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TITLE

[How can the creditor increase the degree of certainty and the effectiveness of the bankrupty proceedings in the Republic of Armenia]

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INTRODUCTION

Bankruptcy proceedings are an essential part of the capitalistic system. *From a law and economics perspective, the existence of insolvency law is justified insofar as it is necessary for ensuring orderly and efficient coordination and negotiations between the stakeholders in case of a debtor's economic or financial distress. The so-called "preventive" restructuring proceedings are no exception. They should, therefore, help identify and distinguish viable and non-viable businesses and facilitate the operational and financial restructuring of the former where an added value to the benefit of all the stakeholders is expected compared to their immediate liquidation.*[1]

Nowadays, bankruptcy has two general aims that should be balanced during the process, ***first of all,*** to help the person to overcome temporary financial difficulties and the ***second one*** to maximize the recovery rate for creditors.

In Armenia[2], corporations have to engage in bankruptcy proceedings against their will, due to the lack of a secondary debt market in the country.

The claims trading market allows creditors to exit their positions with a certain and quick cash payout, which is an enticing prospect given the uncertainty created by, and effort required to participate in and monitor, a bankruptcy case[3].

Undiversified small stakeholders can quickly opt-out of the bankruptcy process and receive the fair value of their claims provided the market for claims is sufficiently liquid."[4]

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[1] Rotaru, Vasile, The Restructuring Directive: A Functional Law and Economics Analysis from a French Law Perspective (September 30, 2019). Available at SRN: https://ssrn.com/abstract=3461716 or http://dx.doi.org/10.2139/ssrn.3461716 or https://blogs.harvard.edu/bankruptcyroundtable/2019/11/12/a-functional-law-and-economics-analysis-of-the-restructuring-directive-from-a-french-law-perspective/

[2] The Republic of Armenia

[3] Folkerth, supra note 59, at 731 ("Because stereotypical creditors, such as vendors or customary lenders (i.e., banks), extend credit to a company on the assumption that the credit will be paid back with interest, they never anticipate having to build 'their business model . . . around tying up capital in bankruptcy proceedings.' Accordingly, when a debtor corporation files for bankruptcy, most creditors are unprepared or unwilling to handle the bankruptcy process.") (quoting Douglas G. Baird & Robert K. Rasmussen, Antibankruptcy, 119 Yale L. J. 648, 660 (2010)).

[4] Douglas G. Baird & Robert K. Rasmussen, Antibankruptcy, 119 Yale L. J. 648, 660 (2010); see also Rasmussen
& Skeel, supra note 8, at 101 ("For some creditors, including many suppliers, the lengthy delay before receiving any
payment on their claims can be a significant hardship. The market for claims can provide a way for such creditors to
cash out their stake early on, rather than waiting until the case is finally resolved at some point in the future.")
(internal citations omitted).

For example, in the U.S. over the years, banks and other financial institutions have demonstrated an increased willingness and desire to exit distressed situations rather than simply staying the course until eventual distributions.[5]

A liquid, dynamic claims market allows risk to be shifted from sellers to purchasers more willing and potentially better able to shoulder the burden.[6]

Viewing the opposite side of the transaction, a claim purchaser obtains the opportunity to profit from an increase in trading prices or distributions from the bankruptcy estate, including potential distributions in the form of cash, debt, and equity.[7]

"Investors who purchase bankruptcy claims often hope to profit in one of three ways: (1) selling their claims within a short period for a profit; (2) exchanging their claims for debtors' more valuable assets; or (3) effectuating a reorganization plan in which debt is traded for equity in the company."[8]

The American Bankruptcy Institute's Commission on Consumer Bankruptcy report itself acknowledged many commentators assert that ". . . the possibility of an early exit and return for creditors increases liquidity overall in capital markets and allows a more forgiving investment environment.[9]

Unfortunately, Armenia does not have a secondary debt market, and in all cases, the creditor has to participate in complicated and costly proceedings. Otherwise, they will lose the opportunity of debt recovery, or even the opportunity to exclude the debt from the balance sheet.

Such a situation leads to the following result: more specialized market creditors, such as banks and other financial institutions, can represent their interests in bankruptcy proceedings. In contrast, other participants do not appear in the procedure because of unawareness or have to use expensive professional services without knowing even approximate results.

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[5] Rao, Jay D., Inequitable Subordination: Distressing Distressed Claims Purchasers by Propagating Subordination Benefit Elimination Theory (December 4, 2019). Available at SSRN: https://ssrn.com/abstract=3498106 or http://dx.doi.org/10.2139/ssrn.3498106

[6] Levitin, Finding Nemo, at 87 (". . . creditors who seek to escape the bankruptcy case with a certain payout can sell their claims against the debtor at a discount on the expected value of a payout at the end of a case and transfer the risk on the payout to parties interested in assuming the risk of an investment.").

[7] Rao, Jay D., Inequitable Subordination: Distressing Distressed Claims Purchasers by Propagating Subordination Benefit Elimination Theory (December 4, 2019). Available at SSRN: https://ssrn.com/abstract=3498106 or http://dx.doi.org/10.2139/ssrn.3498106

[8] See Aaron L. Hammer & Michael A. Brandess, Claims Trading: The Wild West of Chapter 11s, 29 Am. Bankr. Inst. J. 1, 1 (July/August 2010)

[9] Rao, Jay D., Inequitable Subordination: Distressing Distressed Claims Purchasers by Propagating Subordination Benefit Elimination Theory (December 4, 2019). Available at SSRN: https://ssrn.com/abstract=3498106 or http://dx.doi.org/10.2139/ssrn.3498106

On the other hand, banks and financial institutions are specialized in most common scenarios, and in most of the cases do not take active action when the issue is not connected with their security object.

Now we can say that in bankruptcy, we have low recovery rates, and proceedings are quite costly. This fact was already stated in the World Bank Group Doing Business reports each year[10], and potential investors can see these indicators as well.

Doing Business methodology studies the time, cost, and outcome of insolvency proceedings involving domestic entities as well as the strength of the legal framework applicable to judicial liquidation and reorganization proceedings. The recovery rate is calculated based on the time, cost, and outcome of bankruptcy proceedings in each economy.[11]

In this paper, we will try to present insight for creditors from the bankruptcy proceedings and show hidden risks that nowadays, bankruptcy procedure in Armenia has preserved for creditors. By showing the actual problems, we also will try to suggest solutions for them. We tried to find the answer to the following question "How can the creditor increase the degree of certainty in bankruptcy proceedings in the Republic of Armenia and enhance the effectiveness of that procedure?".

From the perspective of the creditors' effectiveness means decreasing the amount of wasted time and costs for creditors and increasing the recovery rate. Moreover, we will suggest solutions mainly for those aspects. In the first chapter, we will discuss the interactions of the creditors with the bankruptcy administrators and hidden problems that unaware creditors most probably will not distinguish, but the outcome of which will have adverse financial results for them.Then in the secondd chapter we will discuss the most commonsituations where the creditors has gap of information concerning the trial, which also has financial results for the freditors. In the third chapter, we will analyze the possible problems that creditors most probably will face in the stage of the debtors' assets sales. Moreover, with the help of the conclusion, we will make assumptions about the discussed issues and the possible solutions.

Literature review

While writing this Master's Paper, We have done some research and get acquainted with the Bankruptcy legislation of the Republic of Armenia, which includes the Law on Bankruptcy of the

[10] Doing Business, Rankings Select the region: Europe & Central Asia *avaliable at* https://www.doingbusiness.org/en/rankings?region=europe-and-central-asia
[11]Doung Business, Methodology, Resolving insolvency, available at https://www.doingbusiness.org/en/methodology/resolving-insolvency (last visited May 05 2020)

Republic of Armenia[12], Civil procedure code of R.A[13]. and compared it with legislations of other countries. In order to understand the attitudes of the other countries, we examined about twenty scientific researches about bankruptcy that are available at Harvard Law School Bankruptcy Roundtable[14] which promotes the dissemination of academic and practitioner views of current bankruptcy issues, via weekly posts targeting issues of interest, typically linking to a more extended analysis elsewhere c similar issues concepts. We also had hundreds of Bankruptcy cases to analyze due to our practical experience as a specialized attorney at law. Besides, we found lots of information on the official site of World Bank Group, electronic press, the official information platform of the trials in RA[15]

CHAPTER 1 Creditors' interactions with the Bankruptcy Administrators that have adverse financial outcomes for creditors.

