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ON LEGAL SUPPORT FOR THE PROCESSES OF ADOPTION, APPROVAL AND IMPLEMENTATION OF THE DEBTOR REHABILITATION PLAN

Abstract. Purpose. The purpose of the paper should be the following: based on the use of analysis and other methods of scientific knowledge, to identify inaccuracies in the legal support of adoption, approval and implementation of the rehabilitation plan, to identify and systematize measures to restore the debtor's solvency, which contain the rehabilitation plan, to make suggestions to improve theory, practice, and legislation. **Research methods.** An analysis of the provisions of the Code of Ukraine on Bankruptcy Procedures (CUBP) and the theoretical views of researchers was conducted to find new ways to protect debtors in the reorganization procedure and to improve existing ways to protect debtors. The dialectical method allowed for studying the theoretical aspects of applying various measures to restore the debtor's solvency in the rehabilitation procedure. The method of formal logic contributed to the study of legal provisions, particularly in identifying gaps and arguing theoretical proposals. Comparative legal and historical legal methods made it possible to identify practical examples in different countries and the works of researchers at various times to argue for the possibility of their implementation in domestic theory, practice, and legislation. **Results.** In the course of studying the relationship during the transition from the procedure for disposing of the debtor's property to the procedure for the rehabilitation, it is necessary to eliminate the inappropriateness in the sequence of regulation of the content of the rehabilitation plan, the processes of consideration and acceptance of the rehabilitation plan by creditors. These issues should be determined before completing the procedure for disposing of the debtor's property. The corresponding provisions should be specified in Section II «Disposition of the Debtor's Property» of the CUBP, since the last article of this section states that the rehabilitation plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property and Article 50 «Introduction of the Rehabilitation Procedure» of Section III begins with the provision that the economic court approves the rehabilitation plan and issues a ruling on the introduction of a rehabilitation procedure. If the administrator of the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or the rehabilitation plan is not approved by the body authorized to manage the debtor's property, the economic court is authorized to make a decision only on the application of economic and legal means to them. The paper highlights the need to bring such an administrator of the debtor's property to disciplinary, administrative, civil or criminal liability outside the bankruptcy case on the initiative of a state body on bankruptcy issues, a self-regulatory organization of arbitration managers, the owner of the debtor's property, any of the creditors, a representative of the law (for example, prosecutor), a member of the public. **Conclusions.** To increase the effectiveness of the application of measures to restore the debtor's solvency, it is proposed to supplement Section III «Debtor Rehabilitation» of the CUBP with the articles that will regulate the legal basis for the application of all measures to restore the debtor's solvency, referred to in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP.

Key words: bankruptcy, rehabilitation of the debtor, disposal of the debtor's property, rehabilitation plan, creditor, economic court, Code of Ukraine on Bankruptcy Procedures, arbitration manager, debtor's property, measures to restore the debtor's solvency, meeting of creditors.

1. Introduction

The economic situation in Ukraine has been quite difficult for several years.

Despite the hard work of most employees, the initiative and ingenuity of entrepreneurs, and the attempts of the authorities to help busi-

nesses, the war still leaves its negative imprint. The well-known saying among financiers that money loves silence has not been canceled and is unlikely to be refuted. Economic activity, and entrepreneurship within its limits, by definition, is risky. In war conditions, the number and scale of risks certainly increases. Therefore, the number of enterprises, institutions, and organizations subject to bankruptcy proceedings (disposal of the debtor's property, rehabilitation of the debtor, liquidation) potentially and increases. It is unprofitable for business entities that planned to conduct economic activities and receive profits and other social effects. It is also unprofitable for the state, whose wealth is directly proportional to the number of business entities and the income from taxes they pay. Creditors are also not interested in bringing their debtor to bankruptcy since they may not receive the entire amount of debt in full in this case. For these reasons, compared with the liquidation procedure, the effective application of the rehabilitation procedure looks more promising.

