

Evidence and Construction of Bankruptcy Exemption for Rural Collective Economic Organizations

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Abstract

The bankruptcy of rural collective economic organizations does not require the realization of collective resource asset ownership transactions, nor does it affect the exercise of collective resource asset ownership representatives, and has certain feasibility. In order to continue the legal person status of rural collective economic organizations to address the need for the survival of public functions, it is appropriate to follow the example of natural person bankruptcy and adopt the system of bankruptcy, exemption from liability and non-termination of rural collective economic organizations. In terms of bankruptcy exemption structure, the scope of bankruptcy liability property of rural collective economic organizations is defined as business assets and the right to use resource assets that have not been contracted to households and quantified in shares. In order to limit the abuse of bankruptcy exemption, it is appropriate to stipulate that private loans and farmers' salary debts cannot be exempted from liability, and the exemption period is set as "liquidation rate + duration" mode, and the withdrawal of members' equity and the construction of public welfare facilities should be restricted during the bankruptcy investigation period..

Keywords

Rural Collective Economic Organization; Special Legal Person; Bankruptcy Exemption; Natural Person Bankruptcy.

1. Introduction

January 4, 2022, the Central Document No. 1 proposed to "consolidate and enhance the results of the reform of the rural collective property rights system Explore the development path of new rural collective economy." It means that rural collective economic organizations will break the shackles, seek a new development model, and establish a mode of operation in line with the socialist market economy system. Rural collective economic organizations are now entering the market economy through the market of collective business construction land and the transfer of land management rights, and their activities in the market economy should not only have a "good beginning" but also a "good end". Rural collective economic organizations should abide by the market rules of survival of the fittest, and need a clear market exit mechanism for adjustment when they become insolvent. The question of whether and how a rural collective economic organization can go bankrupt in the exit system is still controversial in academic circles. Therefore, it is necessary to explore the possibility and path of bankruptcy of rural collective economic organizations in the process of formulating the Law of Rural Collective Economic Organizations.

2. Divergence in the bankruptcy capacity of rural collective economic organizations

On the issue of bankruptcy of rural collective economic organizations, the academic community not only has different views on how to go bankrupt, but also holds very different attitudes on

whether they can go bankrupt. For example, Chen Xiwen believes that rural collective economic organizations are not companies or enterprises, so it is obvious that bankruptcy, reorganization or mergers and other similar situations cannot occur.[1]The opposing views of the academic community on the bankruptcy of rural collective economic organizations mainly exist in three aspects: first, the problem of realizing the bankruptcy property, for example, considering the difficulty of distinguishing and disposing of the bankruptcy property and other characteristics, it is not appropriate to apply bankruptcy or termination procedures,[2] or the fear that the members of rural collective economic organizations thus lose their collective land ownership and the foundation on which their survival depends.[3]The second is the issue of political role and public function. Some scholars point out that the bankruptcy and termination of rural collective economic organizations lead to the elimination of their legal personality, which undermines the stability of their establishment and contradicts the original purpose of their establishment. exercise of ownership of rural collective assets. Some scholars advocate that the subject of exercising collective ownership is the rural collective economic organization, and that this surrogate subject will cease to exist after bankruptcy termination. Some scholars believe that the termination system of rural collective economic organizations is a necessary means to promote their efficient operation and to build a fair market economy, and it is also an effective way to solve their serious indebtedness. [4]With the reform of "separation of government and economy", rural collective economic organizations should return to their economic functions, and the bankruptcy termination system is an important way to exit from the market. [5]

It is not difficult to find that scholars hold widely different views on the bankruptcy of rural collective economic organizations because of the issue of the ownership of resource assets, including land, and the issue of collective property ownership and public functions after the termination of rural collective economic organizations. reflect concerns about the division of rural land after the bankruptcy of rural collective economic organizations, resulting in the privatization of land and weakening the ability to secure rural land, or confusion about the lack of subjects to exercise collective asset ownership and perform public functions after the termination. Therefore, to prove that a rural collective economic organization has the ability to go bankrupt, it is necessary to prove that bankruptcy will neither damage the ownership of collective resource assets nor eliminate the qualification of the subjects exercising collective assets.