Bankruptcy Administrators are tended to bring any recovery of the debt into insolvency proceeding in order to make extra profit.

Bankruptcy Administrator *(in the future B.A.)* has to collect all the estate of the debtor into Bankruptcy proceeding and distribute the income gettered from it fairly among the creditors. Then B.A. has the right to receive his income in a percentage from the amount of the recovery. Today's practice has shown that B.A. does not carry as much for the debt recovery as for his income. There are many cases where a third party or guarantee voluntary recovered the debt directly to the creditor. B.A. applied to the court and tried to impose creditors to send the received money to the exclusive bankruptcy account.

For such claims jurisdiction, we have two general rules. ***Firstly*** according to the "Civil procedural code" of R.A., claims should be brought to that court of the first instance general jurisdiction where the respondent is registered[16]. ***Then*** the 4-the article of the "Law on Bankruptcy" of the Republic of Armenia states that all the cases where the debtor is acting as a respondent or the third party that acts in the side of the respondent should be examined in the same bankruptcy proceeding.

Bankruptcy court of RA has a tendency not to go much into details and approve such claims[17], and the B.A. uses a legal trick to bring the case into the Bankruptcy court of RA in order to enjoy that benefit. B.A.'s artificially create a collision between these two rules by merely adding the debtors'

[12] "Law on Bankruptcy", HO-51-N (՛Սնանկության մասին՝ ՀՀ օրենք, ՀՕ-51-Ն)
[13] The Civil procedure code of the Republic of Armenia, HO-110-N, ratificatified Feb. 27 2018, entred into force Apr.09 2018
[14] *Available at* http://blogs.harvard.edu/bankruptcyroundtable/ (last visited May 11, 2020)
[15] *Available at* datalex.am (last visited May 11, 2020)
[16] Article 21 of the ''The Civil procedure code'' of RA
[17] See *Levon Metsikyan's Bankruptcy Adminstrator Henrik Martikyan v. 'Armbusinessbank'' CJSC, wis* SND/0092/02/19 ' Mar. 10 2020

name to the respondents or third parties list in their failings and bring into action another general rule which states that in cases where there is a procedural rule collision with "Civil procedural code," Bankruptcy rules have priority[18]. In such cases, B.A. usually brings to the court the legal services agreements, which allow them to get another approximately $600 for their attorney from the creditor.

With this solution bankruptcy administrators get their remuneration, the amount of satisfaction decreases without having any legal ground.

B.A.'s legal trick violates the right to a fair trial for guarantees and third parties because Bankruptcy courts are not equivalently accessible for them as their local courts would be. This act does not serve any other aim than B.A.'s income maximization because no one has the right to get the money from the guarantee except secured creditor, that is why the legal rights of other creditors or debtors are not attached. What concerns the cases when the third party recovered the debt directly to creditor, we cannot even imagine why that money should be included to the bankruptcy estate, because that party does not have any obligation to recover the debt. His/her money is not part of the Bankruptcy estate because it is a voluntary act.

Fortunately, the Appellate Civil Court of R.A. ruled that guarantee has the right to satisfy the secured creditor's claim outside the bankruptcy procedure[19]. However, we do not have the same for the third party direct satisfaction cases, but this ruling can be a useful tool to protect creditors in that situation's rights as well.

In such cases, we can see the examples where B.A. ignores the rights of the creditors, guarantees, and creditors, and in order to make extra profit waste the resources of the Bankruptcy estate.

For this kind of problem, we suggest the creditors appeal the decisions of the Bankruptcy Court of RA, because the attitude of the Civil court of appeal of RA differs, and it is in favor of the creditors.

Bankruptcy Administrators use tricks in order to get their revenue with the highest rates of regressive remuneration system.

The main problem is under Article 30 of the Law on Bankruptcy, which provides a regressive percentage for remuneration for B.A. For example, B.A. satisfies debts under 25 million AMD, B.A. receives a 10 percent commission. However, in the case of higher amounts, the commission gets lower. For example, the B.A. was supposed to get a higher commission for the first distributions and lower for subsequent.

The Cassation court of R.A. made the decision[20] that will affect the financial interests of Creditors and Debtors. According to the Cassation court's decision, the B.A. is free to distribute collected money in amounts that he/she can choose arbitrarily, and creditors have no right to influence that process and enforce the B.A. to allocate money in other amounts.

[18] Part 2, Article 1, "Bankruptcy Law'' of RA
[19] See *State revenue commetee v. Hayk Hakoyan LLC*, Case no AVD/0108/04/16, Dec. 14 2018
[20] See State revenue commetee v. Rimk Avto LLC, Case no. EADD/0100/04/17, Feb. 25 2020 decission

Furthermore, creditors have no right to affect that process. B.A. is free to choose the specific amount of money that he/she wants to distribute, which means that, for example, 250,000,000 AMD can be distributed through ten different distribution programs within ten days. The B.A. will get ten percent from each distribution, rather than the lower percentage that he/she would get if he/she distributes the same money through one distribution program.

Worth to mention that the President of the Civil court of appeal Arsen Mkrtchian and four judges of the Cassation Court of RA (Ed.Sedrakyan, S. Antonyan, A. Barsegyan, and T. Petrosyan) have expressed the descending opinions where they stated. *'When deciding the amount of a B.A.'s remuneration, the whole process should be taken into account, not an independently taken distribution program.'*

A possible solution in such cases is to apply to The Constitutional court of RA because the interpretation of the law by the Court of cassation violates the property rights of the creditors. Furthermore, this interpretation is unbalanced from the perspective of the creditors, and they do not have the rights to participate in the decision-making process in funds allocation. The creditors are deprived of the right to enjoy effective remedies in the trial, which is stipulated in the Constitution of the Republic of Armenia.[21]

The next solution is the legislative amendment which will stipulate the balancing mechanisms for the creditors in the decision-making process and the clear stipulation of the rule which will state that '*When deciding the amount of a B.A.'s remuneration, the whole process should be taken into account, not an independently taken distribution program.'*

Speculative interpretation of the law allows Bankruptcy Administrators to receive 5 percent of the starting price of the security object without regarding the fact that the value of that object can be decreased multiple times during the auctions.

Part 9 of Article 43 'Law on Bankruptcy' of R.A. states that a secured creditor has the right to receive the security object when the evaluated price or the starting price of the object in for the upcoming auction is equal or lower the registered claim of that creditor. Then the rule states that in order to get the security object, the creditor has to make an advanced payment to B.A., which will include the 5 percent of the price of the object as the remuneration of the B.A. and coverage of the costs, that are related to maintenance and transfer of property.

In this situation, B.A. speculatively interprets the word "price" and insists that the price is the initial evaluation amount of money. It is not important how much the price has decreased because of the auctions.

[21] Part 1, Article 61 of the Constitution of the Republic of Armenia, *''Everyone shall have the right to effective judicial protection of his or her rights and freedoms'', available at* https://www.president.am/en/constitution-2015/

Unfortunately, the interpretation mentioned above was prevailing all the time, and the Bankruptcy Court of RA agree with it. The interpretation was reapproved by the Appellate Civil Court as well. However, we found one contradictive decision form the Appellate Civil Court and the case where the creditor brought the cassation appeal with the grounding that there is no common judicial practice concerning the issue.

The Cassation court of R.A. decided to start the examination of the appeal on Sept. 9, 2019[22] but did not make a final decision yet.

This problem should be divided into two parts because there can be two possible scenarios depending on the issue of when does the particular case has started. First, if the case has started before Apr. 15 2020 the creditor has to bring the appeal and insist on the same grounds that have already done the creditor in the case that we had mentioned above. Second, if the case has started after Apr. 15 2020 the new regulations[23] that protect the creditors' rights.

According to the amended part 9, article 43 " If the starting price of the subject of the secured right is equal to or less than the amount of the secured creditor's claim, then the creditor included in the list of creditors has the right to receive the object of the secured right in his favor or in part by the court decision. Maintenance and transfer costs, as well as the Bas' remuneration - three percent of **the starting price of the subject of the secured right**, but not more than 10 000 of the minimum wage[24] should be covered by the secured creditor'.

