

SESSION V: THE ROLE OF LOCAL INSTITUTIONS: DISCLOSURE CHANNELS

ON INFORMATION DISCLOSURE LIMITS AFTER BRINGING A BANKRUPTCY ACTION AGAINST A JOINT STOCK COMPANY

Presentation on by

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¹ Disclosure of information on a joint stock company is undoubtedly a necessary instrument for protecting investor's interests. At the same time practice of consideration of bankruptcy cases certifies that disclosure of information on a joint stock company can be used for the purposes of ownership redistribution in contravention of interests of already existing investors – shareholders. And this event has to be taken into account in the course of carrying out work aimed at perfection of legal acts regulating the procedure for information disclosure.

Meanwhile, legislator did not pay enough attention to the peculiarities of information disclosure by a joint stock company, against which a bankruptcy action has been brought, and the existing legal acts are not always adjusted with each other.

So the Federal law "On insolvency (bankruptcy)" establishes a rule according to which it is not allowed to publish or otherwise disclose information on debtor's bankruptcy before publication of an arbitration court decision on recognizing debtor bankrupt. Persons who have committed violation of the said requirement shall bear liability provided in the law.

However, the Regulations on the procedure for disclosing information on essential facts, affecting financial-business activities of securities' issuer, approved by the resolution of the Federal Commission for the Securities Market of August 12, 1998, № 32, provide that issuers are obliged to inform commission about the fact of filing a bankruptcy claim to an arbitration court against them as well as their subsidiaries and dependent companies.

Under Russian legislation in major cases it is easy to bring an action against even a major joint stock company – it is enough to fix a fact that a debtor is not paying its debt in the amount of approximately 2.5 thousand dollars during three months.

While bringing a bankruptcy action, a possibility to take possession of controlling stock substantially increases due to quite understandable psychological state of shareholders. Persons willing to seize organization skillfully use this fact.

The following scheme has been being applied with respect to certain successful trade companies in Moscow.

A supplier delivered goods to a purchaser with deferring of payment without naming a bank, where money had to be transferred. The debt was assigned to persons interested in purchasing shares of the joint stock company.

After a certain period of time a new creditor was filing a claim to an arbitration court requesting to recognize a company bankrupt. A claim was accompanied with an assignment agreement and a copy of a

¹ The views expressed in this paper are those of the author and do not necessarily represent the opinions of the OECD or its member countries. This paper is subject to further revision.

letter to the debtor with the requirement to discharge the debt. Copy of the letter included creditor's bank details. Later in the court the debtor was trying to prove that he had received in an envelope from the creditor a blank sheet of paper instead of the letter.

After bringing a bankruptcy action the creditor was purchasing shares from panicking shareholders at understated prices and upon purchasing a controlling stock he would ask the court to close the case.

The above facts certify that information on shareholders is of great value for persons interested in purchasing shares at understated prices. First of all, this information contains in shareholders register, to which provisional receiver shows interest in certain cases.

Sometimes the following situation took place. Under the guise of necessity to analyze a company's financial-economic state a provisional receiver would require from a chief information on shareholders and, obtaining refusal, would apply to an arbitration court with respect to illegal chief's actions from his standpoint.

Normative acts in these cases do not take into account to a full extent interests of bona fide shareholders. In particular, the Bankruptcy Law does not stipulate norms preventing disclosure of information containing in shareholders register, does regulate in detail rights and obligations and arbitration receivers, concerning company's information disclosure.

At the same time, the Federal law "On securities market", as it seems to me, being designed for normal situation, contains a rule according to which any shareholders and nominal holder of securities, if they have less than one percent of voting shares, are entitled to access shareholders register.

Information on shareholders may contain not only in register. One of the directions of activities of the Federal social fund for protection of rights of investors and shareholders according to the Decree of April 2, 1997, № 277, is the creation of informational database and maintenance of register of investors and shareholders, whose rights have been infringed at financial and stock markets. This information is quite valuable and it would be defensible to establish special rules of its collection and disclosure.

Certain legal acts predetermine possibility of disclosing company's information with respect to transactions, company's indebtedness on engagements.

Possession of such information in the process of bringing a bankruptcy action can be used by unfair competitors and other persons in contravention of the purposes stipulated by the bankruptcy law, namely – prevention of debtor's bankruptcy. Quite often buying up of company's debts takes place in order to increase the number of votes at creditors' meeting, put pressure upon suppliers of raw materials and buyers of goods, produced by debtor.

It was typical for arbitration courts to introduce procedure for debtors' recovery (external management), and this could have taken place, if it was possible to help out organization of the crisis, and that was successful only with respect to 6 percent of organizations. In other cases debtors state became much worse than before introducing of that procedure.

Certain complex problems as applied to information disclosure originate during consideration of an issue of possibility to issue securities by a company in the course of implementation of bankruptcy procedures, as well as an issue whether acts of the Federal Commission for the Securities Market apply on arbitration managers.

Mr. Ivan Tyrishkin

Normal economy is based on the observance of the balance of legally protected rights and interests of all participants of entrepreneurship activities, including interests of shareholders, creditors, and potential investors.

And in order to observe this balance in legal acts it would be useful to work out in detail in normative procedure peculiarities of disclosure and distribution of information on joint stock companies in the period after bringing a bankruptcy action.