

CLASSIFICATION OF CREDITORS IN BANKRUPTCY CASE

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Annotation. The article is devoted to the study of the classification of creditors in the case of bankruptcy. Creditors are one of the main participants in the bankruptcy case, because the satisfaction of their monetary claims against the debtor is one of the goals of the bankruptcy process. At the same time, the legal status of creditors in a bankruptcy case is not homogeneous, but depends on many factors – the moment of filing claims against the debtor, the time of obligations, the security of their monetary claims, etc. In this regard, it is urgent to carry out the classification of creditors in the case of bankruptcy.

The purpose of the article is to classify creditors in a bankruptcy case in order to determine the peculiarities of the legal position of each group of creditors.

Creditors provided for by the Code of Ukraine on Bankruptcy Procedures are divided into: secured and unsecured creditors based on the availability of collateral; at the moment of the requirements – competitive and current.

The peculiarities of the legal position of the initiating creditor in the case of bankruptcy of a legal entity are disclosed. It is emphasized that the initiating creditor bears an additional burden regarding the payment of the court fee (which, by the way, the debtor does not pay when applying to the court with a similar statement) and regarding the advance payment of the arbitration manager's fee. At the same time, even after paying these funds, the initiating creditor does not always receive a result in the form of the opening of proceedings in the case. Since the debtor's disagreement with the creditor's demands may indicate a dispute about the right, and this is a reason for refusing to open proceedings.

According to the results of the research, the author emphasized that the opening of bankruptcy proceedings significantly affects the debtor, his property, and his creditors. It is proposed to single out such a group of creditors as overdue creditors who have had their claims extended. These creditors belong to forced late creditors, however, unlike other late creditors, they enjoy the rights of those creditors who declared their claims on time.

Key words: bankruptcy, insolvency, creditor, economic court, economic process.

1. Introduction.

Bankruptcy cases are characterized by a significant number of participants, in particular, there is often a plurality on the side of creditors. Creditors are one of the main participants in the bankruptcy case, because the satisfaction of their monetary claims against the debtor is one of the goals of the bankruptcy process. At the same time, the legal status of creditors in a bankruptcy case is not homogeneous, but depends on many factors – the moment of filing claims against the debtor, the time of obligations, the security of their monetary claims, etc. In this regard, it is urgent to carry out the classification of creditors in the case of bankruptcy.

2. Analysis of scientific publications.

Current issues of restoring the debtor's solvency or declaring it bankrupt have repeatedly been in the center of attention of domestic scientists and practitioners, among whom we can note: O. Belyanovich, O. Biryukov,

A. Butyrskiy, I. Butyrska, L. Grabovan, M. Guryń, V. Dutka, S. Zhukov, Yu. Kabenok, L. Nikolenko, B. Polyakov, R. Polyakov, P. Pryguza, V. Radziviluk and others. At the same time, the issue of creditor classification in bankruptcy remains relevant due to constant changes in both legislation and judicial practice.

3. The aim of the work.

The purpose of the article is to classify creditors in a bankruptcy case in order to determine the peculiarities of the legal position of each group of creditors.

4. Review and discussion.

The Code of Ukraine on Bankruptcy Procedures (hereinafter referred to as the Bankruptcy Code) defines in Article 1 that a creditor is a legal or natural person, as well as a controlling body authorized in accordance with the Tax Code of Ukraine to take measures to ensure the repayment of tax debt and arrears from the payment of a single contribution to the general obligation mandatory state social insurance within the limits of its powers, and other state bodies that have requirements regarding monetary obligations to the debtor, as well as the administrator for the issue of bonds, who, in accordance with the Law of Ukraine "On Capital Markets and Organized Commodity Markets", acts in the interests of bondholders who have their claims regarding monetary obligations to the debtor confirmed by documents in the prescribed manner; secured creditors – creditors whose claims against the debtor or another person are secured by a pledge of the debtor's property; bankruptcy creditors – creditors with claims against the debtor that arose before the opening of bankruptcy proceedings and the fulfillment of which is not secured by a pledge of the debtor's property; current creditors – creditors with claims against the debtor that arose after the opening of bankruptcy proceedings. As we can see, Bankruptcy Code distinguishes such groups of creditors as:

- secured creditors;
- bankruptcy creditors;
- current creditors.

