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Research on the Protection of Creditors' Rights and Interests in Bankruptcy Reorganization Procedures

Linghong He

School of Law, Southwest Petroleum University, Chengdu, Sichuan, 610500, China

Abstract: Bankruptcy reorganization is one of the important procedures for enterprises to maintain operational value and realize the hope of regeneration. The effective application of the reorganization system is of great significance for debtors to complete debt repayment and safeguard the legitimate rights and interests of creditors. However, in practice, the information asymmetry among stakeholders, the lack of creditor protection mechanism, and the conflict of interests of multiple subjects damage the legitimate rights and interests of creditors, and are not conducive to the bankruptcy and reorganization system to play its due role. In order to protect the legitimate rights and interests of the creditors of bankrupt enterprises and optimize the business environment, this paper puts forward targeted suggestions from the aspects of establishing an information disclosure system, improving the creditor protection mechanism, and improving the judicial active response mechanism, so as to help protect the rights and interests of creditors in the bankruptcy reorganization process. , so as to promote the further development of my country's economy.

Keywords: Bankruptcy reorganization, Creditors, Protection of rights and interests, Information disclosure, Multiple interests.

1. Introduction

Bankruptcy and reorganization is one of the effective paths for enterprises to break the development deadlock, complete the integration of resources and clear the development path. In the process of reorganization, a bankrupt enterprise must rely on the law to coordinate the distribution of interests of all parties, so as to achieve the goal of paying off debts and re-entering the market competition. Therefore, the balance of the debtor's property repayment and distribution is often a key factor in whether a bankrupt enterprise can enter the reorganization procedure. From the current point of view, my country's Bankruptcy Law provides effective legal protection for the protection of creditors' interests. It has made provisions that are beneficial to creditors in terms of the acceptance of bankruptcy applications, the intervention of administrators, and the voting rights of creditors' meetings, so as to avoid the inconvenience of debtors. proper behavior. However, in practice, due to the lag of information disclosure, the timeliness of creditors' grasp of the property status of the enterprise is relatively low, resulting in that the interests of creditors cannot be effectively protected. At the same time, the deficiencies of the creditor protection system and the conflict of interests among multiple subjects also affect the protection of the interests of creditors. The main body of creditors occupies an important position in the market economy, and protecting the rights and interests of creditors is of great significance to maintaining market stability and promoting sound social and economic development. Therefore, the realization of creditors' rights and interests is related to the stable development of my country's socialist market economy, and it is imperative to protect them.

2. The Real Dilemma of The Protection of Creditors' Rights and Interests in The Current Bankruptcy Reorganization Procedure

2.1. Bankrupt Enterprises Lack an Effective Information Disclosure System

During the implementation of bankruptcy reorganization procedures, there are problems such as information asymmetry between creditors and debtors and insufficient creditor supervision. As a participant in the whole process of bankruptcy reorganization, the debtor has a relatively clear grasp of the property status and operational capacity of the enterprise. However, due to the lag of information disclosure, the creditor has a relatively one-sided understanding of the solvency of the bankrupt enterprise. Therefore, in practice, the debtor may take advantage of the information asymmetry loophole, and in the reorganization plan, there may be attempts to evade debts by repaying the creditor's rights in advance, individual repayment, and using bankruptcy to evade shareholders' responsibilities. [1] Article 81 of my country's Bankruptcy Law stipulates the time limit for supervision of the implementation of the reorganization plan; Article 84, paragraph 3 stipulates that the debtor shall explain the draft reorganization plan to the creditors' meeting and answer questions; Article 91 Paragraph 2 stipulates the supervision report submitted by the administrator to the people's court, and the interested parties of the reorganization plan have the right to consult, etc. The above provisions reflect the information disclosure rules of the reorganization plan that are beneficial to the creditors' rights and interests. However, it is worth noting that my country's current "Bankruptcy Law" has not yet stipulated the disclosure time, disclosure content and other elements of relevant information, and the value of information disclosure still needs to be further elaborated, which may easily lead to the implementation of the reorganization plan being opaque to

creditors, adversely affect the protection of the rights and interests of creditors. At the same time, during the execution of the reorganization procedure in my country, the Bankruptcy Law clearly stipulates that the debtor is the executor and the administrator is the supervisor, but the position of the creditor is not specified. The unclear role of creditors leads to weak supervision of creditors, which cannot better mobilize the enthusiasm of debtors for the implementation of the reorganization plan, promote the completion of the reorganization plan as soon as possible, and realize the goal of enterprise reorganization, thereby protecting the rights and interests of creditors. [2]

