

Analysis of Key and Difficult Problems in the of Bankruptcy Claims Review

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Abstract : Bankruptcy claims refer to the creditor's rights established by the bankrupt enterprise before the bankruptcy application of the bankrupt enterprise is accepted by the people's court, and can only obtain fair compensation from the bankruptcy property through the bankruptcy procedure. For the relevant bankruptcy creditors, the amount, nature, security and priority of bankruptcy claims will affect their actual interests. Therefore, the confirmation of estate claims is very important. To ensure the fairness and objectivity of the review and confirmation procedure of bankruptcy claims, the state has stipulated the review and confirmation procedure of relevant bankruptcy claims through legislation, but there are still some difficult problems to be solved. This paper analyzes the connotation and characteristics of bankruptcy claims, analyzes some important and difficult problems encountered in the review of bankruptcy claims, and explores the countermeasures to promote the effective development of the review of bankruptcy claims.

Keywords : Bankruptcy Claims; Review; Key and Difficult Points

In the enterprise Bankruptcy Law of the People's Republic of China, there are three compound review and confirmation procedures for the confirmation of bankrupt claims: manager review, bond meeting inspection and people's court ruling confirmation. In the new bankruptcy law, the relevant operation of the confirmation procedure for the review of bankruptcy claims is not clear, and some judicial interpretations are not perfect, so some disputes exist. Therefore, it is necessary to study the effective path of bankruptcy claims review in combination with some important and difficult problems in bankruptcy claims review.

1. The concept and characteristics of bankruptcy claims review

Bankruptcy claims refer to the creditor's rights against the debtor when the people's court accepts the bankruptcy application. In terms of its characteristics, it mainly includes four aspects: First, the generation time, and the bankruptcy claims need to be confirmed before the people's court accepts the bankruptcy application. After the acceptance of the bankruptcy case, the bankruptcy procedure has actually entered a substantive stage. In order to ensure the fair and fair repayment of the rights and interests of relevant creditors, the first step is to summarize and clarify the amount and nature of the creditor's rights enjoyed by each creditor, so as to make full preparations for further liquidation. Based on the needs of the above work, there must be a time benchmark, which is the critical line for the statistics of bankruptcy claims. Combined with China's bankruptcy law, there are provisions on the time benchmark, that is, when the people's court accepts the bankruptcy application, therefore, until the people's court accepts the bankruptcy application, the creditor can only declare the claims before the bankruptcy application, including the interest generated by the bankruptcy claims, which need to be stopped at the time of the bankruptcy application. Second, the nature of rights. Bankruptcy claims are mainly paid by property. Third, applicable procedures. Bankruptcy claims need to be implemented on the basis of bankruptcy proceedings. After the people's court accepts the bankruptcy application, the debtor's creditors can only use the bankruptcy procedure as the reference basis to claim the right of claim by declaring their creditor's rights, but they cannot bring a civil lawsuit against the debtor's property claim again, nor can they require the people's court to adopt an enforcement procedure of individual repayment of the debtor's property. Before the acceptance of the bankruptcy application, if the creditor has filed a lawsuit

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or applied for arbitration, after the termination of the case, wait for the administrator to accept the creditor and formally carry out work, and the administrator will continue the litigation or arbitration on behalf of the debtor, or withdraw the lawsuit through the creditor or apply for bond declaration. However, even if the administrator continues litigation or arbitration on behalf of the debtor, the claims determined through litigation or arbitration still need to be confirmed by the creditor through the claims declaration procedure before they can be included in the scope of repayment. For the procedures that have been executed before the acceptance of the bankruptcy application, it is necessary to suspend the execution and add their claims to the bankruptcy proceedings as bankruptcy creditor's rights. Fourth, the characteristics of enforceability. The bankruptcy claims are based on the Enterprise Bankruptcy law of the People's Republic of China and belong to the claims enforced by the bankruptcy procedure.

2. Key and difficult problems in the review of bankruptcy claims

With the transformation and upgrading of economy and society and the in-depth promotion of supply side structural reform, bankruptcy practice shows a normal development trend, and all kinds of hot and difficult problems emerge one after another. Relevant creditors, review managers, etc., shall master the key and difficult points in dealing with relevant issues, exchange experience and collision views around these hot and difficult issues, and carry out continuous experience summary and theoretical discussion. Judges, experts, scholars, managers, technical support and other bankruptcy practitioners engaged in bankruptcy work shall actively build a communication bridge for the Party committee, government universities, scientific research institutions, companies, enterprises, managers and other units offer suggestions, so as to constantly grasp the key and difficult problems and study solutions.

