

Application of Bankruptcy System of Rural Collective Economic Organizations

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Abstract

The Civil Code has established the special legal person civil subject status of rural collective economic organizations. Under the dual drive of reform and legislation, rural collective economic organizations are evolving towards market subjects, and the withdrawal mechanism of rural collective economic organizations should be constructed. The application of the bankruptcy system is an inevitable choice under the background of reaffirming the economic functions of rural collective economic organizations, and also meets the practical needs of rural collective economic organizations as special legal persons to withdraw from the market in an orderly manner. When applying the bankruptcy system, the conditions and subject of bankruptcy application of rural collective economic organizations should be clarified; Determine the responsible property, including but not limited to the usufructuary right used by members to exchange capital contributions for shares, and grant members the right to repurchase capital contributions; We will establish a simple bankruptcy procedure, a bankruptcy prevention system, a bankruptcy reorganization system and other supporting systems.

Keywords

Rural Collective Economic Organization; Bankruptcy System; Special Legal Person.

1. Introduction

In practice, rural collective economic organizations are different from profit making legal persons and non-profit legal persons in terms of establishment and termination. The new special legal person system in the Civil Code has solved the problem of the nullity of the civil subject status of rural collective economic organizations. However, there is no regulation on the specific organizational form and access termination system of rural collective economic organizations. The termination of rural collective economic organizations is an important part of the special legal person system, and bankruptcy, as the main means of termination of other general legal persons, should also play its due role in the termination of rural collective economic organizations.

2. Obstacles to the Application of Bankruptcy Law to Rural Collective Economic Organizations

2.1. Under the Background of Political and Economic Integration, Rural Collective Economic Organizations Bear Public Functions

Rural collective economic organizations were set up to adapt to the rural collective ownership economy in China. From the primary commune, the senior commune, to the people's commune, production brigade, and production team, after the reform since the 1980s, the name of the collective economic organization was finally determined in the law. China's rural governance problem presents the complexity caused by historical deposition. After three rural land reforms,

the governance model of "three levels of ownership, team based" has been established. However, in the process of reform again and again, the collective economic organizations did not change more and more clearly. Instead, they assumed the public functions in rural areas outside the economy, and their "non-economic functions" were more prominent.[1] For a long period of time, they appeared to be indistinguishable from the functions of villagers' committees.

On the one hand, the law stipulates that villagers' committees can perform the functions of collective economic organizations on their behalf, which makes most villages adopt the cross-appointment mode of "one set of people, two brands" between collective economic organizations and village committees in reality, resulting in the increasingly unclear cross functions between the two. On the other hand, in terms of legislative provisions and policy guidance, rural collective economic organizations are not only economic organizations, but also carry political and social functions, especially the organizational function of collective ownership. [2] Article 42 of the Land Administration Law endows rural collective economic organizations with governance and management functions; Article 10, paragraph 2, of the Agricultural Law endows rural collective economic organizations with management and service functions. Article 44 points out that rural collective economic organizations are responsible for socialized service of agricultural production.

2.2. The Property Ownership of Rural Collective Economic Organizations has its Particularity

Rural collective economic organizations have rich resources, assets and funds, [3] but there are still disputes over the ownership of collective economic organizations and collective organizations' property. Articles 9 and 10 of the Constitution respectively determine the ownership of natural resources and rural land by peasant collectives. At the same time, the law further stipulates the rural collective ownership of the corresponding property. On the other hand, the law has repeatedly passed legislation to determine the right of collective economic organizations to operate and manage rural land and other property. Article 60 of the Property Law stipulates that rural collective economic organizations exercise ownership on behalf of the collective, Article 10 (3) of the Land Management Law and Article 13 of the Land Contract Law respectively define the right of rural collective economic organizations to operate and manage land.

Although some scholars emphasized that collective ownership and ownership of rural collective economic organizations are equivalent concepts, [4] rural collective economic organizations are the formal expression of collective legal subjects. However, from the perspective of history and practice, the two are not the same. "Peasant collectives" do not refer to rural collective economic organizations in townships (towns), villages or villages. [5] Since this is the case, rural collective economic organizations have no property responsibility and cannot terminate legal persons through the bankruptcy system. Moreover, even if rural collective economic organizations enjoy the ownership of land and other properties, rural land resources and natural resources are special and cannot be transferred based on their social security functions. If it is used as a liability property to repay debts, there will be a loss of collective property prohibited by law.