2.2. There Are Deficiencies in The Creditor Protection Mechanism

The insufficiency of the creditor protection mechanism is mainly reflected in two aspects: one is the insufficiency of the creditor's rights declaration system, and the other is the insufficiency of the creditor's meeting system. From the point of view of the claim declaration system, this system is a precondition for creditors to protect their rights and interests in a stable and effective way. After declaring claims, the obligee has determined his own independent subject status and can distribute the debtor's property more reasonably and effectively. [3] However, from the perspective of my country's practice, the credit declaration system has not been well implemented. First of all, creditors are absent in the formulation of the reorganization plan, and can only vote on whether the reorganization plan is approved. The inability to participate in the planning in the early stage and relying only on the voting behavior in the later stage makes it difficult for creditors to maintain their own rights and interests. Second, after bankruptcy proceedings are initiated, creditors must declare their claims within the reporting period, but the issue of the existence of claims beyond the deadline has not been clearly defined, which affects the protection of creditors' rights and interests. From the perspective of the creditors' meeting system, the creditors' meeting represents the rights and interests of all creditors, and the convening of the meeting and the voting on the reorganization plan can more efficiently resolve the interests of creditors. However, there are still some problems with the legal provisions of this system. my country's "Bankruptcy Law" stipulates that the effective voting of the reorganization plan is "more than half of the creditors of the same voting group present at the meeting agree with the draft reorganization plan, and the amount of creditor's rights represented by them accounts for more than two-thirds of the total creditor's rights of the group. , that is, the group approves the draft reorganization plan.", that is, the calculation method of the number of attendees + the share of creditor's rights + the proportion of consent is adopted. The main problem with this type of calculation method is that if the number of delegates present or the share of creditor's rights has not yet met the standard requirements, it will directly affect the execution effectiveness of the creditors' meeting, which is not conducive to the approval and implementation of the reorganization plan.

2.3. There Are Conflicts of Interest Among Multiple Stakeholders

The heterogeneity among the subjects of the reorganization procedure is stronger, and the conflict of interest is more obvious, such as the conflict of interest between the creditor and the debtor, between the creditor and the creditor, etc. The bankruptcy reorganization procedure bears the important responsibility of coordinating the conflict of interest. [4] In the process of enterprise reorganization, the conflict of interest between the creditor and the debtor is more prominent, mainly in the following aspects: during the reorganization period, the execution procedures against the debtor are suspended, including the execution of collateral; When the repayment plan is approved, some creditors are often actively selected for lobbying. For small-amount creditors, the debtor mostly entertains the plan of full repayment, and for large creditors, the debtor usually intervenes with the help of administrative force; the reorganization plan that has passed the vote often has many creditors' rights that are relieved or waived by the creditor, and the creditor is terminated after the reorganization procedure. Afterwards, the company cannot be required to pay compensation. The conflicts of interest between creditors and creditors are more diversified, mainly reflected in the inconsistency of the order of repayment and the amount of repayment. Secured creditors are paid in advance of unsecured creditors, and secured claims can be fully paid off. The claims of unsecured creditors are ordinary claims, and they will be paid proportionally in the third order after the employee's claims and tax claims are paid off, and the repayment amount may not necessarily be paid in full. [5] The order of repayment of labor creditors is the first, and secured creditors have priority in repayment on specific property with security rights. In the overlapping part of the property, the priority of the two claims is prone to conflict of interest. Likewise, when a contractor's statutory priority coincides with a mortgage-secured claim on the same construction project, the priority creates a conflict of interest. If the implementation of the reorganization plan fails and enters into bankruptcy liquidation, the creditors who oppose the bankruptcy and reorganization get less repayment than the direct liquidation, but it is unfair to make them bear the same consequences as the creditors who agree to the bankruptcy and reorganization.

3. Analysis of the Reasons for Insufficient Protection of Creditors' Rights and Interests in Bankruptcy Reorganization Proceedings

3.1. The Manager Model and Information Asymmetry Lead to The Disadvantaged Position of Creditors

There are two typical models of insolvency administrators in various countries in the world: one is the administrator appointed by the creditors' meeting, and the other is the administrator appointed by the court. The administrator model designated by the creditors' meeting reflects respect for autonomy of will, but it is time-consuming, inefficient, and has the disadvantage of restricting the administrator's exercise of powers. Court-appointed administrators are more efficient and cost-effective, but have the disadvantage of not being able to take into account the wishes of all creditors. [6] Our country has chosen the mode of appointing the administrator by the court for the formulation of the bankruptcy administrator, which leads to the problem that the court fails to fully consider the will of the creditor in practice. Influenced by traditional thinking, some judges do not pay attention to the bankruptcy system, and are unwilling to spend time coordinating specific issues during the reorganization process,

resulting in prolonged trial periods, or even abusing their discretion to force approval of the reorganization plan. If the reorganization fails, it is easy to cause serious damage to the rights and interests of creditors. At the same time, as a highly valuable resource available in bankruptcy reorganization procedures, information is of great significance to make rational judgments and choices for creditors. However, in practice, due to the information asymmetry between the creditor and the debtor, the creditor is often in a passive disadvantaged position. Although my country's "Bankruptcy Law Interpretation (3)" clearly stipulates that "a single creditor has the right to consult the debtor's property status report and other information", as the information controller, the debtor has the right to speak about the time and content of the information disclosed, and there are differences in practice and theory. It may harm the protection of the rights and interests of creditors.

