

CHALLENGING THE AUCTION FOR THE SALE OF PROPERTY OF AN INSOLVENT DEBTOR-CITIZEN

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ABSTRACT

Within the framework of this article, the authors comprehensively reviewed the institution of consumer bankruptcy, as well as the procedures applied in cases of insolvency (bankruptcy) of citizens. The authors consider the administrative and judicial procedure for the protection of rights violated during the auction, as well as existing problems of law enforcement. Based on the analysis of judicial practice, a number of reasons are given, on which the auctions may be declared invalid.

Keywords: arbitration process, bankruptcy of citizens, transactions.

1.INTRODUCTION

In Russia, amendments and additions to bankruptcy legislation entered into force on October 1, 2015. They are aimed at creating an institution for recognizing citizens to be insolvent (bankrupt). Thus, the institution of consumer bankruptcy has existed in Russia for more than three years. Based on the official statistical data, we note a tendency to increase the number of decisions on the recognition of citizens as insolvent, as well as the number of completed procedures for the sale of their property, which indicates the relevance and necessity of the institution under consideration [Kirillovykh, 2015].

According to the provisions of Article 213.2 of the Federal Law On Insolvency (Bankruptcy) (hereinafter - the Bankruptcy Law), when considering cases of bankruptcy of a citizen, such procedures as debt restructuring, sale of property, settlement agreement are applied.

Based on the analysis of certain provisions of the Bankruptcy Law, it follows that the main purpose of the procedures in bankruptcy cases is the maximum possible, taking into account the debtor's property, proportionate satisfaction of claims of creditors and returning to civilian circulation as a subject (with restrictions) of the debtor-citizen.

It is worth noting that the need to create a mechanism for obtaining a bankrupt status by an individual was caused by the difficult economic situation and the existence of the problem of consumer debts, which the citizens are unable to pay in time. The citizen bankruptcy institution was not created with the sole purpose of eliminating the country's economic problems. Thus, the latter has a pronounced social orientation, and the procedures applied during the consideration of cases on the recognition of citizens as insolvent are, first and foremost, of a rehabilitation nature [Karelina and Frolov, 2015].

2.METHODS

The methodological basis of the study was formed by the general provisions of the science of constitutional, civil procedural, administrative procedural, and criminal procedural law. In the study, we used the following methods of scientific knowledge: intersectoral, dialectical, sociological, historical method.

3.RESULTS AND DISCUSSION

Section 213.26 of the Bankruptcy Law is devoted to the specific nature of the sale of citizen's property. According to clause 3 of this Article, the debtor's property, part of this property is subject to sale at the auction in the manner prescribed by the Law. The procedure for the sale of property of the debtor-citizen is generally similar to the procedure established by the general provisions of the Bankruptcy Law, with the exception of a number of features.

Thus, the assessment of a citizen's property is carried out independently by the financial manager, and the latter shall make a decision in writing. As a general rule, this provision is approved by the arbitration court, to whom it appears to be the financial manager within one month from the date of completing the inventory and valuation of a citizen's property [Koraev, 2017].

In addition to the provisions approved by the arbitral tribunal, the auction procedure for the sale of a citizen's property is established by a number of special acts. They include, for example, the auction procedure in electronic form, approved by Order of the Ministry of Economic Development of the Russian Federation No. 495 dated June 23, 2015, as well as the regulations of specialized electronic platforms.

The experience of using the mechanism under consideration has shown that, in practice, the debtors, their creditors and financial managers allow various kinds of abuse, significantly violating the established rules for the sale of property of a debtor-citizen.

The only way to counter this kind of abuse is the recognition of invalid trading results. Next, we consider the features of challenging the auction for the sale of property of the debtor-citizen.

It should be noted that the judicial method of protection of the right violated during the auction for the sale of property of the debtor-citizen is not the only one.

The Law on Competition Protection Law stipulates an administrative procedure for appealing trade procedures. The body authorized to consider the complaints concerning violation of the auction procedure is the Federal Antimonopoly Service of the Russian Federation, and their consideration is carried out in accordance with the provisions of Articles 17, 18.1, 23 of the Federal Law On Competition Protection.

In judicial practice, the position was formed according to which the antimonopoly authority has the right to check the validity of complaints about the violation of the auction procedure and make appropriate decisions on such cases in 2016.

The Law on Competition Protection names two groups of subjects of administrative appeal. The first group includes those who submitted applications for participation in the auction, and the second - other persons whose rights or legitimate interests are infringed upon as a result of violation of the procedure for posting information on the auction procedure or the procedure for submitting applications for participation in the auction.