3. The Evidence of Insolvency Capacity of Rural Collective Economic Organizations

Bankruptcy does not require collective resource assets ownership transactions to be realized Why is it so important whether the rural collective economic organization enjoys the ownership of resource property? The ownership of resource property is the guarantee of farmers' livelihood, and if it is regarded as the ownership of rural collective economic organizations, bankruptcy or disposal of land ownership will be contrary to the public ownership of land in China. The clarification of the nature of resource property ownership is the primary condition for analyzing whether a rural collective economic organization can go bankrupt. From the current central and local legislation, bankruptcy will not affect the ownership of peasant collective resource property for the following reasons:

For one, the subject of collective resource-based asset ownership is not the rural collective economic organization. (1) The Civil Code provides for ownership separately from the rules of exercise. First, as far as ownership is concerned, Article 261 of the Civil Code stipulates that "the real and movable assets owned by the collective shall belong to the members of the collective." Collective members are only natural persons within a certain area,[6] which is a

concept of a collection, not a special legal person of a rural collective economic organization. Meanwhile, as far as the rules of exercise are concerned, Article 262 of the Civil Code stipulates that "ownership belonging to the villagers' collective rural collective economic organization shall exercise ownership on their behalf." That is, the rural collective economic organization is the surrogate subject of ownership, not the subject of ownership, and the representative exercise of ownership is not the same as ownership. (2) The central and local normative documents affirm the status of rural collective economic organizations as exercising ownership only on behalf of the representatives. The Opinions of the State Council of the Central Committee of the Communist Party of China on Steadily Promoting the Reform of the Rural Collective Property Rights System (hereinafter referred to as "Reform Opinions") states that "those belonging to the village farmers' collective ownership shall be exercised by the village collective economic organization on behalf of the collective." In many local normative documents, the term "management" and "management" are also used, such as Article 24 of the Regulations of Heilongjiang Province on Rural Collective Economic Organizations, which stipulates that "the village collective economic organization exercises ownership of collective assets The village collective economic organization shall exercise ownership of collective assets and be responsible for the management of the following assets. This indicates that the exercise of collective land ownership is not the same as the subject of rights, and the right of substitution only includes the right of management.

Second, collective land ownership itself does not contain the right to freely dispose of land. Collective land ownership is accomplished through the transformation of the social body of land, and the political property of public ownership of land restricts the right to dispose of land freely. [7][For example, Article 10 of the Constitution of the People's Republic of China (hereinafter referred to as "the Constitution") stipulates that "no organization or individual may appropriate, buy, sell, or otherwise illegally transfer land". The purpose of collective ownership of rural land is to achieve the function of social security, and the expectation is not to maximize the economic value of the land by entering the market, but to realize its use and income value by keeping and retaining the land. If the foundation of a rural collective economic organization is based on the collective ownership of peasants, and if it does not include the right to dispose of it, then the bankruptcy of a rural collective economic organization certainly does not include the disposition of land ownership.

Bankruptcy does not affect the exercise of collective resource asset ownership representatives The bankruptcy of a rural collective economic organization is not the same as the demise of a rural collective economic organization, or even a brief demise does not mean the absence of a subject representing the exercise of collective resource-based asset ownership. According to Article 101(2) of the Civil Code, "If a rural collective economic organization has not been established, the villagers' committee may perform its functions in accordance with the law." Some scholars believe that although there is a difference in the expressions of "not established" and "terminated" of rural collective economic organizations, this article can be interpreted in an expanded manner so that the subject of collective ownership will not be left vacant. central legislation, the relationship between villagers' committees and rural collective economic organizations has also been expressed as "alternative". For example, Article 5(2) of the Organic Law of the Villagers' Committees of the People's Republic of China provides that the main body for managing rural collective assets is the villagers' committee, while Article 10 of the Agricultural Law of the People's Republic of China provides that the relevant subject is the rural collective economic organization.

According to the above, the current central legislation has clearly and explicitly delineated the right subjects and exercising subjects of resource asset ownership, and the issue of resource asset ownership is not an obstacle to the bankruptcy of rural collective economic organizations. This paper will explore the bankruptcy exemption system suitable for special legal persons of

rural collective economic organizations to ensure their stable operation even after bankruptcy, while avoiding the transfer of functions exercised by representatives of collective asset ownership.