2.3. The Stability of Rural Collective Economic Organizations Should Not be Dismissed Easily

Rural collective economic organizations have the family inheritance and connection based on region and blood relationship, showing naturalness and identity. Members of rural collective economic organizations have a natural dependency relationship with land based on politics and history, and rely on their specific identity as rural collective members. Their entry into and exit

from the rural collective economy are closely related to the nature of land and the identity of farmers, and cannot flow freely. Laws, regulations and local government rules have made relevant substantive and procedural provisions on the entry and exit of members from collective economic organizations, which makes rural collective economic organizations show the characteristics of closeness and stability. [6]

Even though rural collective economic organizations have adopted diversified organizational forms to enter the market economy, such as joint-stock cooperative companies, cooperative economic cooperatives and other market entities, they are naturally regional and closed, [7] closely integrated with specific regions, which makes rural collective economic organizations have characteristics different from other general corporate entities. General enterprise legal persons are established and operated based on capital without any other fetters and implications, and their establishment based on property determines that they can disappear due to property. However, the collective economic organizations cannot be eliminated arbitrarily without legal provisions, and the application of the bankruptcy system is difficult to be broken through in legislation and politics. [8]

3. Necessity of Applying Bankruptcy System to Collective Economic Organizations

3.1. The Inevitable Requirement of Reiterating the Economic Function of Collective Economic Organizations in the Context of the Separation of Politics and Economy

The "collective economic organization" indicates that it is an economic organization, and of course it should take economic development as the main or even the only goal. [9] The collective economic organizations still have unclear functions in the later development, which is due to the functional alienation in the long-term development of the rural management system. In fact, from a historical perspective, rural collective economic organizations include two parts: first, the production brigade is divided into administrative functions and economic functions, with the emergence of village committees and rural collective economic organizations; second, the production brigade is the carrier of collective economic organizations. [10]

Under the dual background of legislation and reform, we should take the separation of politics and economy as the basic foothold and reaffirm the economic functions of collective economic organizations. On the premise of not undertaking or not taking undertaking public functions as the fundamental goal, collective economic organizations can achieve the goal of termination by means of bankruptcy. As the main body of the market economy with the goal of profit making, collective economic organizations need to clear the obstacles of their access to the market through reform on the one hand, and realize their exit from the market through legislation on the other hand, which is also their due meaning as the main body of the market economy. [11]

3.2. Meet the Practical Needs of Rural Collective Economic Organizations as Special Legal Persons to Withdraw from the Market in an Orderly Manner

The rural collective economic organization has the status of a special legal person, which should meet the basic requirements of a general legal person, that is, to enjoy independent property and bear responsibility independently. The debt problem of China's collective economic organizations has a long history. From the perspective of the existing collective economic organizations, it generally presents a phenomenon of excessive debt and heavy burden. By the end of 2017, the total book liabilities of rural collective economic organizations had reached 1.38 trillion yuan, with an average of 2.458 million yuan per village. [12] However, the collective income of some villages cannot offset the expenditure, and the collective economy is heavily indebted, which has become the normal state of rural collective economic organizations. [13]

Rural collective economic organizations mostly rely on government subsidy income, which is actually a business entity without hematopoietic capacity under government administrative intervention.

As for the rural collective economic organization as a special legal person, there are laws to follow for the rural collective economic organization to enter the market and its operation mode, but its exit mechanism is not clearly defined. The reorganization, reconciliation and liquidation procedures included in the bankruptcy law are the main paths for bankrupt enterprises to withdraw from the market. Building the bankruptcy system of rural collective economic organizations can, on the one hand, free the rural collective economic organizations from their accumulated debts and realize their rebirth through various ways; on the other hand, help to realize the fair settlement of creditor's rights and debts and protect the legitimate rights and interests of creditors.

4. System Design of Bankruptcy of Rural Collective Economic Organizations

Article 2 of the current Bankruptcy Law makes it clear that the applicable subject of the bankruptcy system is the enterprise legal person, which makes the rural collective economic organizations that are special legal persons excluded from the scope of application and cannot terminate the legal person through the bankruptcy system. In fact, as early as 2012, the Ministry of Agriculture of the People's Republic of China listed "those declared bankrupt according to law" as one of the dissolution situations of the joint-stock economic cooperatives in the "Articles of Association (Model) on joint-stock economic cooperatives". Although it has no legal effect, it has the function of guiding the direction. In the process of legislation, we can rely on the provisions of Paragraph 2 of Article 99 of the Civil Code, and make it clear in the forthcoming Regulations on Rural Collective Economic Organizations that rural collective economic organizations have the ability to go bankrupt, so as to build a bankruptcy system supplemented by the main body of bankruptcy liquidation, simple bankruptcy, bankruptcy reorganization and other supporting systems. The special provisions that are different from other general enterprise legal persons when rural collective economic organizations apply the bankruptcy system are specified in specific chapters, and the general provisions in the Enterprise Bankruptcy Law can be applied to others.

4.1. Construction of Bankruptcy Liquidation System

1. Clarify the commencement conditions of bankruptcy

The Bankruptcy Law defines the bankruptcy conditions under which an enterprise as a legal person is insolvent or obviously lacking in solvency. Rural collective economic organizations are often characterized by large assets and large debts. According to the statistics of the Ministry of Agriculture and Rural Affairs, by the end of 2016, the average collective assets of villages in the eastern region had totaled 10.276 million yuan, that of villages in the central region had totaled 2.714 million yuan, and that of villages in the western region had totaled 1.75 million yuan. However, the seemingly huge assets are actually based on the fact that rural collective economic organizations have a large number of non-operational assets and resource-based assets. Such assets have social security functions and cannot be included in the category of responsible property. Among the 559000 villages surveyed, 418000 villages had no operating income or operating income below 50000, accounting for 74.9% of the total. [14] Therefore, the standard of insolvency should be clear that the operational assets of rural collective economic organizations are insufficient to repay the debts owed. The obvious lack of liquidity should be attributed to the long-term neglect of rural collective economic

organizations, the lack of stable operating income or the lack of possibility of economic development within five years.