Literature review. Various theoretical and practical aspects of bankruptcy as a legal institution and the specifics of the implementation of various bankruptcy procedures were the subject of research by a significant number of Ukrainian researchers who are scientists, judges of economic courts, arbitration managers, employees, and property owners of business entities that can become participants in bankruptcy procedures – both creditors, debtors or bankrupt. The following are among such Ukrainian researchers: Afanasiev (Afanasiev, 2001), Bilokon (Bilokon, 2005), Biriukov (Biriukov, 1999), Bohatyr (Bohatyr, 2021), Butyrska (Butyrska, 2017), Butyrskiy (Butyrskiy, 2007), Chorna (Chorna, 2018), Dutka (Dutka, 2021), Dzhun (Dzhun, 2009), Hrabovan (Hrabovan, 2017), (Hrabovan, 2019), Hushylyk (Hushylyk, 2019), (Hushylyk, 2020), (Hushylyk, 2021), Kabenok (Kabenok, 2019), Kalchenko (Kalchenko, 2020), Kolisnychenko (Kolisnychenko, 2019), Larionova and Donchenko (Larionova, Donchenko, 2012), Levshyna (Levshyna, 2020), Malyha (Malyha, 1999), Marchenko (Marchenko, 2019), Marchenko (Marchenko, 2019), Minkovskiy (Minkovskiy, 2015), Nosan, Nazarenko S., Nazarenko T. (Nosan, Nazarenko S., Nazarenko T., 2022), Novyk (Novyk, 2021), Pihul and Semenets (Pihul, Semenets, 2020), Poliakov B. (Polyakov B., 2003a), (Polyakov B., 2003b), (Polyakov B., 2003c), Poliakov R. (Poliakov R., 2022), (Poliakov R., 2023a), (Poliakov R., 2023b), Pryhuza (Pryhuza, 2011), Radzyviliuk (Radzyviliuk, 2001), Shara (Shara, 2005), Stepanov (Stepanov, 2006), Tytova (Tytova, 2006)

etc. Nevertheless, despite the quantity and quality of previously conducted scientific research, the number of bankruptcies of Ukrainian business entities is not decreasing. Therefore, it is essential to study the procedure for developing a rehabilitation plan by the arbitration manager, approving it at the meeting of creditors, approving it by the economic court, determining its content, and especially rehabilitation measures, particularly for the possibility of implementation. And among the entire array of the above works of Ukrainian authors, as well as an even larger array of other works that were not specified above, there are relatively few works that directly relate to the problems of development (in particular, filling), adoption, approval, implementation of the rehabilitation plan. This also causes the need for research.

Research methods. An analysis of the provisions of the Code of Ukraine on Bankruptcy Procedures (hereinafter referred to as the CUBP) (Code of Ukraine on Bankruptcy Procedures, 2018) and the theoretical views of researchers was carried out to find new ways to protect debtors in the reorganization procedure and to improve existing ways to protect debtors. The dialectical method allowed for studying the theoretical aspects of applying various measures to restore the debtor's solvency in the rehabilitation procedure. The method of formal logic contributed to the study of legal provisions, particularly in identifying gaps and arguing theoretical proposals. Comparative legal and historical legal methods made it possible to identify practical examples in different countries and the works of researchers at various times to argue for the possibility of their implementation in domestic theory, practice, and legislation.

Purpose. The purpose of the paper should be the following: based on the use of analysis and other methods of scientific knowledge, to identify inaccuracies in the legal support of adoption, approval and implementation of the rehabilitation plan, to identify and systematize measures to restore the debtor's solvency, which contain the rehabilitation plan, to make suggestions to improve theory, practice, and legislation.

2. Completion of the property disposal procedure, development, submission, and approval of the rehabilitation plan

Part two of Article 49 «Completion of the procedure for disposing of property» of the CUBP determines that before the end of the procedure for disposing of the debtor's property, the meeting of creditors makes one of the following decisions:

- approve the rehabilitation plan and submit a petition to the economic court for

the introduction of the rehabilitation procedure and approval of the rehabilitation plan;

– submit a petition to the economic court to declare the debtor bankrupt and open a liquidation procedure (Code of Ukraine on Bankruptcy Procedures, 2018).