4. The Path Choice of Rural Collective Economic Organization Bankruptcy Exemption

4.1. Justification of bankruptcy exemptions from termination: avoiding the disadvantages of termination

At present, two bankruptcy ideas exist in the academic community: (1) bankruptcy termination system: rural collective economic organizations can follow the Bankruptcy Law for bankruptcy liquidation, but the bankruptcy reorganization and reconciliation procedures will be applied in priority, and the villagers' committee can be the main body to undertake public functions after termination; or interconversion of reconciliation and reorganization in order to avoid, to the greatest extent possible, rural collective economic organizations from entering liquidation procedures.[8] (2) Restructuring only without termination: i.e., following the example of U.S. municipal bankruptcy, restructuring is given priority in order to enable rural collective economic organizations to survive.[9]

With reference to the above ideas, it is easy to find that the ultimate goal of introducing bankruptcy system for rural collective economic organizations is to eliminate debts, and neither termination of write-off nor reorganization affects the achievement of this ultimate goal. Reorganization has the disadvantages of large time cost, expensive reorganization, and high investment of judicial resources, which is obviously not suitable for the actual situation of most rural economic underdevelopment. Compared with bankruptcy termination, bankruptcy exemption without termination has less or no impact on public functions, and can also solve the embarrassment of having no subject to take over ownership of collective assets after bankruptcy - it is true that rural collective economic organizations can eliminate their debts after bankruptcy termination, but they still need to re-establish rural collective economic organizations in the same place and carry out registration and code assignment, etc. However, it is still necessary to re-establish the rural collective economic organization in the same place, to register and assign codes, and to consider the issue of taking over public affairs in the bankruptcy process, which is rather cumbersome. Although, as mentioned above, the public functions of rural collective economic organizations or the qualification of collective asset ownership can be found, the bankruptcy method of non-termination is more convenient, stable and easy to accept in view of the status quo of most rural collective economic organizations and the process of reform. Moreover, due to the stage and continuity of the reform of rural collective property rights and the current state of rural development, they will still assume public functions for a long time. The repeated jumping between villagers' committees and rural collective economic organizations for public functions or proxy ownership is more likely to cause functional disorder, which is not conducive to the "separation of government and economy".

4.2. Feasibility of bankruptcy exemptions from termination: insights from natural person bankruptcy

Natural person bankruptcy exemption means that after the end of bankruptcy proceedings, the debts that the honest debtor fails to discharge can be exempted within the scope of the law.[10] There are two characteristics of natural person bankruptcy, one is the survival of the debt subject, because natural person bankruptcy cannot eliminate the natural person's status as a civil subject, the bankrupt can still carry out civil and commercial activities that are not restricted by law; the second is the discharge of debts, that is, the bankrupt debtor can be

discharged from the remaining debts through the debt repayment procedure, if the debt is repaid up to a certain percentage and there is no deceptive behavior. The insolvency of natural persons has the following implications for rural collective economic organizations:

On the one hand, the bankruptcy exemption does not terminate the retention of the personality and status of rural collective economic organizations. The functions of rural collective economic organizations are complex, and this complexity is reflected in the fact that they are both the main body of economic affairs management and the controller of public and political affairs. Although the law does not provide for the compulsory establishment of rural collective economic organizations, it is a basic requirement for the setting of village organizational structure and an indispensable entity in the structure of villagers' self-governance.[11]At the same time, the bankruptcy exemption from termination can ensure that the rural collective economic organization retains its subject status after bankruptcy, continues to represent the exercise of collective resource asset ownership, and continues to manage collective non-operating assets that are not suitable for inclusion in the responsible property, solving the dilemma of having no subject to act on behalf of collective resource asset and non-operating asset ownership after bankruptcy.

