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3.2. Some social aspects of the legal regulation of economic insolvency (bankruptcy) in the Republic of Belarus

The variability of the business environment, economic instability and crises, and a number of other objective and subjective factors affect the financial stability and stability of organizations in various industries and forms of ownership. Failure to fulfill tax, contractual and other obligations often leads to economic insolvency or bankruptcy.

Bankruptcy in the context of the formation of market relations in the post-Soviet space is a relatively new and complex institution, regulated by various branches of law, requiring theoretical understanding. The insolvency of one of the business entities causes a number of negative consequences for a wide range of entities: from creditors and employees to the state as a whole.

In these circumstances, an effective mechanism of state regulation of bankruptcy procedures is of particular importance: from rehabilitation, as a tool for financial recovery, to liquidation with maximum satisfaction of creditors' claims.

With the development of market relations in Belarus, the legal framework for bankruptcy was created and improved. However, the process of institutionalization of these relations cannot be considered complete.

In the Republic of Belarus, the institution of bankruptcy was revived by the publication of the Law of the Republic of Belarus of 30.05.1991 N 826-XII "On Economic Insolvency and Bankruptcy". Conducting bankruptcy proceedings in accordance with this Law was extremely difficult due to insufficient legal regulation of many elements of the procedure. Later, the Law of the Republic of Belarus of 18.07.2000 N 423-Z "On economic insolvency (Bankruptcy)" was adopted. Currently, the third law of the Republic of Belarus of 13.07.2012 N 415-Z "On Economic Insolvency (Bankruptcy)" (hereinafter – the Law) is in force. A draft law "On Insolvency and Bankruptcy" has been prepared [1, 3].

According to Article 1 of the Law:

economic insolvency – an insolvency that has or is acquiring a stable character, recognized by the decision of the economic court on economic insolvency with the rehabilitation of the debtor;

bankruptcy – an insolvency that has or is acquiring a stable character, recognized by the decision of the economic court on bankruptcy with the liquidation of the debtor-a legal entity, the termination of the activities of the debtor-an individual entrepreneur.

The following judicial statistics show the urgency of the problem of bankruptcy. According to the Supreme Court of the Republic of Belarus, the total number of cases of economic insolvency (bankruptcy) pending before economic courts as of 01.04.2021 amounted to 1,657 cases, of which the number of cases of economic insolvency (bankruptcy) of private organizations is 1,516 cases, that is, 91.5% of the total number of cases in this category. In the proceedings of the Economic Court of Moscow Minsk has 39% of the total number of cases of economic insolvency (bankruptcy) (641 cases) [2].

The analysis of the current Law and the practice of its application allows us to identify the following social aspects of the legal regulation of economic insolvency (bankruptcy).

According to Article 8 of the Law, the representative of the debtor's employees, i.e. an insolvent business entity, has the right to file an application for economic insolvency (bankruptcy) of the debtor in connection with the non-performance of monetary obligations arising from labor and related relations with the economic court.

According to Article 24 of the Law, the representative of the debtor's employees is included in the circle of persons participating in the case of economic insolvency (bankruptcy). Therefore, he has all the procedural rights belonging to the persons participating in the case according to the Economic Procedure Code of the Republic of Belarus (to get acquainted with the case materials, to appeal against court decisions and others), as well as to file complaints against the actions (inaction) of the anti – crisis manager (hereinafter referred to as the manager).

The draft of the new law provides for the mandatory participation of a representative of the debtor's employees in the creditors' committee in order to strengthen the protection of their rights and obtain full information about the conduct of bankruptcy procedures [4].

The Law contains a special article "Protection of the interests of the debtor's employees". Thus, according to Article 120 of the Law, the manager continues to fulfill the terms of employment contracts (contracts)

in relation to the debtor's employees or terminates them in accordance with the labor legislation.

Conclusion of new employment contracts (contracts) and collective agreements, making changes and (or) additions to these contracts or their termination are carried out by the manager in accordance with the labor legislation. At the same time, an increase in the number and staff of employees, the conclusion of new employment contracts (contracts) and a collective agreement are agreed by the manager with the meeting (committee) of creditors.