The second option, i.e., the liquidation procedure will be applied in case of assurance that any rehabilitation or other mechanisms for the enterprise are useless and/or impossible (Bohatyr, 2021, 37). In this case, it is unlikely that creditors can expect full repayment of the debt owed to them. If there are facts that indicate the possibility of saving the debtor, the first option is approved – rehabilitation, which will be beneficial to the debtor, the state, and creditors of the debtor.

In part three of the above-mentioned article of the CUBP, one of the four possible court decisions made by the economic court at the final meeting is a resolution on the introduction of a rehabilitation procedure and approval of a rehabilitation plan if the debtor's rehabilitation plan is approved by the meeting of creditors and its approval by creditors in the manner established by the CUBP (Code of Ukraine on Bankruptcy Procedures, 2018). Thus, at the end of the procedure for disposing of the debtor's property, the rehabilitation plan should already be developed and submitted to the meeting of creditors. Based on part three of Article 44 «Introduction of the procedure for disposing of the debtor's property» of the CUBP, the property administrator is obliged, if possible, to carry out the rehabilitation of the debtor, to develop a rehabilitation plan and submit it for consideration to the meeting of creditors; and on the basis of part ten of Article 45 «Creditors and persons wishing to take part in the debtor's rehabilitation» in the property disposal procedure, the property administrator, with the participation of the debtor, develops a plan for the debtor's rehabilitation in accordance with the requirements of the CUBP and submits it to the meeting of creditors for consideration (Code of Ukraine on Bankruptcy Procedures, 2018). This looks positive compared to the fact that during the first editions of the laws on restoring the debtor's solvency or declaring it bankrupt, the rehabilitation plan should have been developed by the rehabilitation manager and submitted to the meeting of creditors within three months from the date of the resolution on the rehabilitation. The question arose about the loss of at least three whole months, during which the rehabilitation plan could already be implemented. Currently, at the beginning of the procedure for disposing of the debtor's property, the administrator must assess the debtor's prospects for rehabilitation

and develop an appropriate rehabilitation plan. The CUBP does not set a deadline for preparing a rehabilitation plan, nor does it determine the deadline for its readiness. However, since even before the end of the procedure for disposing of the debtor's property, such a plan must be reviewed and approved by the committee of creditors, its readiness must be achieved at least several days before the final court hearing in the property disposal procedure (Code of Ukraine on Bankruptcy Procedures, 2018). Hrabovan, referring to the sixth part of Article 51 of the CUBP, points out the obligation of the body authorized to manage the debtor's property to coordinate the rehabilitation plan in cases of bankruptcy of state-owned enterprises without setting the time and consequences of non-fulfillment of such an obligation and recalls that the rehabilitation plan must be developed and submitted for approval by the court in the procedure for disposing of the debtor's property (170 days). The practice of considering bankruptcy cases indicates the existence of a problem of non-fulfillment by these bodies of their obligations to consider the rehabilitation plan within a reasonable time (Hrabovan, 2019, 43). Thus, a controversial issue may arise regarding the further actions of participants in bankruptcy proceedings if the administrator of the debtor's property or the body authorized to manage the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or agree on a rehabilitation plan. In case of improper performance of their duties by the administrator of the debtor's property, the economic court is authorized to make a decision only on the application of means of economic and legal influence, and the issue of bringing such a manager of the debtor's property to disciplinary, administrative, civil or criminal liability should be decided outside the bankruptcy case (Levshyna, 2020, 11). The initiator in this case should be a state bankruptcy authority, a self-regulatory organization of arbitration managers, the owner of the debtor's property, any of the creditors, a representative of a law enforcement agency (for example, a prosecutor), a representative of the public. For most participants in bankruptcy proceedings, it is not the fact of punishing and replacing the arbitration manager that is important, but compensation for damage caused by the fault in the form of intent or unintentional actions, which most likely manifested itself in inaction. As for the possibility of applying liability measures to the body authorized to manage the debtor's property, the question remains open. There is no unambiguous algorithm for answering this question today, only individual proposals of some researchers.