On the other hand, the composition of the debts of rural collective economic organizations provides feasibility for the bankruptcy exemption system. If the composition of debts is too complicated for the bankruptcy exemption system, then the bankruptcy termination system is more suitable to be applied; if the sources of debts of rural collective economic organizations generally tend to be similar or the composition is simpler, then the debts can be extinguished through certain debt repayment procedures with the retention of legal personality. In fact, there are similarities and differences in the composition of their debts. (1) The similarity of debts refers to the simple economic activities of rural collective economic organizations, the clear composition of debts, and the main types of debts originated from banks, credit unions, foundations, private loans, and arrears of salaries of personnel.[12] (2) Differences refer to the different debt composition of rural collective economic organizations in regions with different levels of economic development, for example, one quarter of the collective debt amount in rural Guangdong comes from villagers; the proportion of bank loans in the Pearl River Delta region is larger. According to the similarity of debt composition of rural collective economic organizations, it is possible to unify the conditions for debt settlement and the scope of debt exemption; according to the difference of debt composition of rural collective economic organizations, it is possible to provide for different debt repayment periods and ratios, and provide for the possibility of bankruptcy exemption system.

5. The Structure of the Rural Collective Economic Organization Bankruptcy Exemption

5.1. The definition of the property responsible for the bankruptcy of rural collective economic organizations

The academic community generally believes that operating assets have obvious property attributes and have no problem as liability property. Non-operating assets such as education, medical and elderly facilities provide public services and have public welfare attributes, so there is no objection that they are not suitable for debt settlement. However, there is still little research on whether and how the right to use resource assets can be used as liability property. The Model Charter stipulates land as resource assets, which seems to be excluded from the scope of share discounting and quantification. In the process of collective property rights reform, the quantification of operating assets in shares is generally accompanied by the demutualization of collective land, and the object of demutualized land is the right to use land, which is actually a collective term for the right to contract for the management of collective land

and the right to use collective construction land. [13] In the context of the "separation of three rights" and the reform of collective property rights, the right of use of demutualized resource assets should be allowed to be included in the responsible property of rural collective economic organizations. The reasons are as follows:

a. Collective land management rights mainly include the "four wastelands" and collective management of agricultural land management rights. The Reform Opinions mention that rural collective economic organizations can use "collective 'four wastelands', orchards, farming water and other resources that have not been contracted to households to develop modern agricultural projects." In addition, central legislation also provides for the transfer and quantification of collective management rights to operate land. For example, Article 3 of the Rural Land Contract Law of the People's Republic of China stipulates that the "four barren lands" and other lands can be contracted and operated directly through public consultation or bidding and auction, or the land operation rights can be divided into shares for members of the collective economic organization and then contracted and operated. Therefore, whether the right to operate agricultural land can be treated as bankruptcy property should depend on whether it is operated by the collective unity. [14] In this respect, the right to use resource assets can be interconverted with business assets. That is, if the land is operated by the collective unified management, the right to operate the piece of land can be transformed into business assets, thus meeting the requirements of the Reform Opinions for quantification of business assets in shares.

b. The right to use collective construction land includes the right to use collective business construction land and public welfare construction land. The nature of these two land use rights is determined by their functions. Since the buildings of public welfare construction land mainly have public welfare properties, according to the principle of "housing and land as one", the right to use public welfare construction land should be treated as collective non-operating assets and included in the responsible property. However, under the background of "land follows house", the operating construction land has a large circulation value and can be quantified as resource assets with shares. In practice, under the premise of conforming to the norms, many regions make use of various property facilities and collective construction land according to local conditions to develop corresponding industries by means of joint ventures, cooperation or independent development. [15] Therefore, the right to use collective business construction land is not directly related to public functions, but also has a basis for quantification in discounted shares, and can be used as responsible property.

Whether and how the right to operate and use resource assets can be quantified in shares should be tailored to local conditions. Not all of the resource asset use rights that are quantified in shares can be used as responsible property. For some rural areas that do not contract land to households and insist on collective management, it is a good choice to apply the quantification of collective land management rights in shares. In most areas, the contracting method of family contracting and fragmented operation is adopted, and the unified form of operation is generally weakened. In this case, the possibility of quantifying the collective operation of land in shares is based on, first, whether the area has collectively operated land, and second, how to quantify the resource assets, set as collective shares or quantified to individuals. The above two points should respect the choice of the members of the economic organization and are not appropriate to be mandated in the Organic Law of Rural Collective Economy.