Although the RA Court of Cassation has not yet made a decision[25], the logic of changing the law still makes us think that the decision will repeat the logic of the changed law. If the opposite happens, good reason will be created for an appeal to the RA Constitutional Court; therefore, to file a complaint in cases initiated before Apr.15 2020 is the right decision for the secured creditor.

Bankruptcy Administrators managed to skip an essential part of the procedure, which allows them to get high administrative costs and remunerations quickly, but riskier for Creditors.

Money distribution processual rules are described in article 80 of the Law on Bankruptcy. The general rule states that the creditor's "claims" should be satisfied through the distribution program.

The debtor's assets shall be distributed among nonsecured creditors. However, the remuneration of the Bankruptcy Administrator and administrative bankruptcy expenses have priority

[22] According to official reports The Court of Cassation of the RA takes into the montion only 1,5-2% of the appeals.
[23] The Law on making changes and additions in the Law on Bankruptcy of the Republic of Armenia, No. HO-294-N, ratified Dec. 12, 2019, came into force Apr.15, 2020.
[24] Armenian dram is the monetary unit of RA, According to the law "On Minimal Wage" of RA the minimal wage for the purpose of calculations is 1000 Armenian drams.
[25] *'Armbusinessbank'' CJSC v. PE Gharib Harutyunyan*, Case No. EADD/0018/04/16

among obligations to employees, including wages, medical and disability subsidies, pension contributions, and other compensations as required under the law, tax obligations, and other unsecured debts.[26]

Bankruptcy Administrators include all the administrative costs and their remuneration into the distribution plan with other claim satisfaction and get their money simultaneously with claim satisfactions.

At first glance, it is entirely justified. However, when we go deep into the problem and see what happens, we can see that the rights of the creditors are violated because, in practice, creditors cannot get their satisfaction until anybody brought an objection to the plan.

The trick is obvious. If the creditor is not agreed with some expenses even if it is unjust or groundless $2, he would not be able to receive his satisfaction or part of it because the law clearly states that distribution is possible whether there is no objection against it, or there is a final decision of the court that resolved the dispute started with objection.

Bankruptcy Administrators included their remuneration and administrative costs coverage into a much more convenient field where each creditor knows that simple objection will extend his/her claim satisfaction time for months or even years. Now we can bring the justification that explains why we consider this as a trick, and it is against the law.

Administrative costs. B.A.'s administrative costs cannot be included in the distribution program because article 82 clearly states that the article prescribes the way of satisfaction of the "claims." As we know, in order to be considered as a "claim" the written demand should pass a lot of procedural steps, it should be filed to the court with all the justifications and grounds, the evidence should be attached to it, other participants of the case should be granted the right to bring an objection, and after the court decision, it can be registered and be considered as a "claim".

Only after the registration, the demand becomes a "claim" and can enjoy the benefits that are connected with the status of the claim. Thus, as far as administrative costs did not pass described steps it is only demand and has no right to be satisfied under article 82 regulation. All the other claims have been granted the right to be satisfied because their amount and grounds are already examined and approved by the court. Administrative costs, unlike other claims, were not approved, evidenced, and the process of objection under Article 80 is not sufficient because it allows discussing only issues that are connected with the claim's satisfaction hierarchy and percentage.

For example, in the United States of America, section 502 of the Bankruptcy Code of the U.S.[27] sets forth procedures to govern the allowance or disallowance of a "claim or interest" in a bankruptcy

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[26] http://blogs.harvard.edu/bankruptcyroundtable/files/2020/03/China-Restructuring-for-BRT.pdf

[27] Glossary of legal terms that are used in cases filed under the Bankruptcy Code available at http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/glossary.html (last visited May 10 2020)

case. Section 502(a) provides that a claim or interest, proof of which is filed with the court, "is deemed allowed," unless a party in interest objects. *See Trustees of Operating Engineers Local 324 Pension Fund v. Bourdow Contracting Inc.*, 919 F.3d 368 (6th Cor. 2019).[28]

Under current practice, if the BA included in the distribution plan $20,000 as a property maintenance sum and showed the contract with the person, the creditors have no right to discuss and object on the grounds of reasonability, because courts will conclude that amount is grounded. After all, the contract clearly states $20,000. There is a Cassation court decision on the issue where creditors have deprived the right to object the reasonability of the sum, and a simple contract was considered as absolute ground.

Bankruptcy Administrator's remuneration. Bankruptcy Administrators' remuneration also cannot be included in the distribution plan with a little bit of different logic. Part 3, Article 30, of Law on Bankruptcy states that the remuneration of the Bankruptcy administrator should be stated by the court's decision.

As we already know, the distribution plan can be approved by the court decision only if there is an objection against it; without objection, there cannot be a court decision. Nevertheless, the law states that court decision is mandatory for the remuneration of B.A.

The B.A. has no right to include his remuneration into the distribution plan because the basis of calculating his remuneration is a specific percentage that should be applied to the "satisfied claim amount." That means that claim satisfaction precedes remuneration in the time.

Why is the court decision so important to creditors?

Under Article 1 of the Law on Bankruptcy of the Republic of Armenia, bankruptcy proceedings are conducted under the Civil Procedure Code of the Republic of Armenia, the Judicial Code of the Republic of Armenia, and in the manner established by The Law on Bankruptcy of RA.

If the Law on Bankruptcy of RA defines other rules than the Civil Procedure Code of the Republic of Armenia, the investigation of the bankruptcy case shall be carried out under the rules established by this law.

The Law on Bankruptcy of the Republic of Armenia does not regulate the criteria presented for the court decision, so they should be sought in the Code of Civil Procedure of the Republic of Armenia.

[28] Jones Day, Home, Insights, Presumption Of Filed Claim's Validity And Amount Does Not Apply In Proceeding To Determine Secured Amount Of Claim, *available at* https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/ (last visited, May 10,2020)

According to Article 199 of the RA Civil Procedure Code, 1. The court of the first instance makes decisions by a separate act, which: 1) are subject to appeal; 2) are held outside the court session; 3) according to this Code, must be made by a separate act.

The next step is to understand whether the simultaneous availability of all of the conditions listed in Article 199 is mandatory, or whether each of them is sufficient in itself.

In particular, according to Part 6 of Article 17 of the R.A. Law on Normative Legal Acts, if the application of the norm mentioned in the normative legal act is conditioned by the conditions divided by separate points, these points are not separated by a comma or "and" or With a "or" link, the existence of **at least one of the conditions is sufficient for the application** of this norm unless otherwise provided by the content of the given norm.

Thus, taking into account that the application of the norm mentioned in the normative legal act is conditioned by the conditions divided by separate points, and the fact that those points are not separated by a comma "or "and" our "or" connection, it can be concluded that due to being out of court, it must be done in the form of a separate act.

The Bankruptcy administrator does not have the right to include the amount of his / her remuneration in the distribution plan. However, after the claims satisfaction, he/she must apply to the court to receive a decision defining the amount of his / her remuneration in the form of a separate act.

As for the possible concern that the B.A. may not receive other funds after the distribution, it is pointless, as this cost and distribution can be taken into account when making the distribution, leaving the necessary and sufficient funds in advance to the exclusive account.

Bankruptcy Administrator knows that if he/she keeps the procedure in any case when applying to the court for a remuneration claim, the B.A. will have to show how much the creditors' claims are satisfied for the day of filing the claim. The court will determine the amount of the B.A.'s remuneration, according to article 30.

A complete phase of the bankruptcy proceedings has been bypassed in this case, and the legal remuneration of the Bankruptcy Administrator has been included in the interim distribution plan. At the same time, it is an independent operation, which is even chronologically separate and must follow the interim distribution plan.

Going beyond the possible argument that signing a sealing the intermediate distribution plan by a court under Article 80 of the Law on Bankruptcy of the Republic of Armenia can be classified as a decision in the form of a separate act of the court, we consider it necessary to mention:

According to Article 200 of the RA Civil Procedure Code, the decision of the Court of First Instance made by a separate act must include: 1) the name of the Court of First Instance, the composition of the court, the case number, the year, month, date of the decision, the subject of the claim, 2) Name (s) of the persons participating in the case, 3) the issue on which the decision is made, 4) the grounds on

which the court has referred to the retrospective, other legal acts of the laws, 5) the conclusion on the issue under discussion, 6) the procedure for appealing the decision; if it is subject to appeal, and if the decision is not subject to appeal, the point of it.

