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Research on Court Intervention in Pre-reorganization

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Abstract: The significance of pre-reorganization system lies in the connection between out-of-court reorganization system and in-court reorganization system. The validity of the reorganization agreement reached by the parties through negotiation at the stage of out-of-court reorganization can be directly extended to the reorganization procedure after being examined and approved by the court, and the relevant procedures can be omitted. However, the problem of the pre-reorganization system at this stage is that the court's interference in the pre-reorganization and reorganization stage will lead to the failure of the pre-reorganization system to play its full role, thus causing judicial waste. Therefore, the court should increase its own influence and intervene in the reorganization proceedings as required at the stage of submission of the pre-reorganization plan.

Keywords: Prepackaged Reorganization; Pre-reorganize System; Court Intervention; Pre-reorganization Plan Application.

1. Introduction

Pre-reorganization system, as an important link between out-of-court reorganization and in-court reorganization in bankruptcy law, has played an important role in perfecting bankruptcy law reform and strengthening the credibility and binding force of out-of-court reorganization. Since the National Development and Reform Commission, the Supreme People's Court and the Ministry of Industry and Information Technology issued the Reform Plan for Accelerating the Improvement of the Market Subject Withdrawal System in 2019 and determined the research and formulation of the pre-reorganization system, the pre-reorganization system in the exploratory stage has shown strong influence and applicability in the practice of various regions in China. However, due to the lack of unified provisions on the pre-reorganization system in the current law, the degree of court intervention has not been clearly defined in the practice of some local courts in China, which hinders the implementation and popularization of the pre-reorganization system. Therefore, this paper will start with the application and submission of pre-reorganization plan, and study the degree of court intervention in the pre-reorganization system.

2. Literature Review

In China, the representative definition of pre-reorganization procedure is that before applying for reorganization, the debtor and the debtor make a reorganization plan through consultation outside the court and obtain the consent of the majority of creditors. With the help of the reorganization procedure to make the reorganization plan have the effect of binding all creditors, in order to achieve the recovery of the debtor as soon as possible. Article 22 of *Notice of the Supreme People's Court on Issuing the Minutes of the National Court Work Conference on Bankruptcy Trials* in March 2018 stipulates: "explore the connection between the implementation of out-of-court reorganization and in-court reorganization system." Before the enterprise enters the reorganization procedure, the reorganization plan may be drawn up by the creditors, debtors, investors and other stakeholders through out-of-court commercial negotiations. After the reorganization procedure is initiated, the reorganization plan may be drawn up and submitted to the people's court for examination and approval in accordance with the law. This is the earlier judicial definition in the current effective legal norms in China.

As the birthplace of the pre-reorganization system, as far as the theoretical and practical experience of the United States is concerned, there are three ways of reorganization that are oriented by reorganization but carried out of court first: first, "pre-packing reorganization"; second, "partial pre-packing reorganization"; third, "pre-negotiation reorganization" [1]. The legislative recommendations on the reorganization system in the *Legislative Guide on bankruptcy Law of the United Nations Commission on International Trade Law* (hereinafter referred to as Legislative Guide on bankruptcy Law), in a broad sense, it covers the types of pre-packaging reorganization, partial pre-packaging reorganization, pre-negotiation reorganization and so on, but mainly focuses on the analysis of the specific legislative proposals. Moreover, it is expressed by the concept of voluntary reorganization negotiation and summary reorganization procedure, and does not use "pre-packaged reorganization" to cover all types of out-of-court reorganization negotiations or the combination of out-of-court reorganization and formal reorganization procedures. The feature of pre-reorganization in the procedure is that it can greatly shorten the time spent in the formal reorganization procedure in court and ensure that the procedure advances rapidly, thus reducing the overall management cost. [2]Secondly, the pre-reorganization must be based on the autonomy of the market subject. One of the important considerations is the qualification of the court to intervene in the pre-reorganization scheme. Some scholars believe that this stage can be understood as still the commercial behavior of the debtor, and it is essentially an out-of-court reorganization at this time, and judicial intervention will occur only when the debtor applies for formal re-order[3]. With the development of the concept of bankruptcy to social standard, when considering the bankruptcy procedure, we should not only pay attention to the interests of creditors and debtors, but also pay attention to the realization of social and public interests.

Therefore, as for the degree of involvement of the court in the pre-reorganization system and the legal ownership of the

pre-reorganization system as a bridge between out-of-court reorganization and in-court reorganization, the legal ownership of the pre-reorganization system is worth demonstrating and studying as an important link in the development and recognition of the pre-reorganization system in China. This paper will focus on the degree of court intervention in the two stages of pre-reorganization plan application and submission.

