification early warning and bankruptcy reorganization enterprise identification mechanisms.

6. Conclusion and future works

Focusing on rural revitalization, this paper takes the bankruptcy reorganization system of township partnership enterprises as the research object and analyses the concrete practice of the bankruptcy reorganization system of partnership enterprises by courts, governments and enterprises in 26 counties in mountainous areas of Zhejiang Province. It is suggested to explore a comprehensive and effective bankruptcy reorganization mechanism of township partnership enterprises and solve the practical difficulties of this system by improving the bankruptcy reorganization legislation of township partnership enterprises, optimizing the bankruptcy reorganization procedure of enterprises, rationally regulating the joint and several debt liabilities of partners, optimizing the financing environment of partnership enterprises, and deepening the linkage mechanism construction. The corresponding innovative experience is obtained and further extended to national township partnership enterprises, promoting the institutionalization, rationalization and standardization of the bankruptcy reorganization of township partnership enterprises and constantly adding new impetus to the realization of the goal of common prosperity.

Acknowledgments

This research was supported by Zhejiang Province philosophy and social science planning project, the National University Student Innovation Training Project of the Ministry of Education and Zhejiang University Student Science and Technology Innovation Project and New Talent Plan Project.

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