2.1 Question 1: How does the creditor's meeting verify the claims recorded in the claims statement?

Does it need to vote

In the process of dealing with bankruptcy claims, it was pointed out that in the verification of claims recorded in the statement of claims by the creditors' meeting, the creditors' meeting confirmed them by voting. It was also pointed out that the creditors' meeting did not need to vote again to verify the claims recorded in the statement of claims, whether there was an objection or not.

Through research and analysis, the author believes that the latter view is feasible, mainly because. First, it is stipulated in the bankruptcy law that the people's court has the right to finally confirm the bankruptcy creditor's rights. Before the bankruptcy creditor's rights are finally confirmed, the creditors participating in the creditor's meeting belong to the creditor's rights declarant, not the bankruptcy creditor. And in the case of early bankruptcy claims not confirmed, whether creditors have the qualification of creditors and the amount of claims they represent are uncertain, so they do not have the right to exercise their voting rights. Second, if we vote on the verification results of creditor's rights, it is actually unfavorable to the smooth implementation of bankruptcy proceedings. It is stipulated in the bankruptcy law that if creditors have doubts about the resolution of the creditors' meeting and believe that it violates relevant laws and regulations and harms their own interests, they can apply to the people's court for cancellation of the resolution within 15 days from the date of determination of the resolution of the creditors' meeting and require the creditors' meeting to make a new resolution in accordance with the law. If creditors still have doubts about the re enacted resolution, whether they can request the law again has not been stipulated in the new bankruptcy law. Therefore, if the creditors have objections to the resolution and the law is not clear, it will lead to the prolongation of the time of the bankruptcy procedure because of the dispute, which will also have a certain impact on the smooth progress of the overall bankruptcy procedure.

2.2 Determination of limitation of action for objection

The verification of the creditors' meeting is not carried out by vote. Therefore, what should be done if the creditors or other interested parties do not agree with the claims recorded in the statement of claims? In the bankruptcy law, it is stipulated that the parties may file an objection lawsuit, and the people's court shall finally confirm the creditor's rights. However, doing so will also lead to new problems, such as the length of time for the parties to file meaningful litigation. In combination with this problem, the bankruptcy law has not made specific provisions, but it was pointed out that in the absence of clear provisions in the bankruptcy law. It is necessary to focus on the relevant provisions of the general principles of the civil law. After knowing that the dispute occurs, the parties should file a lawsuit with the people's court. However, it is also pointed out that the two-year period refers to the limitation of action in ordinary civil disputes, which is not applicable in bankruptcy cases, because the period is too long, which is unfavorable to the smooth development of bankruptcy proceedings. Based on relevant analysis and case studies, the author believes that the limitation of action in objection litigation should be unified in combination with the limitation of action in ordinary civil disputes. If the objection dispute case is not completed before the distribution of bankruptcy property, the manager can deposit the corresponding property in combination with the amount and nature of the disputed creditor's rights claimed by the creditor, and the

distribution shall be made after the corresponding disputed claims are determined.

3. Conclusion

For the review of bankruptcy creditor's rights, we should be good at grasping the key and difficult points. In addition to the two issues mentioned in this paper, there are actually many places that need to be discussed. For this, the relevant managers should pay attention to the matters that should be paid attention to when reporting and registering bankruptcy claims, the review principles of bankruptcy creditor's rights, the formal review and substantive review of bankruptcy claims. This paper studies the objection lawsuit of non confirmation of bankruptcy creditor's rights, how to exercise the voting right in the creditor's meeting, the examination and confirmation of overdue interest and default interest in bankruptcy creditor's rights, and the examination and confirmation of tax creditor's rights. We should meet the requirements of "four good", "four modernizations" and "four principles". "Four good" means: good financial handover, good declaration of creditor's rights, good review and confirmation, and good hearing of objections. "Four modernizations": digitization, typing, listing and synchronization. "Four principles" are: substantive review principle, fair treatment principle, in-depth communication principle and collective confirmation principle.

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