The above criteria give high standards of the reasoned judicial act, which means that only the marking of "not being objected to" and stamped by the court cannot be interpreted as a decision that has high standards described in Article 200 of the RA Civil Procedure Code.

Worth to mention that, in China, the administrative expenses and debts of common interests are not mentioned in the creditor classification; thus are likely to be pay-as-you-go. [29]

Thus, in practice courts did not apply Articles 199, 200 of the RA Civil Procedure Code and misinterpreted Part 3 of Article 30 of the R.A. Law on Bankruptcy, finding that without a separate judicial act it is possible to allow the Bankruptcy Administrator's remuneration to be included in the interim in the distribution plan.

Concerning this issue, we can suggest the following possible solution. The law should be amended, and the effective mechanism should be added for case participants to object to administrative expenses or creditors should be granted the right to approve the budget of expenses in advance. There should be stipulated by law that the administrative costs and BAs' remuneration system not be constructed in a way where the creditor is unwilling to object because it will prolong his/her claim satisfaction for months or even years.

Current regulation and practice severely violate the rights of creditors to a fair trial and effective remedies, as well as the right to property.

Bankruptcy administrators usually do not accomplish inventory of the property of the debtor, evaluate the property, and to make an analysis of the financial situation of the debtor in time or fully.

According to Article 56 of the Law on Bankruptcy of RA, within 30 days after the judgment on declaring the debtor bankrupt comes into force, the Bankruptcy Administrator shall carry out an inventory of the debtor's property.

According to Part 2 of the same article, the inventory must include all the property belonging to the debtor, including the work done and unrecognized work and services for third parties, as well as the items under the debtor's possession. The inventory documents indicate the book value of the property at the time of the inventory (if known).

[29] Xiao Ma, China Continues to Issue New Rules Promoting Corporate Rescue Culture, Facilitation of Bankruptcy Proceedings, *available at* http://blogs.harvard.edu/bankruptcyroundtable/files/2020/03/China-Restructuring-for-BRT.pdf

According to Article 58 of the Law on Bankruptcy of RA, within 35 days after the debtor is declared bankrupt, the Bankruptcy Administrator submits to the court the analysis of the debtor's financial situation. If the debtor's activities are multifaceted and have large volumes or for other good reasons, the court may extend the financial analysis period to a reasonable time.

The analysis of the debtor's financial situation should contain information:

A) on the reasons for bankruptcy, including the existence of false or intentional bankruptcy features

B) on the reimbursement of court expenses and the adequacy of the debtor's funds for the remuneration of the B.A.

C) on the possibilities of restoring the debtor's solvency;

D) on the possibility of collecting the debtor's receivables

E) on disputed transactions concluded with the debtor.

According to Article 19, Part 1, Clause b of the law, after the judgment on declaring the debtor bankrupt enters into force, the court shall:

Immediately decide the time and place of the first meeting of the creditor. The first meeting of creditors is scheduled for bankruptcy at http://www.azdarar.am on the official website of the Public Notices of the Republic of Armenia, not later than 80 days from the date of publication and not earlier than 50 days[30].

As we can assume the first meeting of the creditors, must take place no earlier than 50 days and no later than 80 days later after the judgment announcement, and inventory should be accomplished within 30 days after the judgment, submission of the analyzes should be within 35 days after the judgment.

The only exception is when the debtor's activities are multifaceted and have large volumes or other respectable reasons. In the last mentioned situation the court may postpone the submission of financial analysis for a reasonable period. It should be noted that only the court can extend the 35 days limit and only with the grounds that are described by the law.

From the accurate and systematic analysis of the cited norms, the sequential logic of the norms, it follows that when the meeting of creditors is scheduled, there should already be an inventory of the property and an analysis of the debtor's financial condition.

[30] After Apr. 15, 2020 the rule has been changed as follows *'' The decision to approve the final list of claims sets the time and place of the first meeting of creditors. The first meeting of creditors is scheduled no later than 40 days after the decision to approve the final list of claims, and no earlier than 30 days''.*

Such a chronology is logical, in line with the principles of bankruptcy proceedings, and its objectives.

The logic is that the purpose of the first meeting of creditors is not only to distribute votes, but also to discuss the possible strategies of the satisfaction of creditors' claims, to develop the necessary tactics, decide wether the debtor has a potential to be financialy recovered, or not. The main precondition for all this to be done is the existence of the inventory and financial situation analize.

It follows from the above analysis that during the first meeting of creditors, the B.A. must have already carried out an inventory of the debtor's property, its evaluation, and analysis of the financial situation.

Unfortunately, judicial practice shows the opposite the Civil Court of Appeal stated that the Bankruptcy Administrator does not need to comply with the time limits because as far as bankruptcy proceedings continue, creditor's rights are not violated. According to the Civil Court of Appeal the inventory was not carried out, as the inventory can be carried out only if properties are belonging to the debtor in the objective reality, and he considered that there is no property in the name of the debtor.[31]

We think that such a position is unfounded, unsubstantiated and unreasonable, as it follows from simple logic that if a person has not made complete inquiries about the existence of the debtor's property, he cannot have complete information about the absence of property, which means that no one can conclude, that the debtor does not have property. Unless there is no full inquiry, it is impossible to conclude that the debtor has no property.

Besides, the Court of Appeal concluded. "*If the B.A. does not submit the analysis within the 35 days prescribed by law, the existence of this fact cannot in itself lead to the B.A.'s inactivity being recognized as illegal"*.

This interpretation and implementation of the rule put creditors under the superpower of the B.A., who can carry out inventory, evaluation, and financial analysis whenever he/she wants and time limitations prescribed by law are not binding for them.

Worth to mention that we found a contradictory decision by the same the Civil Court of Appeal, which at this time stated. *"Article 29 (1) of the Law on Bankruptcy of the Republic of Armenia, as well as some other articles of the same law, regulate both the terms of fulfillment of powers and enshrine in the legislative guarantees for the exercise of those powers of B.A. In bankruptcy proceedings, the B.A. acts as an entity balancing the interests of the debtor and the creditors. In case of non-fulfillment or improper fulfillment of its powers by the B.A., participants themselves*

[31] *See Arthur Khachatryan*, voluntary bankruptcy application, Case no. SND/0775/04/19, The Civil Court of Appeal, Dec. 05, 2019, decission

involuntarily restrained from exercising rights under the law. As a result, we have distortions in full bankruptcy proceedings".[32]

If there is no inventory act, no financial analysis, all the necessary and sufficient inquiries have not been made, creditors cannot decide, for example, to approve or submit a financial recovery plan or not, to complete the case in the absence of the debtor's property, and so on.

The right of the creditor to demand the performance of such actions complies with the powers and responsibilities specified by the law for the B.A. However, the Civil Court of Appeal in the first scenario assumed that there is no violation of the creditors' rights.

Thus, there is a need for a uniform interpretation of the law for this issue as well because practice shows that B.A.s do not carry out their duties promptly.

Part 1 of article 32 before Apr. 15, 2020, had the following rule. *"The judge, on his or her initiative, at the request of the meeting of the creditors or the debtor, must terminate the BAs' powers prematurely if he or she fails to perform his or her duties properly under this law."*

After the last changes that came into force Apr. 15, 2020, the Bas' was granted more freedom, because now part 1, of the article 32 of the Law on Bankruptcy stipulates that 'The court, on its initiative, with the application of the Board of Creditors, Creditors meeting, the creditor or the debtor, terminates the term of office of the BA prematurely, if the latter does not fulfill or improperly fulfills his / her powers defined by this Law."

At first glance, it may seem that the amendment has a technical nature, but there is another addition to the article. Now there is part 2 of the same article, which states the following *"Before deciding to terminate the powers of a BA on the grounds of non-fulfillment or improper fulfillment of his /her duties by a BA, the court shall notify the BA. Within three days after receiving the notification, BA has the right to submit his position and if it is possible to eliminate these violations. In case of termination of the violations by the BA within the established period and presenting relevant evidence to the court, BAs' powers shall not be terminated prematurely".*

This new regulation has not been tested in practice, but we know for sure that courts were not inclined to apply the previous more severe and categoric rule. Moreover, the result of that attitude is the irresponsible behavior of BAs' that we now have in practice.