In cases and in accordance with the procedure established by law, the authorized state body has the right to make payments to employees of state organizations to compensate for wages not paid before the opening of bankruptcy proceedings against the debtor-employer. At the same time, the authorized state body that made the payments has the right to act in the case of economic insolvency (bankruptcy) as a creditor, whose recourse claims are satisfied in the order of priority established by paragraph 3 of Part 3 of art. 141 of the Law for the remuneration of employees of the debtor.

Out of turn, settlements are made for the obligations of the debtor that arose after the opening of bankruptcy proceedings, including:

claims of individuals to whom the debtor is responsible for causing harm to their life or health;

payment of severance payments and remuneration of persons who work (worked) for the debtor under employment contracts (contracts) (Part 1 of Article 141 of the Law).

First of all, the claims of individuals to whom the debtor is responsible for causing harm to their life or health are met by capitalizing the corresponding time-based payments.

In the second place, calculations are made for the payment of severance payments, remuneration of persons working (who worked) for the debtor under employment contracts (contracts) and civil law contracts, the subject of which is the performance of works, the provision of services or the creation of intellectual property, for mandatory insurance premiums, contributions to professional pension insurance, and other payments to the Social Protection Fund of the Ministry of Labor and Social Protection of the Republic of Belarus, and also for the payment of insurance premiums for compulsory insurance against industrial accidents and occupational diseases (Part 2 of Article 141 of the Law).

At the same time, the establishment of claims of creditors of the first and second priority and their inclusion in the register of creditors' claims

are made by the manager himself on the basis of the debtor's balance sheet data as of the last reporting date, as well as other documents confirming the existence of debts to these creditors, considered by the manager no later than seven days after their receipt. Based on the results of the review, the relevant entries are made in the register of creditors' claims with the corresponding notification of creditors (Articles 142-143 of the Law).

In order to preserve social stability in conditions of projected insufficient funds for wages in bankruptcy cases with a high proportion of pledged liquid assets, the draft reference norm (as in the Russian Federation) establishes the obligation to develop an act of the President of the Republic of Belarus on the procedure for paying employees in the event of an employer's bankruptcy. At the same time, in order to guarantee partial payments for the costs associated with the conduct of the bankruptcy case and wages, it is mandatory to direct 20% of the proceeds from the sale of the pledge for these purposes [4].

A settlement agreement may be concluded from the moment when the economic court initiates proceedings on the case of economic insolvency (bankruptcy) after the repayment of the debt on the claims of creditors of the first and second stage, but not before the first meeting of creditors (Part 1 of Article 152 of the Law).

As of 01.04.2021, in the Republic of Belarus, proceedings on the economic insolvency (bankruptcy) of organizations that are important for the economy and social sphere of the country, which include state organizations, organizations that have a share of state ownership in the authorized fund, city-forming and equivalent organizations, budget-forming, system-forming organizations, are conducted in 141 cases [2].

The Law contains special rules on the bankruptcy of city-forming and equivalent organizations. According to Article 1 of the Law, a city-forming organization is a legal entity whose number of employees is at least one-fourth of the employed population (jobs) the corresponding locality or at the expense of the implementation of economic (economic) activities of which the life support of the corresponding locality is maintained.

According to Article 165 of the Law, a plan for the liquidation of a debtor-a city-forming or equivalent organization may provide for the sale of an enterprise by tender or auction.

If there is a request of the state body, under the jurisdiction or subordination of which the city-forming or equivalent organization is located and which participates in the case of economic insolvency

(bankruptcy) of the city-forming or equivalent organization, the sale of the enterprise is made by holding a tender.

At the same time, the legislator established the following mandatory conditions of the competition:

retention of jobs for at least seventy percent of the employees employed at the company on the date of its sale;

retraining at the expense of the buyer or employment of at least seventy percent of the employees employed at the enterprise on the date of its sale, in the event of a change in the main type of economic (economic) activity of the enterprise.

It is also possible to highlight the social aspects of the legal regulation of the bankruptcy of certain categories of debtors, such as banks, insurance companies, organizations that carried out illegal activities to attract funds from individuals, individual entrepreneurs. In turn, these features can be the subject of a separate study.

In conclusion, we note that the Belarusian legislation on economic insolvency (bankruptcy) contains a number of legal norms of a social orientation, in particular, with regard to the protection of the rights of employees, persons who performed work under civil law contracts, victims of obligations arising from harm to life or health, and others. Judicial practice on the application of the legal norms considered in the article has developed clear and unambiguous.

Sources:

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