3.2. Imperfect Legal Norms Lead to Weak Protection of Creditors' Rights and Interests

my country's laws set the bankruptcy and reorganization system norms relatively simple, and there are many loopholes, such as unclear specific operations in procedures and unequal rights allocation. The former is mainly manifested in that the review standards for reorganization applications are relatively general and lack specific provisions, which leads to random initiation of reorganization procedures. For example, many bankrupt enterprises with no net assets or debts larger than assets enter the reorganization process, which will not only damage the interests of creditors, but also be detrimental to the optimal allocation of market resources. Since the implementation of the "Bankruptcy Law" in 2007, more than 30 listed companies have entered the reorganization process, but no listed company has gone bankrupt and delisted. This "phoenix" phenomenon has greatly affected the stability of the national securities market. [7] In addition, the approval of the reorganization plan is often a mere formality. Once the creditors' meeting approves the draft reorganization plan, the court's review is almost in vain, and the approved plan is immediately approved for implementation. The creditor's access to the reorganization plan and claims of interests cannot be guaranteed through specific legal procedures. In terms of the rights setting of the reorganization participants, the Bankruptcy Law has different provisions on various stakeholders, resulting in conflicts and contradictions in the protection of creditors' rights and interests. For example, in terms of the person who submits the right to apply for reorganization, the Bankruptcy Law clearly stipulates that debtors, creditors and specific funders can apply for the initiation of reorganization proceedings, while other subjects do not enjoy this right; although creditors can apply for initiation of reorganization proceedings, but has no right to formulate a draft reorganization plan, etc. With the progress of the reorganization process, the conflicts among the stakeholders became more and more acute. In addition, the legal provisions on information disclosure have drawbacks, which will make the two parties of interest in a state of information asymmetry. When the temptation of interest is higher than the cost of breach of contract, enterprises often voluntarily breach the contract in order to maximize their own interests.

3.3. Scarcity of Resources and Complicated Pursuit of Interests Exacerbate Conflicts Among Stakeholders

With the continuous progress of the times, healthy enterprises have certain resources to support them in terms of capital, technology and management. But for businesses on the brink of bankruptcy, the resources available to rescue themselves are dwarfed. To promote the smooth implementation of the reorganization plan through creditor adjustment and waiver of creditor's rights, so that the debtor can carry out bankruptcy and reorganization with limited resources will inevitably cause damage to the rights and interests of creditors. "More monks and less porridge" makes it difficult for bankrupt companies to formulate, approve and later implement the reorganization plan. The scarcity of resources not only deepens the conflicts between stakeholders, but also risks expanding the interests of participants. At the same time, the complexity of the pursuit of interests also exacerbates the contradictions among the stakeholders. In the process of bankruptcy and reorganization, creditors pursue the maximization of claims and interests; debtors hope to reduce debts and retain the operating value of the enterprise; investors hope to exchange minimum investment for maximum income, and ultimately various stakeholders will be formed in the bankruptcy and reorganization process. Diversified interest pursuit situation. Bankruptcy and reorganization must complete the adjustment of the conflict of interests of the participating subjects, but how to reasonably distribute the diverse interests to ensure fairness and justice requires careful treatment. Bankruptcy and reorganization procedures reflect the value of efficiency, but the protection of creditors' rights and interests reflects the value of social order. For example, the implementation of the reorganization plan approved by the court can improve the efficiency of reorganization and save the cost of resources. But mandatory approval plans are often carried out at the expense of most creditors, and if the reorganization fails, the losses to creditors may be even greater. At this time, the efficiency value of bankruptcy and reorganization challenges the value of social order.