[32] *See State revenue commetee of RA v. Tigran 96 LLC,* Case no. EADD/0189/04/16, Jul. 25, 2019 decission of the Civil Court of Appeal of RA

Bankruptcy Administrators usually exclude secured creditors from the list of stakeholders in interim distribution plans during the allocation of funds that are not connected with that security object.

Part 6 of the Article 43 of the Law on Bankruptcy states that the secured creditor included in the list of creditors may not participate in the distribution of the proceeds from the sale of the object of the unsecured right due to his debtor's obligation until the sale of the object of the secured right as long as the current value of the secured object (estimated value or starting price of auctions) is equal or higher than the claim amount is. If the value of the object of the secured right (starting price) decreases by the amount of the secured claim during the sale by public bargaining or loss of property (destruction, theft) or damage, then the secured creditor acquires the right to vote by the amount of secured claim and property value difference.

The Bankruptcy Law creates a rebuttable presumption that a proof of claim is prima facie evidence of the claim's validity and amount. U.S. courts disagree, however, over whether that presumption also applies in a proceeding to determine the secured amount of the creditor's claim. The U.S. Bankruptcy Court for the Eastern District of California weighed in on this issue in *In re Bassett*, 2019 WL 993302 (Bankr. E.D. Cal. Feb. 26, 2019). The court broadened the divide in the debate by holding that the presumption that a filed claim is valid does not create a presumption that the claim is secured to the extent specified in a proof of claim[33].

Noting that the issues "appear[] to be a matter of some debate," the bankruptcy court ruled that the evidentiary presumption of a claim's validity does not extend to the value of the collateral to determine the secured amount of the claim. These processes, the bankruptcy court wrote, "are separate and distinct." It explained that the former establishes the existence of a debt and entitlement to payment. In contrast, the latter determines how the established debt is to be paid and treated under the Bankruptcy Code. The court accordingly held that the evidentiary presumption of Bankruptcy Rule 3001(f) does not apply to a motion to value collateral under section 506(a) "because that presumption is limited to the claims allowance process and within that process applies only to the 'validity' and *unbifurcated* claim 'amount' as stated in the plain language of the rule.[34]"

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[33] Jones Day, Home, Insights, Presumption Of Filed Claim's Validity And Amount Does Not Apply In Proceeding To Determine Secured Amount Of Claim, *available at* https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/ (last visited, May 10,2020)

[34] Jones Day, Home, Insights, Presumption Of Filed Claim's Validity And Amount Does Not Apply In Proceeding To Determine Secured Amount Of Claim, *available at* https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/ (last visited, May 10,2020)

https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/

According to the bankruptcy court of the U.S., this approach: (i) preserves the court's fact-finding function in the valuation process; (ii) avoids delays in the plan confirmation process in cases where a proof of claim is not timely (or is never) filed; and (iii) eliminates the possibility that a secured creditor might attempt to extract more from a debtor based on an unrealistic value of the collateral.[35]

Section 506(a)(2) of the Bankruptcy Code of the U.S. governs the valuation of the personal property securing a claim in chapter 7 or chapter 13 case involving an individual debtor. The value of such property "shall be determined based on the replacement value of such property," which is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined. [36]"

Bankruptcy Rule 3012 establishes a procedure for asking the bankruptcy court to determine the amount of a secured claim under section 506(a).

The extent to which a claim is secured or unsecured is determined under section 506(a) of the Bankruptcy Code. Section 506(a)(1) provides that a claim is "a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property … Furthermore, it is an unsecured claim to the extent that the value of such creditor's interest is less than the amount of such allowed claim." The provision goes on to mandate that "[s]uch value shall be determined in light of the purpose of the valuation and the proposed disposition or use of such property."[37]

Valuation is a critical and indispensable part of the bankruptcy process. How collateral and other estate assets are valued will determine a wide range of issues, from a secured creditor's right to adequate protection.

In Armenia, w have a similar unresolved situation where B.A. only relying on the fact that the creditors claim is secured them form the allocations list and tries to satisfy only unsecured claims. In most of the times, allocations take place even early stages of the case when security object is not evaluated at all.

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[35] https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/

[36] Jones Day, Home, Insights, Presumption Of Filed Claim's Validity And Amount Does Not Apply In Proceeding To Determine Secured Amount Of Claim, *available at* https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/ (last visited, May 10,2020)

[37] Jones Day, Home, Insights, Presumption Of Filed Claim's Validity And Amount Does Not Apply In Proceeding To Determine Secured Amount Of Claim, *available at* https://www.jonesday.com/en/insights/2019/09/presumption-of-filed-claims-validity, also https://blogs.harvard.edu/bankruptcyroundtable/2019/11/19/presumption-of-filed-claims-validity-and-amount-does-not-apply-in-proceeding-to-determine-secured-amount-of-claim/ (last visited, May 10,2020)

If one is a secured creditor he/she has to pay attention to any allocations and do not let the B.A. to allocate money until the evaluation is carried out correctly, after that if she/he finds out that the value of the object is not equal or less than her/his claim is he/she should object to the distribution program and demand to include his/her in the list in that amount that the security objects price less than his/her claim is.

The same scenario can be applied in the guarantees` case as well. Until the B.A. has not evaluated the guarantees` property and did not determine creditors' potential satisfaction amount, the secured creditor should not let to distribute the funds between unsecured creditors.

Most B.A.s` in Armenia and the Bankruptcy Court of RA think that the decision on approving the claim determines the amount of the claims secured portion. However, we think that the claims register is a living document that can be changed if the value of the security objects is decreased. And the unsecured portion of the claim should be determined at the specific moment taking into account the current value of the security object.

In order to avoid misinterpretation, we suggest to amend the law and stipulate that the unsecured portion of the claim should be determined at the specific moment taking into account the current value of the security object and the BA is under obligation to keep updated calculations.

CHAPTER 2: Bankruptcy Administrators are not inclined to be supervised bu the creditors or act transparently.

There are no balanced regulations concerning B.A.'s obligation to hold the creditors' meeting by the demand of the creditors.

Article 35 of the Law on Bankruptcy of the Republic of Armenia states that" The meeting of the creditors can be organized by the B.A. on his initiative or at the request of a creditor (creditors) with more than 5% of the vote. At the initiative of the creditor, the meeting can be organized if the creditor pays the expenses of the organization and conducting the meeting. The B.A. shall organize the meeting at the request of the creditor (creditors) no later than two weeks after receiving the request for holding the meeting.

The creditor (creditors) requesting the holding of the meeting shall be obliged to reimburse the expenses of the meeting held at his request no later than one week after the submission of the meeting request, according to the budget submitted by the B.A. The unused funds at the request of the creditor (creditors) shall be returned to the creditor (creditors) within three days from the end of the meeting".

The creditors' meeting is a specific tool for creditors to empower their right to supervise the B.A.'s actions, but in practice, we have this scenario in one of the cases[38].

[38] 'Armbusinessbank'' CJSC v. Susanna Tonoyan, Case No. SHD1/0053/04/17 Oct. 02 2019

Creditors submitted the request, but B.A. submitted the unreasonably big budget for that meeting and pointed out the location for the meeting that is 200 km away from the Yerevan and the Bankruptcy court of RA.

According to current regulations, creditors do not have the right to balance such ultimatums. This time also, the regulation puts creditors under the superpower of the B.A.

Because the law did not grant creditors the right to bring the objection against budget and location, creditors tried to bring appellation against B.A., insisting that he did not fulfill his obligations.

The bankruptcy court of RA denied the appeal. Then the Court of Appeal of R.A. stated that there is no violation of the creditor's rights because the law allows the B.A. to return the money that was not used in the organization procedure[39].

There should be clear criteria by which the B.A. should plan the organization of the meeting. Absolute freedom of the B.A. should not be allowed, and as with the same success, the B.A. can be licensed in the Republic of Armenia, then carry out his activity in New York. The participation of any meeting will be an apparent disproportionate burden for the creditors.