5.2. The scope of exemptions from bankruptcy of rural collective economic organizations

Based on the principle of justice or good faith, debts that cannot be discharged in the natural person bankruptcy system are divided into the following four categories: (1) debts arising from

administrative violations, criminal acts, torts, etc.; (2) debts arising from personal relationships; (3) debts that cannot be discharged due to public policy; and (4) partial debts concealed by dishonest acts. The above debts not only arise from non-market transaction behaviors, but also are prone to induce moral risks if they are directly exempted. [16] On the basis of the above four kinds of debts that cannot be exempted, the following provisions should also be made to exempt the scope of rural collective economic organizations.

First, debts arising from private lending cannot be forgiven. As a representative of the peasant collective, the purpose of establishing a rural collective economic organization is to improve the welfare of the peasants, and it would be contrary to the original purpose of establishing the organization if the debts of the peasant creditors were to be forgiven. Second, debts incurred by rural collective economic organizations due to unpaid wages of personnel are non-exempt. The purpose of bankruptcy proceedings is to protect the interests of creditors, and the interests of farmers' creditors should be put first in the bankruptcy exemption.

5.3. The rural collective economic organization bankruptcy exemption inspection period set

There are two existing models for setting the examination period for bankruptcy exemption in China: (1) fixed period model; (2) liquidation rate + period model. For rural collective economic organizations, it is obviously more appropriate to apply the second bankruptcy inspection period model: first, different liquidation rates are set for rural collective economic organizations with different economic conditions, and the inspection period can be shortened for those with faster economic recovery. If the "one-size-fits-all" model is adopted, it is obvious that the differences in rural collective economic debts cannot be met. Secondly, setting the "settlement ratio + exemption period" is conducive to encouraging rural collective economic organizations to repay their debts in order to balance the interests of creditors. It also allows rural collective economic organizations to retain a corresponding share of their annual income to repay debts on the basis of the development of the collective organization. Therefore, the inspection period for the bankruptcy of rural collective economic organizations can be referred to Article 41 of "Some Provisions of the People's Court of Suzhou Wujiang District on the Liquidation of Personal Debts (for Trial Implementation)", which divides the inspection period from one to six years according to different liquidation ratios.

5.4. The limitation of the rights of rural collective economic organizations during the period of bankruptcy exemption

In the bankruptcy law of natural persons, certain restrictions will be imposed on the debtor's rights during the examination period, such as prohibiting the debtor in the bankruptcy proceedings from engaging in specific industries or restricting the debtor's high-spending behavior. Restrictions on the rights of rural collective economic organizations during the bankruptcy examination period are also necessary, and the restrictions on their rights should be in line with the requirements for the restoration of the economic functions of rural collective economic organizations: (1) suitable for the normal operation of rural collective economic organizations during the examination period, so as to repay their debts on time. (2) To ensure the stability of public functions, and to revitalize the economy, so as to avoid the rural collective economic organizations from falling into debt crisis again. The details are as follows:

First, the collective share redemption is restricted during the inspection period. Article 16 of the Interim Measures for the Management of Rural Collective Assets and Shareholdings of Zhejiang Province stipulates that "collective redemption may be carried out only when the liquidity of the village collective economic organization accounts for more than ten percent of the total assets and the average annual increase in operating income in the past three years reaches five percent or more." The redemption of shares of rural collective economic

organizations is only possible when economic conditions permit, and this provision helps to ensure the sustainability of the operation of rural collective economic organizations and prevent the withdrawal of equity in case of poor operation to accelerate the collapse of the collective economy in local areas. [17] However, for share redemptions caused by special circumstances such as major illness of collective members or death of all members in the household, the membership rights should be realized in time to solve the immediate need of members with money.

Second, the inspection period is not necessary to add infrastructure. During the bankruptcy of rural collective economic organizations, the revival of economic functions should be the primary condition, "Heilongjiang Province, the management of rural collective economic organizations," Article 30 also provides that "the development of the collective economy should be within the means, not illegal debt construction infrastructure or public service facilities. On the one hand, this period should provide sufficient preparation for the early resumption of normal economic functions of rural collective economic organizations and reduce unnecessary expenses; on the other hand, it can prevent the construction of public welfare facilities from becoming "bad projects" due to insufficient funds.

Acknowledgements

Research Innovation Fund Project of Anhui University of Finance and Economics (Project No. ACYC2022195).

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