

Study on the determination of bankruptcy creditors rights that exceed the limitation of execution

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ABSTRACT

There is not much research in the theoretical field on whether the debt beyond the enforcement period can be identified as bankruptcy debt, but in practice, the bankruptcy administrator has explored a relatively clear way to examine this problem. This article first from a bankruptcy reorganization case around for more than during the execution of the debt is identified as the creditors rights review problem as the breakthrough point, and then through the references of the current view and reasons are discussed, summarizes for the problem, the industry mainly from the perspective of theory and legal norms, and practice of insufficient, in this paper puts forward the opposite view and demonstrate research.

KEYWORDS

bankruptcy debt compulsory execution; debt confirmation

Through the retrieval of China network database, during execution, enforcement, bankruptcy, creditors rights confirmation keywords combination or a single search, only to retrieve an article about more than during the execution of the claims can be identified as bankruptcy related articles, but in the WeChat public search, there are quite a lot of articles to study the problem. An article retrieved in the CNKI holds that the claims confirmed in the judgment documents beyond the legal time limit for enforcement shall not be regarded as valid claims in bankruptcy proceedings, and the authors of twelve articles should not be identified as bankruptcy claims, however, only one article describes the view that can be identified as bankruptcy claims. At present, we mainly summarize and extract the view that should be identified as bankruptcy debt from the theory and legal provisions, but the final theory should be combined with practice. After studying the theory, we should focus on practice and combine theory with practice to find out the optimal solution of the problem.

1 The question of

1.1 How to review the bankruptcy claims decided by the court but exceeding the execution period

In a bankruptcy reorganization case, the vast majority of the creditors of the enterprise have the creditors rights determined by the effective judgment of the court, but they have not applied for compulsory execution for more than two years, that is, they have exceeded the time stipulated by the law, and claim the creditors rights to the administrator. How to review these claims has become a difficult problem for the manager in the creditors rights review stage. The enterprise bankruptcy

law and other relevant laws do not clearly stipulate how to examine the creditors rights beyond the enforcement period, which may be used for reference to the review of the statute of limitations. It is generally believed that beyond the three-year limitation period of action prescribed by law, the debtor has the right of defense, and the administrator exercises the right of defense on behalf of the debtor to safeguard the legitimate rights and interests of the debtor and other creditors. Therefore, for the claims over three years of limitation, according to the relevant laws and regulations, the administrator will not confirm the identity of the bankruptcy claims during the examination. Even if the creditor does not recognize the examination result of the administrator and files a lawsuit to the court accepting the bankruptcy, if the administrator takes the creditors right has exceeded the limitation of action as the defense reason, the court will still reject the creditors claim according to law after the trial, and will not identify the claim as the bankruptcy claim. However, in combination with the reality, in the above cases, the vast majority of creditors are creditors exceeding the period of application for compulsory execution, if all are not confirmed, withThe purpose of bankruptcy is the opposite one. Even if the manager in violation of the existing laws and regulations of the case, the claims is not confirmed, the bankruptcy property in monetary distribution to the remaining few creditors, even if this practice in accordance with the existing law, but the rest of the vast majority of creditors will produce dissatisfaction, may cause group petitions, is not conducive to social stability, bring pressure to the local government.

1.2 Whether it is identified as bankruptcy claims cannot be generalized

There is no absolute answer to whether the creditors right that exceeds the bankruptcy execution period is certainly recognized as bankruptcy creditors right or not recognized in the bankruptcy procedure, but should be analyzed according to the situation of the case. Under normal circumstances, it should not be identified as bankruptcy claims, but in special circumstances can be identified as bankruptcy claims.

2 Creditors exceeding the enforcement period should not be considered bankruptcy claims under normal circumstances

Once claims exceed the time limit for enforcement, they should not be regarded as valid claims in bankruptcy proceedings. The reasons are as follows:

2.1 Relevant laws and regulations

2.1.1 The le of interpretation

From the perspective of the interpretation, the judicial interpretation of the law of enterprise Bankruptcy puts forward the period of limitation of action and the period of enforcement, and stipulates the factors that the manager needs to consider in the review of creditors rights. This means that how to examine a creditors right is how to examine the limitation of action. For the creditors right that exceeds the limitation of action, the bankruptcy claim shall not be confirmed as the same as the creditors right that exceeds the limitation of action.