We think that the B.A.'s activity is a specific kind of business activity, and each year they voluntarily choose the locations from where they want to receive the cases. If the B.A. had asked to include him/her in the distribution lists of the region, he/she must take the business risk of not justifying the expenses.

As for the possible solution, we can suggest the legislative amendment, which will stipulate the effective mechanisms for objection and minimal requirements for the meeting.

Bankruptcy Administrators do not tend to make exclusive accounts' transactions transparent to creditors.

B.A.s usually put an excessive amount of administrative costs in the distribution program, which in many cases end with disputes that last months or years. There are rumors[40] that during the last-mentioned months (years) period, BA usually takes the money from the exclusive account and puts them into circulation; in some cases, they put money into their savings accounts, give deposits to the banks and receive interests.

In the scenario when there is no objection, BA gets extra money, which in some cases can be more than thousands of dollars. The second scenario**,** if the distribution funds are enough large B.A., intentionally brings all kinds of applications and uses all the tricks to postpone the dispute resolution.

[39] ''Armbusinessbank'' CJSC v. Susanna Tonoyan, Case No. SHD1/0053/04/17 Oct. 02 2019

[40] we use term ''rummors'' because still there is no judical act that stated the crime and presumption of innocence prevails

Already in two significant cases, we have noticed this problem, where the creditor did not manage to receive its $110,000 for about 1,5 years [41]and the second one $230,000 for about a year, but endless disputes continue[42].

When we tried to figure is there a possible way for the creditor to supervise the exclusive account transactions, we realized that, according to the law, creditors do not have enough rights.

Regulations that somehow resembles the situation are prescribed in Article 38, Part 1 of the Law on Bankruptcy of the Republic of Armenia, according to which the Board of Creditors (from now on referred to as the Board) represents the interests of creditors and exercises control over the activities of the B.A. under the procedure established by this law.

According to paragraph 4 (a) of the same article, the Board has the right to request information from the B.A. on the debtor's financial condition and bankruptcy proceedings.

The first problem with this right is that there is no precise regulation how the Board can request that information, is it mandatory to have a meeting or the Board can authorize one person to do such administrative things. If the meeting is mandatory, then B.A. will probably try to fail its organization with an above-described trick with an excessive budget and unreasonable location submission.

By relying upon the rules, as mentioned above, creditors requested the bank statement of the account for the whole time from the BA. However, B.A. did not even answer the request, justifying that there are no specific rules that will describe the time limit for its providing to the sole creditor. What concerns the statement BA justified his actions that if we need information about the financial condition, he will provide his calculations, but the law does not oblige him to provide the bank statement at all.

We think that each creditor should have a right to request the information from the B.A. on the debtor's financial condition and bankruptcy proceedings. Moreover, the B.A. should be obliged to provide the statement of the exclusive account within one-two days, or even open the account in a way which will provide creditors sufficient tools to monitor it online[43].

Now we think that there is a potential risk. There is a chance that B.A.s can use money from exclusive accounts for their purpose, and with the help of the funds from another debtors' account, they can refill the account at a critical moment.

This kind of scenario is full of undesirable consequences for everyone, because, in such a way, B.A. uses a pyramid scheme that can go out of control any time abusing rights of creditors, shareholders, and other stakeholders.

[41] Yerevan Municipality v. Vardan Hovhannisyan wis. EKD/0126/04/15
[42] Arthur Shahinyan v. Delta-Armenia LLC, wis EAQD/0112/04/14
[43] Banks in the Republic of Armenia have such services which in some cases are totally free.

We think that the extensive audit should be carried with all of the B.A.'s, and only after it we can have a firm ground to make steps going forward.

Bankruptcy Administrators manage the exclusive account funds without the supervision of the creditors.

In one of the cases, there were collected about $120,000 in the exclusive account[44]. Furthermore, the B.A. submitted a distribution plan with significant administrative expenses, and the sole creditor made a business judgment to bring an objection clearly understanding that because of the disputed money will stay on the account for months or even years.

In order to mitigate losses, the creditor had found the company which was open to receive the money as a loan with an interest rate of 1.5 percent per month. The last company was also able to bring the Bank guarantee letter. In that case, there were almost no risks for the transaction. The creditor also suggested the BA to transfer the money from a regular account to a savings account with an interest rate of 5% per year in the same bank were the exclusive account was opened bu the BA.

In the case when there is an objection, we have funds that consist of three parts 1. The funds that the creditor will receive after the dispute resolution in any case (untouchable sum for the creditor). 2. The funds that the BA will receive after the dispute resolution in any case (untouchable sum for the BA). 3. The sum of the funds that are under dispute and depended on the resolution can go to either of the parties.

Creditor suggested the B.A. transfer its' untouchable sum to the savings account or to lend it with the interests, but BA did not agree. The creditor requested a creditor's meeting and asked to add the following discussion to the agenda '*Deciding on the management of funds in the special account during the examination of the dispute over the distribution program.'*

In this case, B.A. organized the meeting. However, when BA understood the real intention of the creditor, he excluded the discussion from the list. BA closed the meeting justifying that creditors and even the creditors' meeting do not have a right to manage the funds.

There were not any risks in that case, but B.A. preferred to leave the $120,000 to stay in the account for months untouchable rather than even to change the account to saving or deposit one in the same bank, which is not a rational business decision from his side.

We also understand that the funds and long term trials are some kinds of pressure that BA uses to employ on the creditors and get the extra portion of funds through huge administrative expenses and their remuneration.

[44] State revenue commetee v. Rimk Avto LLC, Case No. EADD/0100/04/17

This kind of behavior shows that there were no minimal business judgments in this situation, or there are secret processes from the side of BA that contain risks for everybody, and that processes act as a time bomb.

The creditor passed through all the instances of the courts[45] , but the judicial system has defended the B.A.s' position, and the BA was considered the sole person who is free to decide upon such kind of issues.

We think that in all cases where there is no risk for others, or that risks are covered with reliable means, the creditors, especially those who have expectations from that funds, should have right to manage the funds if they reasonably think that the method of management will enhance their recovery rate.

We also suggest amending the legislation in a way that will allow the BA to distribute the above mentioned **two untouchable funds** even in the cases when there is an objection to the distribution program. Only after the amendment, the creditor will enjoy the right to a fair trial and accessible court.

Bankruptcy Administrators inform participants about administrative expenses only post factum.

Administrative costs and creditors' satisfaction rate are a whole, and where there is a move on either side of the border, there is an interference of property rights.

For example, if in situation one the sum of the B.A.'s remuneration and administrative expenses were 15%, then the amount of satisfaction of creditors' claims will be 85% of the collected fund, so if in situation two we move the limit of administrative expenses in favor of the BA, it will decrease the creditor's claim satisfaction rate proportionally.

Thus, we can assume that as far as we touch upon the property rights of the creditors, they also should have a right to participate in the decision-making process that concerns the funds or debtor's property. Neglection of the creditors' opinion on the reasonableness and expediency of the implementation of administrative expenses violates the creditor's right to property (legal expectation), as it does not allow them to participate in the decision-making process in managing their property.

Under current regulations and practice, we have a hollow portion of these expenses, which is already imposed on creditors in the form of an intermediate distribution plan *post factum*.

In one of the cases[46], the creditor tried to rectify the situation and tried to use the charter of the creditors' meeting as a possible solution.

[45] State revenue commetee v. Rimk Avto LLC, Case No. EADD/0100/04/17
[46] State revenue commetee v. Rimk Avto LLC, Case No. EADD/0100/04/17

According to Part 4 (c) of Article 33 of the R.A. Law on Bankruptcy, "the exclusive competence of the Creditors meeting includes the adoption of its charter."

Then in the charter, the creditors included provisions according to which Creditors meeting approves the budget of the expenses provided by the B.A. Creditors noted that in the case of exceeding that budget, B.A. bears the risk of being them uncovered. Creditors also stated in a charter quick mechanisms to amend the budget in cases of unexpected situations.

Through creditors' meetings, creditors approved the charter, but B.A. successfully brought an appeal to the Bankruptcy court of RA. Creditors tried to appeal the decision, but the application was denied by the Civil Court of Appeal.

