ABOUT THE TERM BANKRUPTCY IN LEGAL SCIENCE

О ТЕРМИНЕ БАНКРОТСТВО В ЮРИДИЧЕСКОЙ НАУКЕ

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Annotation

This article analyzes various approaches to the concept of «bankruptcy», as well as the relationship of this term with the concept of «insolvency». Despite the fact that these concepts are enshrined in the legislation, discussions continue in the scientific community about the relationship between these two terms, as well as about the concept of bankruptcy itself due to changes in the further development of civil legislation and significant socio-economic changes in our country recently.

Аннотация

В данной статье анализируется различные подходы к понятию «банкротство», а также соотношение этого термина с понятием «несостоятельность». Несмотря на то, что данные понятия закреплены в законодательстве, в научном сообществе продолжаются дискуссии о соотношении этих двух терминов, а также о самом понятии банкротство ввиду изменений дальнейшего развития гражданского законодательства и существенных социально-экономических изменений в нашей стране в последнее время.

Keywords: bankruptcy, insolvency, concept, term, definition, legal entity.

Ключевые слова: банкротство, несостоятельность, понятие, термин, определение, юридическое лицо.

The relevance of the research topic lies in the fact that despite the recent reform of the current civil legislation, including on the issues of bankruptcy of legal entities, there is no consensus on the relationship between the concepts of «bankruptcy» and «insolvency» in legal science, and the discussion on the definition of this concept itself continues.

Given the importance of the bankruptcy mechanism itself both for the economic life of society and for the development of civil law legislation, the need to study this issue led to the choice of the research topic.

In accordance with Federal Law № 127-FZ of 26.10.2002 «On Insolvency (Bankruptcy)» (hereinafter referred to as the Bankruptcy Law), bankruptcy is understood as the failure of the debtor to fully satisfy the creditors ' claims for monetary obligations, for the payment of severance payments or for the payment of labor of persons working or who worked under an employment contract or to fulfill the obligation to pay mandatory payments [1].

Thus, the Law on Bankruptcy does not contain a separate definition of the concept of bankruptcy of a legal entity, but only contains a general description of this term.

The definition of the concept of «bankruptcy» is given in this law by transferring monetary obligations, the inability to fulfill which may be the basis for declaring it bankrupt.

The construction of this definition is not very successful, since according to the rules of the Russian language, the listed monetary obligations also apply to a citizen, while the inability to fulfill salary obligations can only take place in relation to a legal entity or individual entrepreneur, but not an ordinary citizen.

In addition, Article 25 of the Civil Code of the Russian Federation (hereinafter – the Civil Code of the Russian Federation) contains a description of the grounds on

which a citizen can be declared bankrupt, which include the inability to satisfy creditors ' claims for monetary obligations or mandatory monetary payments [2].

In this regard, a situation is created when the concept of bankruptcy in the Bankruptcy Law expands the list of monetary obligations that a debtor (including a citizen) cannot fulfill, although these obligations (salary payments and other debts to employees) cannot arise in principle, unless, of course, he is an individual entrepreneur.

The fact that the term «legal entity» is absent, while the term «citizen» is present, does not add clarity to the definition of bankruptcy.

Thus, the concept of «bankruptcy of a legal entity» in the current legislation is absent, while the concept of «bankruptcy of a citizen» is devoted to Article 25 of the Civil Code of the Russian Federation.

More successful is the presence of definitions of the concepts of «bankruptcy of a legal entity» and «bankruptcy of a citizen» in article 2 of the Bankruptcy Law, which defines the basic concepts of this law. It may be necessary to give a separate definition of the concept of «bankruptcy of an individual entrepreneur», but this issue requires additional research.

As mentioned above, the current legislation defines the concept of bankruptcy solely through the transfer of monetary obligations, the inability to fulfill which may be the basis for declaring it bankrupt.

Meanwhile, a number of authors believe that the term «bankruptcy» can be used in different meanings and in each case it is necessary to determine in what context this term is used.

So, according to S. A. Karelina, bankruptcy can be understood as:

- a certain condition of the debtor's property;
- the special condition of the debtor himself;
- special legal staff;
- "confluence of creditors»;
- special procedure;
- type of legal liability [3].

E. D. Suvorov suggests considering even more meanings of this concept, according to which bankruptcy can be understood as:

- specific economic condition;
- the debtor's objection to the demand for the performance of the obligation;
- lack of physical ability to satisfy the debtor's creditors ' claims;
- special procedure;
- legal fact;
- a certain method of responding to the insolvency of the debtor;
- the inability to satisfy the creditors ' claims on the part of the debtor, established by the court;
- a type of management model;
- one of the types of enforcement proceedings;
- a legal basis for the liquidation of a legal entity;
- the type of proceedings in the case, the purpose of which is the liquidation of debts to creditors;
-the basis established by law for the introduction of a special regime for the purpose of satisfying the claims of bankruptcy creditors;
- a special regime introduced to meet credit requirements [4].

At the same time, the expediency of such an extended interpretation of bankruptcy is highly questionable.

First, most of the "meanings" of the term bankruptcy listed above represent its principles, features, or functions, and should be considered from this point of view.

Secondly, bankruptcy, in our opinion, is an important legal term that includes the definition of a special state of a person in civil turnover, in which this person, for certain reasons, is unable to fulfill certain (mainly monetary) obligations imposed on him by law or contract.

The need to introduce this concept into civil circulation was connected, it seems, with the need for continuity and predictability of this civil turnover and the entire economic life, and the exclusion from it of persons who are unable, for certain reasons, to fulfill their obligations.

According to most scientists, a legal term is a word or phrase that denotes a concept of this special, in this case, legal field of knowledge, i.e., terms are words, and a concept is a form of thought expressed through definitions [5].

The conceptual and categorical apparatus of law is one of the most important tools of legal science and practice. A single and correct definition of the concept provides for the identification of its exact meaning and content. If this requirement is not met, there will be a violation of the rules of legislative technique, which will further affect the lack of formal certainty of the rule of law [6].

The current legislation, and the Law on Bankruptcy, and the Civil Code of the Russian Federation, and other regulations do not share the concepts of «bankruptcy» and «state», understanding them as synonyms, while there is no consensus among scientists on this issue. And although some scientists agree with the opinion of the legislator, another opinion is widely represented in the legal literature.

Thus, the famous Russian lawyer G. B. Shershnevich understood bankruptcy as the careless and intentional infliction of damage by an insolvent debtor to its creditors as a result of the reduction or concealment of its property [7], thus distinguishing these concepts.

According to the results of research by other authors, insolvency and bankruptcy cannot be identical for a number of reasons, including the following::

- bankruptcy and insolvency correspond to different degrees of insolvency;
- bankruptcy is one of the possible options for insolvency;
- bankruptcy is the process of liquidation of a debtor legal entity, and insolvency is an event that closes the stage of development of the insolvency of this legal entity;
- various causes of insolvency and bankruptcy [8].

In conclusion, it should be noted that despite the existence of a legal definition of bankruptcy, this definition needs some clarification, in particular, in fixing the definition of bankruptcy of a legal entity.

The current legislation provides for the identity of the concepts of bankruptcy and insolvency, while representatives of the old Russian school of civil law, as well as many modern scientists, do not consider these concepts synonymous.

Given the importance of the institution of bankruptcy both in civil law and in general in the economic life of the country, it seems necessary to continue research and discussion on the problems raised in the article.

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