2.1.2 Legislative system perspective

From the perspective of legislative system, the recognition of effective legal documents stipulated in Article 7 of the third judicial Interpretation of enterprise Bankruptcy Law is not equal to

the abandonment of Article 6. Therefore, the administrator may still examine the creditors rights exceeding the execution period according to law, and shall not confirm them because they exceed the execution period.

2.2 Counterplead right

If the effective judgment document does not apply for enforcement during the execution period of two years, it becomes a natural debt and the debtor has the right of defense. If the bankruptcy administrator has the duty of diligently and faithfully performing its obligations, it shall exercise the right of defense of the debtor and safeguard the legitimate rights and interests of the debtor and other creditors.

2.3 Consistency

The administrator shall maintain the consistency of his views in the examination of creditors rights and the confirmation of creditors rights. From the perspective of consistency, because the law does not clearly stipulate that whether the claims beyond the execution period can be identified as bankruptcy claims, in the process of debt review, the managers of different cases may make different review results. In the case with an accounting firm as the administrator, the claims exceeding the execution period of the lawsuit were also identified as bankruptcy claims with the consent of the creditors meeting.

Similarly, in special circumstances, claims exceeding the limitation of execution may also be identified as valid bankruptcy claims. However, when the above cases of creditors rights in the creditors rights review stage, the creditors objection to the creditor based on amount, and the result of the administrator claims review, to the bankruptcy court, in litigation, on the basis of the civil procedure law, the administrator as litigation representative has the right to exercise the defense of the debtor of more than apply during the execution of the claims, making the creditors rights shall not be recognized as bankruptcy, which will lead to the administrator limitation argument of the argument and the creditors rights review. Repeated changes of views may lose the trust interests of creditors to the manager. Therefore, it is necessary to maintain the consistency of the review with the views in the proceedings

2.4 Fairness

It violates the principle of fairness to confirm that the claims beyond the period of the execution of the application is bankruptcy. Setting up the execution period of the application is to urge creditors to exercise their rights in a timely manner, and the law will not protect those who are indifferent to their rights and do not actively advocate their rights. According to the relevant laws and regulations of the bankruptcy law, the claim exceeding the limitation of action does not belong to the bankruptcy claim. If the claims over the period of execution are still confirmed, it is obviously unfair to the creditors exceeding the statute of limitations, and also unfair to other creditors in the same bankruptcy case.

Creditors do not reasonably use their rights under the premise that the bankrupt enterprise has a better ability to pay off debts and has public relief as a backing. When the statutory execution period is exceeded, even if the enterprise has not filed for bankruptcy and the creditor applies for execution, the debtor has the right to defend. In the special state of the debtor applying for bankruptcy, the debtors right of defense beyond the enforcement period should be protected, which is also the guarantee that other effective bankruptcy claims can be fairly repaid.

2.5 Many local courts did not find

In the case of Su 081718 (2020) of Huaian Intermediate Peoples Court (2020), the court held that the claims did not belong to the bankruptcy claim; in the case of the Guangdong Higher Peoples Court (2022), the court held that the application of the law is systematic, not the only condition in the bankruptcy procedure, but other conditions stipulated by the law.

3 The creditors rights exceeding the enforcement period may be recognized as bankruptcy claims under special circumstances

3.1 The provisions of Article 7

As stipulated in Article 7 of the Judicial Interpretation of the Bankruptcy Law, the administrator shall confirm the creditors rights determined by the effective legal documents. This law stipulates that it is the legal basis for determining that the creditors right beyond the execution period is still the bankruptcy creditors right. The creditors right beyond the execution period, although losing the protection of national compulsory force, is still the true and effective claim confirmed by the court judgment.

The law does not stipulate the term of validity of the effective judgment document of the court. Only when the judgment is wrong or other new circumstances are covered by the new judgment document or the old judgment document is revoked, the effective legal instrument will change into invalid. Although the law stipulates the time limit of application for enforcement, the author believes that this is to make the right holder not lie on the right to sleep and improve the public awareness of the rule of law. At the same time, for the consideration of saving judicial resources, the court can not wait for the right holder to apply for the compulsory execution of an effective legal document. In addition, for the law is not retroactive legal adaptation, if the effective legal documents are modified or abolished, on the basis of the obligee to apply for enforcement has no effective legal basis, continue to the effective legal document enforcement is obviously not appropriate, and will bankrupt the existing rule of law, challenge the authority of law, reduce the majesty of the law in the public heart, more serious loss of legal system to the regulation of human society, leading to human society lose order, chaos.