If the classification of those groups of creditors, which are provided for in the Bankruptcy Code, is to be developed, then it can be carried out according to the following criteria:

- 1) secured and unsecured creditors based on the availability of claims security;
- 2) at the moment of the requirements –
- 3) competitive and current.

As for secured and unsecured creditors, the issues of protecting the rights of secured creditors (previously they were called collateral) have always been the subject of lively discussions in academic circles. Determining in the bankruptcy procedure whether the creditor belongs to the group of secured and/or bankruptcy creditors makes it possible to immediately understand the prospects of the respective creditor regarding the satisfaction of its requirements. As a result of long processes of reforming legislation in the field of bankruptcy, the banking sector gradually lobbied for the privileged status of secured creditors, which was a logical and expected step of the legislator [1]. Thus, L. Grabovan, analyzing the Bankruptcy Code, notes: secured creditors are included in the composition of the parties to the case (Article 1 of the Code), previously they had the status of a participant; received the right to initiate a bankruptcy case; voting with the right of an advisory vote during decision-making by meetings and the creditors' committee (Part 1 of Article 48 of the Code). Mandatory termination of the moratorium was established automatically after 170 days from the date of introduction of the property disposal procedure (regarding the subject of security) (Part 8 of Article 41 of the Code). During the debtor's rehabilitation procedure, at the request of the secured creditor, the court may make a decision to terminate the moratorium on the property (object of security), if such property is not involved in the implementation of the rehabilitation plan or is a fast-wearing item or perishable goods (Part 8 of Article 41 of the Code) [2, p. 57].

Among bankruptcy creditors, it is possible to single out the initiating creditor – the creditor who applies to the economic court with a statement to open bankruptcy proceedings. Given that only the debtor himself can initiate a case of insolvency of a natural person, the initiating creditor can only be in a case of bankruptcy of a legal entity.

The creditor's appeal to the court with an application to open bankruptcy proceedings against his debtor is one of the manifestations of the right of the initiating creditor to judicial protection. In the scientific literature, it is noted that the need for protection arises only in the presence of a legal dispute, after causing damage to legal relations or a real threat to it. Since protection is an activity to eliminate obstacles in the normal functioning of legal relations, it will take place only when the authorized subject has the right to it [3, p. 55]. Creditors are often faced with the insolvency of debtors and are forced to initiate bankruptcy proceedings [4, p. 49].

At the same time, the initiating creditor bears an additional burden regarding the payment of the court fee (which, by the way, the debtor does not pay when applying to the court with a similar statement) and regarding the advance payment of the arbitration manager's fee. As indicated by A. Butyrskyi and L. Nikolenko, the initiating creditor advances payment for the arbitration manager's services to the court's deposit account. However, payment for the services of an arbitration administrator in other court procedures is problematic [5, p. 26]. At the same time, the initiating creditor, even after paying these funds, does not always receive a result in the form of the opening of proceedings in the case. Since the debtor's disagreement with the creditor's demands may indicate a dispute about the right, and this is a reason for refusing to open proceedings. After all, the presence or absence of a legal dispute is one of the key points to be established by the court when deciding on the opening of the relevant proceedings. At the same time, the Bankruptcy Code does not define any criteria or signs of the concept of "law dispute" [6].

In the science of economic procedural law, an economic dispute is defined as a contradiction between participants in economic relations regarding different understandings of mutual rights and obligations, which exist due to the implementation or violation of legal norms in the economy and which are subject to resolution by the parties or in a jurisdictional manner [7, p. 14]. At the same time, it is often difficult to distinguish whether there really is a dispute about the right or the debtor simply does not want to allow the opening of bankruptcy proceedings – the matter is not always simple, which requires a thorough analysis of the circumstances of the case from the judge, because in the end everything here depends on the judge's discretion. The discretion of the court, as L. Nikolenko points out, is a complex of jurisdiction, since the economic judiciary is a set of stages, in each of which the economic court, realizing the granted rights, carries out various activities determined by the tasks of the judiciary [8, p. 32]. In contrast to a lawsuit procedure, where the court decides the dispute on the merits, in the bankruptcy procedure, the creditors' claims are recognized or rejected [9, p. 46-47].