The above-mentioned judge of the economic court Hrabovan drew attention to the revolutionary nature of the provision on restricting the participation of interested parties in voting at meetings of creditors when approving the rehabilitation plan. There was no such provision in the previous legislation of Ukraine. It is contained in part five of Article 52 of the CUBP and provides that the claims of creditors who are interested parties in relation to the debtor are not considered for voting purposes when approving the rehabilitation plan. Article 1 of the CUBP specifies the list of such persons quite broadly (Hrabovan, 2019, 40). On the other hand, Hrabovan does not consider this provision progressive or vice versa. This provision is called revolutionary, i.e., new. In this case, it is necessary to support adding such a provision in the CUBP because creditors from among the persons interested in the debtor do not lose their rights to repay the debtor's obligations to them, i.e., their property rights were not infringed. Such creditors only lose the right to vote when approving the rehabilitation plan.

3. Controversial issues of adoption of the rehabilitation plan. Initiation of the rehabilitation procedure

Ukrainian researchers believe that rehabilitation at its core is a rehabilitation procedure in a bankruptcy case, and the concept of rehabilitation is proposed to be understood as the restoration of rights. Rehabilitation in bankruptcy proceedings also restores the debtor's rights. However, with the restoration of the debtor's rights, creditors' rights are also restored, which is a feature of the rehabilitation procedure (Dutka, 2021, 98; Hushylyk, 2020, 77). Therefore, creditors are often more interested in the qualitative formation and implementation of the rehabilitation plan because only full recovery or rehabilitation and restoration of the debtor's solvency guarantee repayment of their accounts payable in full.

From the moment of transition to the rehabilitation procedure, approval of the rehabilitation plan, and appointment of an arbitration manager – special administrator or rehabilitation manager, the latter accepts the debtor's property under the title of the right of economic management. From now on, this person is responsible for implementing the rehabilitation plan. The qualitative and quantitative content, i.e., the content of the rehabilitation plan, is defined in Article 51 “Debtor Rehabilitation Plan” of the CUBP (Code of Ukraine on Bankruptcy Procedures, 2018). B. Poliakov proved twenty years ago that the rehabilitation plan should be considered as a public legal agreement, since the will of its participants has

a common interest – restoring the solvency of an economic entity (Poliakov B., 2003a, 6, 24, 28). It is quite justified to consider such an interest as public law, which integrates the interest of the state and the territorial community in the work of the enterprise, the production of products in demand by society and the economy, the payment of taxes, providing work for citizens, the interest of owners of the company's property, the interest of employees of the enterprise and their families.

CUBP as a whole is built in the order of classical implementation of bankruptcy procedures. Therefore, it is illogical to place Articles 51 «Debtor Rehabilitation Plan» and Article 52 «Consideration of the Rehabilitation Plan by Creditors» of the CUBP in Section III «Debtor Rehabilitation». Two arguments can be given in favor of this: 1) the last article of Section II «Disposition of the Debtor's Property» states that the reorganization plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property; 2) the very first in Section III «Debtor Rehabilitation», Article 50 «Introduction of the Debtor Reorganization Procedure» begins with the provision that the economic court approves the debtor rehabilitation plan and issues a resolution on the introduction of the rehabilitation procedure (Code of Ukraine on Bankruptcy Procedures). Therefore, the location of the regulation of the rules for approving the rehabilitation plan after the provisions that this plan is already approved by the meeting of creditors and approved by the economic Court looks somewhat ridiculous. It is hardly possible to consider the presence of the word “rehabilitation” in the phrase «rehabilitation plan» and the title of Section III as an absolute argument. Obviously, this situation needs to be corrected in the future.

4. Measures to restore the debtor's solvency

In general, a rehabilitation plan is a kind of action program to restore the debtor's solvency, in particular, due to the alienation of its property and the repayment of creditors' claims in connection with this (Poliakov R., 2023a, 243). Therefore, in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP, the main components of the rehabilitation plan are defined as measures to restore the debtor's solvency. In general, this provision contains fourteen types of measures and an indication of their non-exhaustion. They are restructuring of the enterprise; - repurposing of production; - closing of unprofitable production; - deferral, installment payment or forgiveness of debt or part of it; - fulfillment of the debtor's obligation by third parties, etc. (Code of Ukraine on Bank-

ruptcy Procedures, 2018). The measures differ in terms of implementation methods and consequences for the participants in bankruptcy procedures, particularly the debtor. If some measures provide for changes in the organization and production methods, types of activities, products, works, or services that are produced, performed, or provided, then others – the alienation of the debtor's property.