Based on the complaint consideration results, the antimonopoly body decides whether the complaint is grounded or unjustified, and if the body establishes violations of the auction procedure, the latter issues binding instructions to the auction organizer to take actions aimed at eliminating violations of the auction procedure.

It should be borne in mind that this method of protection is effective only until the conclusion of contracts based on the auction results, since their recognition as void is possible only in a court of law.

Turning to the issue of judicial protection of the right, one should also consider some procedural aspects of insolvency proceedings of citizens who are not the individual entrepreneurs.

When analyzing the legal nature of insolvency proceedings, M.V. Telyukina came to the conclusion that the bankruptcy cases cannot be attributed either to lawsuit or to special proceedings, but are an independent type of process (on the one hand, it's not about an economic dispute, but about establishing the fact of debtor's insolvency, and on the other - in order to establish this fact, complex procedures are carried out, including those related to the implementation of a number of substantive and procedural actions, as well as the resolution of certain disputes) [Teliukina, 2003].

Returning to the procedural side of challenging the auction for the sale of property of the debtor-citizen, it seems appropriate to determine the legal nature of this type of judicial protection.

The procedure for resolving a dispute in a bankruptcy case within the framework of the existing legal regulation is characterized as quasi-search, and the essence of this procedure as a claim [Shyshmareva, 2009].

According to clause 1 of Art. 61.8 of the Bankruptcy Law, an application for challenging the debtor's transaction is filed with the arbitration court considering the debtor's bankruptcy and is subject to consideration in the debtor's bankruptcy case. The question of jurisdiction of a separate dispute on the recognition of tenders for the sale of citizen's property is also governed by this rule.

The form and content of the application for challenging the debtor's transaction in a bankruptcy case and the procedure for filing it with the arbitration court shall meet the requirements of claim specified in Articles 125-126 of the Administrative Procedure Code of the Russian Federation.

Despite the fact that the Supreme Court of Arbitration of the Russian Federation pointed out the acceptance procedure of such statements to the proceedings back in 2010, the arbitration courts often institute separate proceedings in such cases.

Thus, it is obvious that there is a problem of determining the court composition authorized to consider applications for the recognition of tenders for the sale of the debtor's property as invalid, as well as the expediency of combining a separate dispute,

the proceedings of which were initiated in a separate case with a citizen's bankruptcy case.

It seems to be a controversial position, formed by the Supreme Arbitration Court of the Russian Federation, that a statement on the recognition of auction for the sale of property of debtor-citizen should be considered within the framework of a bankruptcy case. In this case, a number of authors express an opinion on the validity of this approach [Podolsky, 2018].

This is primarily due to the fact that the consideration of disputes in these cases within a single case does not correspond to the goals of effective justice, it significantly complicates the consideration of the case, violates a reasonable time frame for its consideration. This situation is due to the following reasons: the complexity of this category of cases, the number of persons involved in the case, as well as complaints and petitions requiring the adoption of an appropriate procedural resolution.

Also, it seems doubtful that the provisions of clause 2.1 of Article 130 of the Administrative Procedure Code of the Russian Federation grounds for combining by the arbitral tribunal of the case on the recognition of auctions for the sale of the debtor's property void with the bankruptcy case. The law refers the presence of a connection between them on the grounds of the stated requirements or the evidence presented to the grounds for combining cases. Resolving the question of the need to merge cases, the court shall first proceed from the prevention of the adoption of conflicting judicial acts. We believe that the connection of the case on the recognition of the auction for the sale of the debtor's property with the citizen insolvency case, when considering the need for their combining, is immaterial.

In addition, the practical experience of the article authors suggests that consideration of a separate dispute in a bankruptcy case does not ensure the comprehensiveness and objectivity of the application consideration on the merits.

Thus, it is seen that it is necessary to determine the criteria by which the category of separate disputes under consideration in the citizen insolvency case would be allocated to a separate proceeding. At the same time, it seems expedient to supplement the Bankruptcy Law with procedural rules, according to which, in a bankruptcy case, an arbitration court should verify the validity of a statement only within the framework of the existence of circumstances that indicate a possible violation of the auction procedure. At the same time, the merits of the case, if such circumstances are confirmed, should be considered in a separate proceeding by the court with a different composition, which presumably would remove the additional burden on the judges considering the bankruptcy cases, as well as ensure the effective administration of justice.

At the same time, the disadvantages of special regulation of procedural relations arising in connection with the recognition of the results of auction for the sale of the debtor's property are invalid.

The shortened period of appeal applied to the definitions of the arbitration court, rendered as a consideration result of a separate dispute, limits the ability of a person, whose right was violated, to reinstate it in the court of appeal in many respects. An additional argument in support of the position on the need to apply a general term of appeal to these types of judicial acts is the fact that the cases on the type of isolated disputes are often characterized by particular complexity and a large number of evidence presented in the case file.