However, the above mentioned only set the term of validity for the state to realize the effective legal documents through the means of state coercive force, but the facts determined in the effective legal documents and the judgment issued in accordance with the provisions of the law at that time are valid, and there is no time limit. Take the most typical creditors right as an example, the creditors right determined by the legal documents exceeding during the execution period is only changed from the legal debt to the natural debt. It is not illegal for the creditor to ask the debtor for the unpaid debt accordingly, so why cannot the creditors right exceeding the execution period be identified as the effective bankruptcy creditors right?

3.2 Fairness

For the cases mentioned at the beginning of this article, the vast majority of creditors are the creditors who hold the effective legal judgment but exceed the execution period. If these claims are not confirmed, the purpose of bankruptcy is difficult to achieve. If the vast majority of bankruptcy claims are not confirmed, how to protect the legitimate rights and interests of these creditors, and whether they also constitute excessive protection of the rights and interests of the confirmed creditors.

3.3 Natural debt, voluntary payment

3.3.1 A debt of nature

It is true that a claim beyond the statute of limitations or enforcement period, although exceeding the time of public relief, is still a debt. The debt is only transformed from legal debt into natural debt, and the creditor still has the right to request payment, and after the debtor pays, it will not constitute the case that unjust enrichment should be returned. For the debtor, the debt is a natural debt, which can be recognized or not recognized. Under special circumstances, as the administrator of the bankruptcy case, he can confirm the bankruptcy claim combined with the actual situation of the bankruptcy case and with the consent of other creditors and debtors.

3.3.2 As determined by the effective judgment documents

In addition, as mentioned above, claims exceeding the limitation of execution are different from claims exceeding the statute of limitations. In the examination, for the creditors right beyond the limitation of action, it is necessary to examine whether the debt relationship is established, and then the limitation of review. For the creditors rights that exceed the execution limitation, the limitation problem can be directly examined. For the creditors right exceeding the limitation of execution, the judgment document effective by the court serves as the authenticity and validity of the creditors right. Even if it becomes a natural debt, the authenticity of the creditors right and debt relationship need not be questioned.

3.4 Case

In the beginning of the case in this article, some creditors have applied to the court for compulsory execution, but in the bankruptcy administrator when declare creditors rights and unable to apply for evidence of strong, some creditors have never apply for strong and has passed the time limit, the bankruptcy administrator combined with the actual situation, discussion, finally think application is only the procedure, does not affect the entity rights, decided to have the court effective judgment but during the compulsory confirmation for bankruptcy claims, won the recognition of all creditors, obtained the good social effect.

4 Epilogue

First of all, according to the legal provisions of Article 7 of the Bankruptcy Law, the creditors rights identified by the effective legal documents can be identified as bankruptcy creditors rights, and then consider whether the effective legal documents have set the validity period. Through the argument, the legal document that proves the effect is always valid unless repealed, and the difference is only whether there is still a way to realize the content of the judgment through the state force, if not, the debtor can still perform voluntarily. Secondly, fairness is one of the basic principles in civil law. According to Marxs philosophy debate theory and thinking, according to the specific problems in the contradiction to concrete analysis theory, not one size fits all, so in the provisions of the basic law and provides many exceptions, outside the law and issue a lot of judicial interpretation, not broaden the scope of law, to adapt to the social life emerge in endlessly various new situations.

The life of law comes not only from its logic, but also from its close connection with life. The legal interpreter should not only mechanically wander between the law and the dictionary, but also constantly switch the sight between the legal provisions and the real situation, in order to seek the

true meaning of the law. In terms of the question of whether the claims over the compulsory execution period can be identified as bankruptcy claims, the administrator should not only be rigid based on the cold legal provisions, but should comprehensively determine according to the actual situation. The legal person should not let the law become cold, but should let it have a temperature, do a temperature of the legal person.

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