In general, the opening of bankruptcy proceedings significantly affects the debtor, his property, and his creditors. Thus, in the procedures for the disposal of property and rehabilitation, the seizure of the debtor's property or other restrictions on the disposal of his property are canceled by the commercial court, if they prevent the economic activity of the debtor and the restoration of his solvency or the implementation of the rehabilitation plan and do not conflict with the interests of bankruptcy creditors [10, p. 79].

If bankruptcy or insolvency proceedings have already been opened, the debtor's creditors have no choice but to submit an application with creditor claims against the debtor and acquire the status of a participant in bankruptcy proceedings. By participating in the case of the debtor's bankruptcy, creditors aim to satisfy their monetary claims [11, p. 67].

Professor B. Polyakov proposes the division of creditors, depending on their participation in the bankruptcy case, into competitive (which, in turn, he divides into initiating, forced and privileged) and non-competitive (which include current, collateral, property and others). Competing creditors are one of the main participants in bankruptcy proceedings, they actively influence the entire bankruptcy procedure and often make fateful decisions regarding the debtor. Initiators are those creditors who directly initiate bankruptcy proceedings. Forced creditors are creditors who applied to the commercial court within thirty days from the day of the official announcement of the initiation of bankruptcy proceedings. Privileged are creditors whose claims are not subject to the moratorium [12, p. 64].

As for the last group of creditors, O. Latynin once described the peculiarities of the legal position of privileged creditors during the time of the Law of Ukraine "On restoring the debtor's solvency or recognizing him as bankrupt": "The demands of privileged creditors do not require recognition by the court and can be satisfied during the entire bankruptcy procedure. The Bankruptcy Law includes persons with claims for the payment of wages, alimony, compensation for damage caused to the health and life of citizens, author's remuneration (Part 6, Article 12) to the privileged creditors. Privileged creditors can apply to the court for recognition of their rights. In this case, they acquire the status of registered creditors. However, repayment of privileged creditors' claims does not depend on recognition by the court" [13, p. 24].

In connection with the changes that have taken place in the Ukrainian bankruptcy legislation, another group has emerged among forced creditors – the so-called "late" creditors – that is, creditors who have declared their claims against the debtor, but missed the deadline set for this. R. Polyakov points out in this regard: "The legal fate of "late" bankruptcy creditors has changed. Now their demands: are subject to consideration at all stages of the bankruptcy procedure; are repaid equally with all bankruptcy creditors. The only difference is that "late" creditors do not have the right to vote in representative bodies of creditors (general meetings, committee of creditors)" [14, p. 80].

The period during which bankruptcy creditors must declare their monetary claims against the debtor (30 days from the moment of publication of the announcement of the opening of bankruptcy proceedings) has always been considered to be time-barred and non-renewable. However, in connection with the effect of martial law in Ukraine, economic courts began to recognize the effect of martial law as a valid reason for missing the 30-day deadline for creditors to declare monetary claims against the debtor and to renew the deadline for such creditors to appeal to the court [15, p. 33]. However, already at the beginning of 2023, the Supreme Court emphasized that the term provided for in Art. 45 of the Bankruptcy Code, is final and is not subject to renewal (resolution dated January 19, 2023 in case No. 902/207/22) [16]. At the same time, the existence of this resolution does not negate the legal status of those creditors who, although they missed the deadline for filing their claims, but for whom this deadline was renewed by the court. These creditors belong to forced late creditors, however, unlike other late creditors, they enjoy the rights of those creditors who declared their claims on time. This gives reason to single out such creditors as a separate group – overdue creditors for whom the deadline for filing claims has been extended.

5. Conclusions.

Therefore, the legal status of creditors in the case of bankruptcy is not homogeneous, but depends on many factors – the moment of filing claims against the debtor, the time of obligations, the security of their monetary claims, etc. The opening of bankruptcy proceedings significantly affects the debtor, his property, and his creditors. It is proposed to single out such a group of creditors as overdue creditors who have had their claim deadline extended. These creditors belong to forced late creditors, however, unlike other late creditors, they enjoy the rights of those creditors who declared their claims on time.

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