4. The Perfect Way to Protect the Rights and Interests of Creditors in Bankruptcy Reorganization Proceedings

4.1. Establish A Bankruptcy Reorganization Information Disclosure System

In order to break the information asymmetry between the two parties in the process of bankruptcy and reorganization of enterprises, my country should establish a clear information disclosure system to restrict it, and provide effective information support for creditors to understand the property status and operating ability of the bankrupt enterprise. On the one hand, relevant departments may, in light of the characteristics of bankruptcy reorganization procedures, clearly stipulate the information disclosure obligations of administrators and debtors, classify them according to different procedural stages, and make specific provisions on the subject, time, content, and method of information disclosure, so as to protect creditors. On the other hand, during the implementation of the reorganization plan,

strengthen the accountability system of the information disclosure subject to prevent the occurrence of false information and untimely information disclosure during the information disclosure process and damage the rights and interests of creditors. For example, when the court chooses to appoint an administrator, creditors can be allowed to attend the supervision to increase the participation of creditors in decision-making; clearly define the reasons for changing the administrator, and use an enumeration to explain the manifestation of "the administrator's intentional or gross negligence". The court can make a reasonable judgment on the disclosed information to ensure that the information disclosure puts the creditor and the debtor in a symmetrical position of information. At the same time, from the overall point of view, attention should also be paid to the system design of the individual interests of a single creditor, to fully ensure the participation of each creditor in the reorganization procedure, to protect the creditor's right to know the information, and to ensure that the creditor has complete and accurate information. Express their own opinions and exercise their voting rights to safeguard their own rights and interests.

4.2. Improve the Creditor Protection Mechanism

To improve the creditor protection mechanism, we should start from two aspects: improve the creditor's rights declaration system and improve the creditor's meeting system. From the perspective of improving the creditor's rights declaration system, creditors can be divided into declared creditors and undeclared creditors, and perfected according to their different situations. When the enterprise entered bankruptcy proceedings, the total amount of property has basically stabilized. For creditors who have declared their claims, they should pay full attention to the information disclosure in the first creditors' meeting, and transparent information will serve as a reference for creditors to participate in the reorganization process. For creditors who have not declared their claims, relief measures for supplementary declaration should be set up to avoid interference with the substantive validity of claims due to lack of procedural validity. However, the application of the relief system should also be limited, and its scope should be limited to the delayed declaration or failure to declare due to its own reasons. [8] From the perspective of improving the creditor meeting system, it is necessary to determine the nature of the meeting system and clarify the resolution regulation of the meeting. The meeting of creditors makes all the creditors gather together, and its role is irreplaceable. As the decision-making organization of the benefit distribution plan, the creditor meeting emphasizes the collection and independence of the interest relationship. In the application of the resolution regulation of the creditors' meeting, my country adopts the principle of the combination of people and money. However, in practice, there are often problems that the number of people does not reach the pass ratio or the share of creditor's rights does not reach the pass ratio, and no solution has been found in the legal provisions. Therefore, when the above problems arise, it is possible to consider letting an authoritative court intervene, adopting stricter resolution regulations, focusing on the number of creditors, supplemented by the share of creditors' rights, taking into account the proportion of each person's share of creditor's rights, and promoting the meeting of creditors. went well. [9]

4.3. Improve the Active Response Mechanism of The Judiciary

In the bankruptcy reorganization procedure, coordinating the conflict of interests of multiple subjects and regulating and promoting the smooth implementation of the reorganization plan largely determine the success of the enterprise reorganization. Therefore, insisting on the balance of interests of all participants plays an important role in realizing fairness and justice. As the supervisor of the bankruptcy reorganization procedure, the court is the core that leads the orderly proceeding of the reorganization procedure. Therefore, improving the judicial response mechanism has a positive effect on protecting the rights and interests of creditors. First of all, the court should actively guide and strengthen supervision when organizing the negotiation and negotiation of various stakeholders, so as to avoid situations such as deadlock in the negotiation, improper transfer of interests between the debtor and the creditor, etc. that damage the legitimate rights and interests of the creditor. In the event of "election bribery", the court should prohibit the creditor from exercising the right to vote. Secondly, bankruptcy cases are highly specialized. Our judicial organs should establish specialized bankruptcy trial organizations, strengthen the professional knowledge training of judges, and enhance the ability of judges to handle such cases, thereby saving judicial costs and improving judicial efficiency. Local governments can also establish a joint coordination mechanism to give play to the active role of the government in the bankruptcy and reorganization of enterprises, and achieve two-way cooperation with the court. For example, the court can strengthen communication with the taxation department, establish a good supporting mechanism, give preferential tax treatment to bankrupt enterprises, restore the credit of bankrupt enterprises, etc., so as to promote the smooth progress of bankruptcy. [7] Finally, judges should pay attention to the compulsory approval of the reorganization plan and adhere to the principle of minimum acceptance of the compulsory approval of the reorganization plan. When the judge compulsorily approves the reorganization plan, it shall determine that at least one of the creditors voting group above has accepted the draft reorganization plan. Otherwise, the court should exercise the power of compulsory approval cautiously.

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