As in any other legal process, an interested person, appealing to the arbitration court and demanding to recognize the auction for the sale of the debtor's property to be invalid, shall provide relevant evidence.

According to clause 1 of Article 447 of the Civil Code of the Russian Federation, an agreement, unless otherwise stipulated by its essence, may be concluded through the auction procedure. The contract is concluded with the person who won the auction. Thus, trading is one of the ways to conclude a contract, which allows determining the counterparty with whom the contract will be concluded.

According to clause 1 of Article 449 of the Civil Code of the Russian Federation, the auction held in violation of the rules established by law may be invalidated by the court at the request of interested person.

Clause 44 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10, the Plenum of the Supreme Arbitration Court of the Russian Federation No. 22 dated April 29, 2010, On some issues arising in judicial practice in resolving disputes related to the protection of property rights and other real rights, states that public auctions conducted in the manner established for the execution of judicial acts may be declared invalid by the court according to the claim filed by the interested person in case of violation of the rules established by law by virtue of cause 1 of Article 449 of the Civil Code of the Russian Federation.

Being guided by the specified explanations, the arbitration courts apply a one-year limitation period in the proceedings for auction challenging established by clause 2 of Article 181 of the Civil Code of the Russian Federation.

Auction is a way to conclude a contract, and the auction recognition as invalid is the reason for the contract invalidity entered into with the person, who won the auction. For this reason, the filing of a claim for invalidation of auction also means the filing of a claim for the invalidation of a transaction concluded as a result of the auction, and the application of consequences of its invalidity. Therefore, such a dispute cannot be considered without the participation of the auction winner as a respondent.

A different interpretation of clauses 1 and 2 of Article 449 of the Civil Code of the Russian Federation would have made it impossible to restore the violated rights of the applicant. This interpretation is given in the Resolution of the Presidium of the Supreme Court of Arbitration of the Russian Federation No. 2814/10 dated July 15, 2010 [Johnson, McMillan and Woodruff, 2002; Paul, 2010].

The auction rules should be understood as the requirements that shall be met to ensure that all individuals are able to participate in the submission of their application at the auction, the proper auction conduct and the winner determination. The prerequisite for the auction invalidation is the substantial nature of the violation of the procedure for organizing and conducting such an auction, its ability to influence the outcome of auction.

4.SUMMARY

The most common grounds for recognizing trades on the sale of the property of a debtor-citizen to be invalid are:

1) prevention of potential participants to participate in the auction because of the incorrect indication of information in the notification of its conduct or the establishment of such rules that violate their rights.

For example, the Supreme Court of the Russian Federation invalidated the auction in the case No. A57-494/2014 due to the fact that the auction organizer refused to allow the participant entering the auction under the pretext of violating the time limit for the deposit, which shall be paid by the applicant to the account 2 business days before the auction date. The court found that the definition of the specified period wrongfully cuts off potential participants on formal grounds, and therefore such auction was deemed inconsistent with the law [Obermueller, Hess and Ins, 1999].

2) publication of unreliable, incomplete information or its untimely placement, resulting in a restriction of the number of potential buyers or violation of the rights of participants.

3) abuse of the right by the organizer or participant.

The auction may be invalidated for other reasons. Considering the question of the grounds that really entail the auction invalidity, the Supreme Court clarified in clause 71 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 50 dated November 17, 2015 that the violations committed by the organizer of public auction are deemed significant if, taking into account the specific nature of circumstances of the case, it is established that it influenced the results of public auction and led to the infringement of the rights and legitimate interests of the claimant.

It should be noted that there are other ways to protect the rights of interested parties, consisting in appealing a court ruling on the approval of the provision on the sale of the debtor's property, as well as a report on the determination of the initial selling price at the auction within the bankruptcy case.

5. CONCLUSIONS

Summing up, we should note the following. Statistics show that most of the disputes in this category (63% of the total number of resolved cases) end with the refusal of courts to meet the stated requirements. Such indicators, in our opinion, do not reflect the real number of violations of the rights of participants in relations in this area, but are due to the problems noted above.

The mechanism for the sale of property of the debtor-citizen in Russia is currently functioning, but its effectiveness is being questioned. The outlined tendency to increase the consideration of bankruptcy cases of both citizens and legal entities requires a quick response of the legislator to the problems arising in practice. The introduction of a number of changes aimed at preventing abuses during the auction would create conditions under which the claims of creditors would be met in greater volume. The formation of this approach to consideration of separate disputes by the arbitration courts and the introduction of a rule on the consideration of some of them in a separate proceeding can provide an opportunity for prompt response to infringement of rights during the auction in the insolvency proceedings of a debtor-citizen.

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