When developing the rehabilitation plan, the manager of the debtor's property may also include measures not mentioned in part two of Article 51 of the CUBP. These can be either measures developed based on the above-mentioned measures or completely different ones. The rehabilitation manager can enter into agreements with the debtor's counterparties – potential current creditors, both defined by the rehabilitation plan and not provided for by it, but necessary for implementing the debtor's current activities and restoring its solvency. On the one hand, this can cause some inconvenience. According to R. Poliakov, the disadvantage of the rehabilitation plan is the lack of an exact liability due to the lack of claims of current creditors that arose after the opening of bankruptcy proceedings (Poliakov R., 2023a, 243–244). This is also noted by Marchenko (Marchenko, 2019, 51), Kolisnychenko (Kolisnychenko, 2019, 65–66), and other researchers of bankruptcy procedures. On the other hand, it is possible that the ingenuity of the rehabilitation manager, making timely decisions in favor of the debtor's interests, will help restore its solvency. However, such decisions can be made by the rehabilitation manager when managing the debtor's current business activities. If certain global measures are implemented to restore the debtor's solvency, it is obvious that they should be specified in the rehabilitation plan. Thus, based on the dissertation research results, B. Poliakov justified the possibility of exchanging debts for shares or equity interests as a form of financial recovery. However, in his opinion, this form is possible in the rehabilitation procedure, provided that it is regulated in the rehabilitation plan (Poliakov B., 2003a, 24). Clarification regarding the mandatory regulation of this in terms of rehabilitation is important from the point of view of preventing the seizure of shares and property of the debtor by perpetrator of illegal seizures, since joint-stock companies are the most vulnerable to such attacks, and one of the most convenient moments for a takeover attempt is the period of bankruptcy proceedings in relation to a joint stock company (Derevyanko et al., 2020, 177–178). Obviously, the legislator listened to the opinions of B. Poliakov, since the CUBP contains Article 53 «Increase in

the authorized capital of the debtor». It states, among other things, that all actions regulated in this article are carried out in accordance with the rehabilitation plan and legislation (Code of Ukraine on Bankruptcy Procedures, 2018). In Section III of the CUBP, separate articles regulate measures to restore the debtor's solvency: - sale in the procedure of rehabilitation of the debtor's property as a single property complex (Article 54); - alienation in the procedure of rehabilitation of the debtor's property by replacing assets (Article 55); - sale in the procedure of rehabilitation of a part of the debtor's property (Article 56) (Code of Ukraine on Bankruptcy Procedures, 2018). It seems logical to supplement this section with articles that would regulate the procedure for applying other measures to restore the debtor's solvency, specified in Part Two of Article 52 of the CUBP. The description of other measures in separate articles should contribute to their more frequent inclusion in the rehabilitation plan and wider application in the rehabilitation procedure.

5. Conclusions

In the course of studying the relationship during the transition from the procedure for disposing of the debtor's property to the procedure for the rehabilitation, it is necessary to eliminate the inappropriateness in the sequence of regulation of the content of the rehabilitation plan, the processes of consideration and acceptance of the rehabilitation plan by creditors. These issues should be determined before completing the procedure for disposing of the debtor's property. The corresponding provisions should be specified in Section II «Disposition of the debtor's property» of the CUBP, since the last article of this section states that the rehabilitation plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property and Article 50 «Introduction of the rehabilitation procedure» of Section III begins with the provision that the economic court approves the rehabilitation plan and issues a ruling on the introduction of a rehabilitation procedure (Code of Ukraine on Bankruptcy Procedures, 2018). If the administrator of the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or the rehabilitation plan is not approved by the body authorized to manage the debtor's property, the economic court is authorized to make a decision only on the application of economic and legal means to them. The paper highlights the need to bring such an administrator of the debtor's property to disciplinary, administrative, civil or criminal liability outside the bankruptcy case on the initiative of a state body on bankruptcy issues, a self-regulatory organization of arbitration managers, the owner

of the debtor's property, any of the creditors, a representative of the law (for example, prosecutor), a member of the public.