The court noted: "*The legislature has allowed the creditor to express his disagreement with the administrative and other expenses incurred by the Administrator by filing an objection, based on which the court makes a decision under the law."*[47]

We disagree with the last-mentioned opinion and think that If we exclude the possibility of preliminary approval by the creditors, a decision will be made when the BA will incur expenses at the expense of creditors, against which there will be no real opportunity to object during the interim distribution.

The problem is that according to the court's interpretation, by objecting to the interim distribution plan, creditors may feel protected, but this is not the case in the scope of the examination of the issue.

Objecting to an intermediate distribution program is not a useful tool in the fight against the attorney, assistant, many other unreasonable and expensive services, or actions involved by the B.A.

We do not claim that the use of expensive services or take such actions are not necessary. However, we consider it necessary to inform creditors in advance about their justification, reasoning, and the possibility of alternatives, as all this is done at creditors' expense.

In this case, if there is a budget, all parties will be protected. The B.A. will make the expenses more freely, being sure that he/she has the right to do so. Even if the expenses are challenged in the future, the BA can show the decision of the meeting on approving the budget and win the case quickly. On the other hand, the creditors will finally enjoy the benefits of certainty that nowadays, bankruptcy does not have.

Now creditors do not know how much the administrative costs will be, so it is not clear what his expectations are, which is a violation of the right to property.

[47] State revenue commetee v. Rimk Avto LLC, Case No. EADD/0100/04/17

There are many such cases in one of the cases[48], as the B.A. paid the lawyer 2,400,000 AMD for sending 12 written debt demands to debitors, all of them had similar texts and about 100 words, while in the free market all this could be achieved minimum at a price ten times less.

We think that if the B.A. does not have anything to hide, he/she should be inclined to act transparently. If the BA does not obtain artificial agreements from service providers at exorbitant prices, does not gamble with the funds from exclusive accounts, does not create financial pyramids, he/she should not be embarrassed from planning his/her expenses.

Article 23.1, Part 1, Clause 5 of the Law on Bankruptcy of the Republic of Armenia stipulates that the B.A. is obliged to contribute to the formation of trust in B.A.s', but we think that avoiding the transparency of administrative expenses, the B.A. has violated the obligation to promote trust.

Only after meeting such a transparent B.A. will the perceptions of B.A. change, formation of trust in B.A.will start.

Assuming the above mentioned, we suggest to amend the law and create the mechanisms that will help the creditors to supervise and monitor the procedure of administrative expenses.

CHAPTER 3: Problems that creditors can face in the stage of the debtors' property sales.

In practice, Bankruptcy Administrators sell bankruptcy estate in a way that does not ensure the implementation of the goal of that process.

According to part 1 article 75, the sale of the debtor's property is carried out by the B.A. through public bargaining or direct transaction.

In this topic, we will discuss the sale of the debtor's property is carried out by the B.A. through public bargaining.

Bankruptcy Administrators organize auctions in such a way that the minimum legal requirements are met, and they do not take the initiative to identify real buyers of potential property and make the auctions more viable.

The B.A. publishes the announcement mainly in the "Novoye vremye" daily newspaper and azdarar.am website.

[48] State revenue commetee v. Rimk Avto LLC, Case No. EADD/0100/04/17

Novoye Vremye: Almost no one knows about it, the announcements are published in such a small font that they are almost illegible, no photos are posted at all.

Azdarar.am website:

The official website of the Republic of Armenia for public announcements and about which few people know, no photos are posted here, information about the lot is a blur and incomplete. B.A. mentions in the announcement that those who need more information about the lot can contact them by phone. It should be noted that the site's search engine is very sophisticated; the site does not have a user-friendly interface. When we marked one character in the search field differently, we did not receive the desired result, and if we write more than one keyword, we received an error message.

It should be noted that there are some well-known free websites in the country, where it is more convenient and less time-consuming to publish an announcement, and the effectiveness is more. However, the B.A.s' do not use these sites and are satisfied only with the above and their connections.

Under such conditions, the organization of auctions becomes meaningless, and creditors have the opportunity to receive less satisfaction at each the next auction.

To prove the above, we found an announcement where the B.A. was selling three Nissan March cars for $ 50, $ 80, and $ 120, respectively. Prices for these cars have reached these levels without being sold at many auctions, each time with a 10% discount[49].

We took the text of the announcement, re-posted it on the list.am website without photos, and even a few minutes later received numerous calls from potential buyers. We later found out that people are willing to pay even more than the price posted on azdarar.am, for example, for car mirrors or water containers. At the same time, on the same list.am website, we were able to find the one in the worst condition from the same car for only $ 1,100.

So, if a creditor is waiting for the B.A. to organize auctions without taking active steps to get her/his money, it is very likely that the creditor will get many times less satisfaction than he/she expects. Hence, they need to find norms that will help them take active steps to undertake:

According to part 1 article 75, the sale of the debtor's property is carried out by the B.A. There should be a property sell program based on the inventory results, presented by the B.A. and approved by the creditor's meeting.

In one of the cases, the creditors added some essential points, that would help to sell the property more quickly, to the sell program. When the B.A. did not comply with creditors demands, they had the opportunity to defend their rights in court and to confirm that the B.A.'s actions were illegal[50].

[49] Available at https://www.azdarar.am/announcments/org/46/00672989/ (last seen at May 10 2020)

[50] *State revenue commetee V. A. S. J. Constuction LLC*, Case No. ESHD/0081/04/15

The B.A. of this case objected to the complaint against his inaction, claiming that the law provided an exhaustive list of information to be included in the sales program. The additional requirements included in the program by the creditors are not provided by law, so he was not obliged to keep them. The bankruptcy court found the B.A.'s arguments sufficient and rejected the appeal[51].

The RA Civil Court of Appeal upheld the complaint of the creditors. It stated that it was apparent from the literal interpretation of the phrase "should include" in Article 75, Part 1.1, of the R.A. Law on Bankruptcy is defined only compulsory inclusion of information in the property sale program. Creditors may include other requirements not mentioned in article 75, Part 1.1, but considered necessary by the creditors' meeting. Moreover, if the program is already approved, the B.A. has to follow these rules unwaveringly by the force of Part 1 of Article 75 of the R.A. Law on Bankruptcy.[52]

The last-mentioned decision received a great deal of attention, as the BA was a member of the Supervisory Board of the Board of Bankruptcy Administrators.

After that, the content of the issue changed, as the Supervisory Board informed the Bas' about the risk associated with the sales program, after which no other B.A. was allowed to make any additions to the most convenient for them and primitive sales programs.

After that, B.A.'s were presenting convenient for only them sell programs as they were used to do, and when creditors tried to make additions to it, the B.A.s did not include them in the program, arguing that only they had the authority to submit the program. Creditors could either approve the program or not.

At first glance, it may seem that by not approving, the B.A. can be pressured to make the necessary additions, and the negotiations can resolve the situation, but this was not the case. There is a part 1.1 article 75, of the Law on Bankruptcy of R.A., according to which *''If the sales program of is not approved by the creditors' meeting, the B.A. has the right to apply to the court and demand to approve the property sale program, attaching the decisions of the creditors' meeting"*.

Thus, in all cases where the creditors did not agree with the sale program or tried to make any additions, the B.A.s' recorded the fact that the creditors' meeting had not approved it and applied to the court to confirm it.

The courts, in turn, upheld them in all the cases that we met during this research, regardless of objections of the creditors. In one of the cases, the court even ruled that creditors did not even have the right to object[53], to which the Court of Appeal replied that it was not intended to object to the

[51] *State revenue commetee V. A. S. J. Constuction LLC*, Case No. ESHD/0081/04/15, Insolvenccy court of RA Feb. 18 2019 ''Decision on examining the petition''

[52] *State revenue commetee V. A. S. J. Constuction LLC*, Case No. ESHD/0081/04/15 Civil court of appeal of RA Apr. 18 2019 decission

[53] *State revenue commetee V. A. S. J. Constuction LLC*, Case No. ESHD/0081/04/15 Bankruptcy court of the Republic of Armenia September 23, 2019 Decision on approval of the sales programm.

B.A.'s application. However, the creditors exercised their right to disagree with the application through their decision not to approve the sale program[54].