3. Degree of Court Intervention at the Stage of Application for Pre-Reorganization Plan

As can be seen from the contents of the trial of bankruptcy dispute cases in the *9thconferenceminutes*, the meeting held that the positive rescue function of the bankruptcy reorganization system should be brought into full play in a timely manner; the parties are encouraged to achieve win-win interests of all parties through reconciliation procedures or by reaching a self-settlement; attention should be paid to improving the economic benefits of the implementation of the bankruptcy system, reducing the time and cost of running bankruptcy procedures, and effectively maintaining the operating value of enterprises. According to the pre-reorganization procedure, the application stage of the pre-reorganization plan is undoubtedly the negotiation and negotiation of party autonomy among the stakeholders of the debtor. This is to solve the problem that debtors miss the best opportunity because they hesitate to enter the stage of bankruptcy reorganization, and to establish a system that enables debtors to give up all kinds of concerns and voluntarily enter the salvage procedure as soon as possible, with reversible or recoverable guarantees[4]. Therefore, in essence, this link can not be interfered by the court in the sense of bankruptcy reorganization, but is still in the stage of civil negotiation, but under the legal guidance of bankruptcy law. Generally speaking, Chapter 11 cases of the United States bankruptcy Code adopt the managed debtor model, and custodians are appointed only in rare exceptions. Therefore, the pre-reorganization procedure in the United States is also promoted by the debtor, but in practice, the debtor will hire professional institutions and people in the field of law or accounting to assist them in voluntary reorganization negotiations. That why, in order to prove that the pre-reorganization system can well connect out-of-court reorganization with in-court reorganization, debtors or creditors should be allowed to decide on their own intermediaries or relevant debt managers before applying for restructuring.

On the contrary, if the court is responsible for supervising and managing the preparation of the pre-reorganization plan by sending the interim administrator it appoints, the first problem is that not all debtors have the will and ability to manage the progress of the debtor[5]; secondly, it will lead to duplication of the function of the pre-reorganization system and the reorganization system. Because the court intervenes at the stage of the pre-restructuring plan, it is likely to trouble potential trade creditors and investors to revive the company and get out of debt. This may give others the illusion that the company has been restructured in bankruptcy, thus further compressing the value of the company, resulting in encroachment on the rights and interests of both creditors and debtors.

Separating the pre-reorganization system from the bankruptcy reorganization system can reduce the judicial cost. Through the information transmitted by the interim administrator, the court has the advantage of knowing the progress of the enterprise's plan and continuous follow-up at the first time. Therefore, the court can waive the hearing of the debtor or creditor applying for bankruptcy reorganization or pre-reorganization to a certain extent, so as to directly evaluate and decide whether to enter the bankruptcy reorganization or not. Thus, it is wasted on making judgments on relevant opinions issued by third parties, such as review materials, investigation inquiries, organization hearings, professional structures or personnel, and through pre-reorganization work reports submitted by pre-reorganization managers after the submission of materials by the interim manager. judicial resources for judgment.

4. Extent of Court Intervention at the Stage of Submission of Pre-Reorganization Plan

Different from the application stage of the pre-reorganization plan, which is dominated by the out-of-court reorganization system, the submission stage of the pre-reorganization plan is mainly faced with the reorganization procedure initiated by it, which is mainly the stage in which the court examines and approves the out-of-court reorganization activities and reorganization agreements and gives them legal effect. Although this stage is still in the pre-reorganization system, the object of its alignment and integration is the in-court reorganization system, which has in fact been restricted by the court trial and enforcement.

In the United States, the pre-reorganization plan reached by the prepackaged reorganization must meet the conditions required to approve the reorganization plan in the formal reorganization procedure, which means that the pre-reorganization plan will also be subject to strict review by the court after it has been submitted to the court. Based on these theories the pre-reorganization plan needs to be approved by the court before it can take effect in the formal reorganization procedure and be forcibly approved under special circumstances. At the same time, in order to realize the rapid reorganization of enterprises and reduce the waste of judicial resources, it is also very important for the appointment of bankruptcy administrators. Although the relevant provisions prohibit the appointment of interested managers, interim managers in the pre-reorganization phase generally do not belong to interested managers and have faithfully performed their obligations and duties, they should therefore be appointed to continue as managers in the reorganization process in order to enter the reorganization process smoothly. At this point, the intervention of the court in the submission stage of the pre-reorganization plan can better promote the direct connection between the pre-reorganization system and the reorganization system, and make the bankruptcy reorganization system operate efficiently and conveniently, in line with the original intention of the pre-reorganization system, even as a simple bankruptcy system in some specific cases, so the court should introduce it at this stage.

5. Conclusion

The pre-reorganization system highlights the independent negotiation of the parties, emphasizes the market-oriented and legal operation mode of pre-reorganization, and clearly excludes the compulsory intervention of judicial power and

administrative power. prevent pre-reorganization into extrajudicial reorganization to evade the constraints of bankruptcy law and abuse judicial power. And because of its characteristics, it has the ability to shorten the time of staying in court to formally reorganize the procedure and ensure that the procedure advances rapidly, thus reducing the overall management cost. Secondly, pre-restructuring must be based on the autonomy of the market subject. But at the same time, the problem of lack of transparency will also cause substantial damage to other creditors.

Just like the connotation and development law of the bankruptcy concept, the pre-reorganization system will also make a corresponding contribution to the improvement of the bankruptcy law system based on this development framework. The first problem that needs to be solved is how to determine and regulate the degree of intervention of the court. Although the existing law does not give a unified answer, and the legal norms that come out of the stage vary from place to place, as long as we grasp the core idea of the pre-reorganization system, the degree of court intervention in the application stage of the pre-reorganization plan will be reduced. on the other hand, at the stage of submitting the pre-reorganization plan, the degree of court intervention increases to achieve the equality and protection of the rights of all parties. If we can realize the entry from the reorganization procedure to the reorganization procedure as far as possible, then it will better reflect the advantages of the pre-reorganization system in the system design.

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