To increase the effectiveness of the application of measures to restore the debtor's solvency, it is feasible to supplement Section III «Debtor Rehabilitation» of the CUBP with the articles that will regulate the legal basis for the application of all measures to restore the debtor's solvency, referred to in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP.

Further scientific research on the legal support of the rehabilitation procedure should be aimed at finding ways to improve the components of the legal status of participants and maximize the satisfaction of their interests.

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ЩОДО ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ПРОЦЕСІВ СХВАЛЕННЯ, ЗАТВЕРДЖЕННЯ І ВИКОНАННЯ ПЛАНУ САНАЦІЇ БОРЖНИКА

Анотація. Мета. Мета роботи – на основі застосування аналізу та інших методів наукового пізнання виявити неточності у правовому забезпеченні процесів схвалення, затвердження і виконання плану санації, визначити і систематизувати заходи щодо відновлення платоспроможності боржника, які містить план санації, зробити пропозиції до теорії, практики і законодавства. **Методи дослідження.** Для пошуку нових або вдосконалення наявних способів захисту боржників у процедурі санації проведено аналіз положень Кодексу України з процедур банкрутства (КУзПБ), теоретичних поглядів дослідників. Застосування діалектичного методу дало змогу дослідити теоретичні аспекти застосування різноманітних заходів, спрямованих на відновлення платоспроможності боржником у процедурі санації. Формально-логічний метод наукового пізнання сприяв дослідженню норм законодавства, зокрема в частині виявлення прогалин та аргументування теоретичних пропозицій. Порівняльно-правовий та історично-правовий методи дали змогу виявити ефективні приклади у різних країнах, роботах дослідників у різні часи й аргументувати можливість їх запровадження у вітчизняні теорію, практику і законодавство. **Результати.** У ході дослідження відносин під час переходу від процедури розпорядження майном боржника до процедури санації боржника треба усунути недоречність у послідовності регламентації змісту плану санації, процесів розгляду й ухвалення плану санації кредиторами. Ці питання мають визначатися перед завершенням процедури розпорядження майном боржника, а відповідні норми – розміщатися у КУзПБ у Розділі II «Розпорядження майном боржника», оскільки в останній статті цього розділу вказується, що план санації схвалюється зборами кредиторів ще до закінчення процедури розпорядження майном боржника, а найперша у Розділі III стаття 50 «Введення процедури санації боржника» розпочинається нормою про те, що господарський суд затверджує схвалений план санації боржника і постановляє ухвалу про введення процедури санації. У разі невиконання розпорядником майна боржника обов'язку з розроблення плану санації або неузгодження плану санації органом, уповноваженим управляти майном боржника, господарський суд уповноважений приймати рішення лише про застосування до них засобів господарсько-правового впливу. Наголошено на необхідності притягнення такого розпорядника майна до дисциплінарної, адміністративної, цивільно-правової або кримінальної відповідальності за межами справи про банкрутство з ініціативи державного органу з питань банкрутства, саморегульованої організації арбітражних керуючих, власника майна боржника, будь-кого з кредиторів, представника правоохоронного органу (наприклад, прокурора), представника громадськості. **Висновки.** Із метою підвищення ефективності застосування заходів щодо відновлення платоспроможності боржника запропоновано у Розділі III «Санація боржника» КУзПБ до наявних статей, що регламентують окремі такі заходи, додати статті, якими буде врегульовано основні правові засади застосування усіх заходів щодо відновлення платоспроможності боржника, названих частиною другою статті 51 «План санації боржника» КУзПБ.

Ключові слова: банкрутство, санація боржника, розпорядження майном боржника, план санації, кредитор, господарський суд, Кодекс України з процедур банкрутства, арбітражний керуючий, майно боржника, заходи щодо відновлення платоспроможності боржника, збори кредиторів.

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