In the end, it was noted that the creditors' meeting has a secondary role in the approval of the sales program[55], and the B.A. can have his preferred sales program with or without the consent of the creditors' meeting[56].

However, a step forward has been made in the sense that at least the possible mechanism was clarified for exercising the rights of creditors:

The creditors can try to add the favorable provisions to the program if the B.A. is not minded, or to ask the B.A. to include in the protocol of the meeting their justifications for not approving the sale program, hoping that the court will address them[57].

We think that the sale program can be a severe tactical tool to recover as much debt as possible, and the choice of that tactic implies making a business decision. Business decisions can have both positive and negative consequences, so its real final decision. In our opinion, the subordination of the real beneficiaries' opinion is not reasonable and permissible, so the law needs to be reformed in this regard.

Bankruptcy Administrators' are not tended to sell the organization as going business.

It is a common knowledge that selling the business as a going concern is much more profitable than selling it by parts.

According to the part 3 of the Article 19 of the Law on Bankruptcy of R.A. from the moment, the judgment on declaring the debtor bankrupt enters into force, the powers of the persons participating in the statutory capital (share, shareholding) to dispose of the capital of the debtor, which are conditioned by law, shall be suspended. The exercise of these powers may be permitted by a court decision within the framework of a financial recovery program.

Out of fairness to the Italian law, it should be noticed that the vast majority of reorganization plans provide for the sale of the whole business[58], so equity holders are, *de facto*, wiped out because once

[54] *State revenue commetee V. A. S. J. Constuction LLC*, Case No. ESHD/0081/04/15 Civil Court of Appeal of the Republic of Armenia, Nov. 11, 2019 decision
[55] It should be noted that the World Bank's Doing business report gives a separate point to the state if it turns out that the creditors have a significant role to play in the decision-making process regarding the organization of the sales process.
[56] There is no the final decission the dispute now is at The Cassation Court of RA
[57] In our practice, they have never been addressed
[58] *See* Daniele Vattermoli, *Concordato con continuità aziendale,* absolute priority rule *e* new value exception,

the sale is made the proceeds are distributed following the 'standard' liquidation waterfall, in which equity gets nothing if creditors are not paid before.[59]

Also, since 2015 Italian legislation provides for competing for offers, so the plan and proposal are subject to a 'market test': equity holders may design the plan in a way that they are left with interest, but it is at risk if creditors prefer the competing offer (Art. 163(4), Bankruptcy Act of the Republic of Italy). Moreover, when the plan is 'prepacked' with a firm offer to buy the business as a going concern, the court *must* initiate an auction of the business, irrespective of any condition of the firm offer (Art. 163-*bis*, Bankruptcy Act), and this also applies when the plan does not expressly provide for a sale of the business. However, it is designed in a way that the post-confirmation sale of the business is the only reasonable outcome[60].

Of course, when assessing liquidation value, it may be the case that the going-concern value is used, because the Italian law has ample instruments to allow the continuation of business even in bankruptcy, intending to auction off the business as a going concern[61] . However, well-known issues of loss of value are most likely to occur in judicial liquidation, and this is now the valuation that casts its shadow on the negotiation[62].

Italian legal jargon, therefore, distinguishes between 'direct' continuation and 'indirect' continuation, the latter including a reorganization in which business continues with another entity through sale, transfer as consideration for a company's capital. This distinction had its way into the new law, which now provides for tighter rules for plans envisaging continuation of the business, either directly or indirectly (Art. 84 Crisis Code of Italian Republic).

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112 Rivista del diritto commerciale (2014), part I, 331-357 (recognising that APR is usually not applied to equity holder
mainly as a means to incentivise reorganisations, expresses the opinion that this should not be allowed under current
Italian law), and Daniele Vattermoli, *La posizione dei soci nelle ristrutturazioni. Dal principio di neutralità*
organizzativa alla residual owner doctrine?, 63 Rivista delle società (2018), 858-890 (advocating such opinion taking
account, inter alia, the Directive proposal of 2016, which provided for APR as the only rule; as is well known, the final
Directive changed the default to a 'relative' priority rule [Art. 11(1), Directive 2017/1132]).
The full reference of the proposal is Proposal for a Directive of the European Parliament and of the Council on
preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency.
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[59] Zorzi, Andrea, The Italian Insolvency Law Reform (November 23, 2019). Available at SSRN: https://ssrn.com/abstract=3492422 or http://dx.doi.org/10.2139/ssrn.3492422

[60] *See*, Tribunal of Vicenza, 12 July 2019 (decree in case No. 51/2018), unpublished but available at http://www.ilcaso.it/giurisprudenza/archivio/22542.pdf.

[61] Art. 104 Bankruptcy Act and Art. 211 Crisis Code

[62] Zorzi, Andrea, The Italian Insolvency Law Reform (November 23, 2019). Available at SSRN: https://ssrn.com/abstract=3492422 or http://dx.doi.org/10.2139/ssrn.3492422

In Armenia situation is more complicated because the law does not provide clear procedures for selling the business as a going concern, we only have a restriction rule about time limits which says that powers of the persons participating in the statutory capital (share, shareholding) may be permitted only by the court and only within the framework of reorganization.

As we know the reorganization plan can be submitted until the first meeting of the creditors, but as we already mentioned there is almost no information assembled about debtor by the B.A. until the first meeting, moreover the courts stated that time limits for the B.A. for inventory, evaluation, and financial analyzes are not binding. Thus the execution of the right to approve a reorganization plan and sell the company as a going concern is unrealistic because, in order to make a reasonable decision, creditors shou$_l$d gain enough information about the financial situation and potential perspectives.

The next legal issue regarding the topic related to the legal question is whether the bankruptcy proceedings should be stopped after the sale of the shares or whether the sale of the shares is a purely change in the composition of the shareholders.

The legislation of the Republic of Armenia does not give an unequivocal answer to this question, so we must be guided by the general rules according to which the sale and purchase of shares cause rights and responsibilities, changes, terminates only with the seller and the buyer. Hence, the person who will try to acquire the shares of the bankrupt company has to continue to cope with the complex processes of bankruptcy proceedings.

This last fact significantly reduces the chances of the company selling as an expensive business, so in this regard, “I need clear legislative regulations and reforms.”

As for the B.A.s`, once again, the latter emphasizes the importance of performing their duties promptly and the possible negative consequences for creditors.

CONCLUSION

In this master's thesis, we have presented the opinion that the lack of a secondary debt market is probably one of the main reasons for the decline in the sector. Today's participants in bankruptcy procedure can be divided into three parts 1. who tottally do not understand what is going on, 2. who are interested only with a narrow segment of issues (banks and financial institutions), 3. over skilled debtors who uses fraudulent schemes.

We think that the Armenian Bankruptcy procedure needs new participants who will be more interested in finding new solutions and, at the same time, have enough resources for experiments. The last-mentioned participants will be the companies that are investing in debts and forming the secondary debt market. New skillful participants will not be as tolerant of illogical judicial practice as today's participants are. Furthermore, they serve as a driving mechanism for the bankruptcy institution as a whole. On the other hand, the

secondary debt market will increase the liquidity of the debt, which will de a positive consequence for the economy of the country.

However, before the more significant changes have not taken place yet, we tried to focus our attention on the problems faced by creditors that cannot be noticed at first glance, which have adverse financial consequences.

In Chapter One, we identified interactions with bankruptcy administrators in which creditors need to be cautious and attentive. Otherwise, they may receive the costly procedure, delays for years with or without meeting the satisfaction of their claims.

The second chapter presents several cases in which creditors lost the red thread of bankruptcy proceedings due to judicial practice, the behavior of BAs', or the imperfection of the law. In that scenario, creditors consistently go to a state of uncertainty. Through the analysis of cases and legislation, we have tried to provide ready-made tools for protecting the rights of the creditors, however, noting that in some cases it is impossible to resolve the issue without legislative reform.

In the third chapter, we tried to introduce t the traditions created in the proceedings, which are related to the process of selling the debtor's property. We have mainly presented the traditions that, in one way or another, can harm the interests of creditors. We have proposed practical solutions to make the auction process more manageable and profitable, and in some cases, we have noted that the situation may not improve without legislative reform.

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