2. Provision of insolvency commencement proceedings

In general, insolvency may be commenced on application. For a rural collective economic organization, the applicant may be a creditor, a debtor and a superior competent authority. Where the debtor applies for bankruptcy, it shall be examined and approved by the competent authority at a higher level. Considering that on the one hand, China, especially in rural areas, has a certain misunderstanding of the bankruptcy system, believing that bankruptcy is death, which is easy to form a situation where collective economic organizations are deadlocked and do not apply for bankruptcy. On the other hand, a large number of collective economic organizations are in a state of desolation, without operation or management, lacking practical management personnel, and their resolution mechanism has already failed. Therefore, it can be stipulated that the superior competent department has the right to apply for bankruptcy. In other words, the rural agricultural management department and the township management department can apply for bankruptcy for collective economic organizations.

4.2. Determining the Property of Collective Economic Organizations

1. Determine the scope of liability property

The scope of rural collective property can include operational property, resource property and non operational property. Public welfare assets and resource assets (including collective land) cannot become debt paying assets, that is, they cannot become the responsible property of collective economic organizations to bear external responsibilities. [15] It should be considered that under the two-stage right structure of "confirming rights+exchanging shares", farmers use their usufructuary rights to take shares in rural collective economic organizations, and determine the equity they should enjoy through share conversion. [16]

The operational property includes but is not limited to the usufructuary rights contributed by farmers, but also includes fixed assets used for operation, such as aboveground buildings and machinery and equipment, as well as the share of assets of enterprises and other economic organizations held by collective investment and intangible assets enjoyed by rural collective economic organizations.

2. Give members of rural collective economic organizations the right to buy back their land management rights

For rural members, land is the root of life, not only bearing the functions of solving basic employment and sources of livelihood, but also bearing the social security functions of education, medical care and elderly care. Therefore, when restricting or depriving members of collective economic organizations of their land rights, they should be cautious and provide members with the right to buy back. After the people's court accepts the bankruptcy application, the board of directors shall explain and inform the members of the collective economic organization of the relevant situation and the meaning of bankruptcy. If the members of rural collective economic organizations are unwilling to bear the risk of "land loss", they can be given the right to buy back the land they originally contributed with a certain amount of capital. [17]

4.3. Establish Supporting Procedures for Bankruptcy Liquidation

1. Bankruptcy risk prevention system

The adoption of bankruptcy prevention system can avoid certain market risks and prevent the occurrence of bankruptcy causes by regulating the behavior of rural collective economic organizations in advance. In fact, many regional collective economic organizations have spontaneously formed bankruptcy risk prevention systems. It can include positive encouragement and negative prohibition. Administrative regulations and departmental rules can guide the way in which rural collective economic organizations can operate by setting up

positive lists and negative lists, such as encouraging the use of sole proprietorship, joint-stock cooperation and other forms of business activities such as leasing, tourism, aquaculture and animal husbandry; Negative prohibition forbids or restricts rural collective economic organizations to engage in high-risk behaviors through explicit provisions.

2. Summary bankruptcy proceedings

Simple bankruptcy procedures should be established for rural collective economic organizations. Bankruptcy cases of rural collective economic organizations with small value and simple facts can be handled through simple bankruptcy procedures, which can not only reduce the burden of the court, but also help rural collective economic organizations and their members get rid of the complicated procedures as soon as possible. In terms of application conditions, the composite mode of statutory and application based can be adopted. On the one hand, the property of a collective economic organization with a specific case value is the legal standard, for example, the summary procedure can be applied if it is less than 2 million yuan. On the other hand, considering that different regions have different historical formation conditions and different cases, it can be judged in combination with the complex procedures and potential risks of the case. For example, although the case value is more than two-million-yuan, simple cases can still apply for summary procedures, which can be applied after the approval of the court. Summary procedure should not only be short in duration, but also simplified in procedure. The specific performance is to shorten the trial period and the announcement period. If it can be stipulated that the case should be heard within three months after acceptance, on the other hand, electronic document service can be adopted and the appointment of managers can be simplified. [18]

5. Bankruptcy Reorganization Procedure

Reorganization procedure is an important way to bring dying enterprises back to life. As for the rural collective economic organization, its bankruptcy directly affects the survival and development of regional farmers and the entire regional economy because it is stable in the region. If they can be helped to recover their lives by means of bankruptcy reorganization, they should adopt the way of bankruptcy reorganization. However, considering that this method often requires a large amount of manpower, material resources and financial resources, the scope of application of reorganization should be limited. Rural collective economic organizations undergoing bankruptcy reorganization should first have the possibility of rescue, and should submit a reasonable reorganization plan with obvious benefit effect; Select competent managers; Negotiate with creditors and form a reorganization agreement to improve their asset vitality through debt relief, rollover, refinancing and other means.

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