



With a view to explain the issues arising in judicial practice and to provide the uniform approach to their settlement, the Plenum of Supreme Arbitration Court of the Russian Federation drafted Decision No. 59 as of 23 July, 2009 "On certain issues of application practice of the Federal Law "On Enforcement Proceedings" when a petition in bankruptcy is filed.

The main provisions of the Decision taken by the Plenum of Supreme Arbitration Court are as follows:

1. When considering the disputes to declare unenforceable the enforcement or other documents, to declare invalid the debtor's transactions, resulting in the priority of creditors' claims, to make the head or the bankruptcy trustee responsible for losses, the courts shall proceed from that, according to the aforesaid regulation, the satisfaction by the debtor of claims of individual creditors, including at the initiative of the debtor, is contrary to the provisions of the Bankruptcy Law.

2. The creditors and authorized bodies are not entitled, pursuant to Part 1, Article 8 of the Federal Law "On Enforcement Proceedings", to submit the enforcement documents issued by the courts or other authorities for collecting the funds directly to the bank or the credit institution where the debtor's accounts are opened.

3. The bank is entitled to accept for execution the enforcement and other documents on the uncontested collection of funds from the debtor's accounts (in particular, the collection orders on the acceptance-free write-off of liabilities) only subject to the condition that the aforesaid documents or the documents attached thereto should contain the information confirming the allocation of the debt collector's claims to the current payments. If the aforesaid documents contain the information confirming the allocation of the debt collector's claims to the current payments or to the claims under which the enforcement is not suspended, or this information is inconsistent, the bank shall return to the debt collector the enforcement document and state the reason thereof. If the bank fails to comply with this requirement, the debtor, in the course of the supervision procedure or financial recovery, or the external or bankruptcy administrator may request the bank in subsequent procedures to repay the losses incurred by the unlawful write-off of funds from the debtors' account.

4. As the claims for disputes over the protection of property possession or ownership may not be considered as execution against property pursuant to paragraph 4, item 1 of Article 63 of the Federal Law "On Insolvency (Bankruptcy)", the enforcement proceedings on the aforesaid claims may not be suspended. Within the unsuspended enforcement, the court bailiff may effect attachments and other enforcement actions provided for by the Law on Enforcement Proceedings as well as the courts of general jurisdiction or the arbitration court may take appropriate measures to enforce a judicial decision.

5. After introducing the supervision and within three days upon receipt of the enforcement document, the court bailiff shall issue an order to dismiss the institution of enforcement proceedings pursuant to paragraph 4 of item 1 of Article 63 of the Bankruptcy Laws as applied to Article 8, Part 1 of Article 31 of the Law on the Enforcement Proceedings. According to the aforesaid provisions when bankruptcy proceedings are subsequently dismissed (except for the cases when an amicable agreement is entered into), the missed deadline fixed for submitting the enforcement document for execution shall be renewed by the court which accepted the judicial act in accordance with the procedure provided for by Part 1 of Article 23 of the Law on Enforcement Proceedings.

6. When considering the complaints against the court bailiffs' decisions and actions (omissions), the courts shall take into account that, if the claims stated in the enforcement documents for which the enforcement proceedings is suspended by the introduction of supervision are consolidated in summary

enforcement proceedings together with the enforcement documents, for which the enforcement proceedings are not suspended, there will be considered as lawful the court bailiffs' actions within the summary enforcement proceedings on the suspension of execution of the enforcement documents on the relevant claims.

7. When the court bailiff performs enforcement actions within the framework of enforcement proceedings considered as suspended pursuant to paragraph 4, item 1 of Article 63 of the Bankruptcy Law, his actions will be recognized by the court as unlawful beyond the bankruptcy case.

8. Pursuant to paragraph 4, item 1 of Article 63 of the Bankruptcy Laws, there will be revoked the attachments and other restrictions imposed by the enforcement proceedings in accordance with Article 80 of the Law on Enforcement Proceedings as well as by the courts for enforcement of judicial acts. In this case, there will be no changes in the measures taken by the courts (such as attachments and other restrictions to dispose of the debtor's property) for securing a claim.

9. When considering the disputes over the appeal of court bailiffs' actions, the courts shall proceed from that if the attachment is revoked pursuant to Arts. 63, 81, and 94 of the Bankruptcy Law, the court bailiff shall perform the required actions in accordance with the procedure that would be applied if the court had satisfied the claim for releasing the property from attachment.

10. The court bailiff's failure to act may be appealed against in the court considering a bankruptcy case, irrespective of which court or public authority issued the judicial act serving as the grounds for property attachment.

11. The bankruptcy trustee as a party to a bankruptcy case, shall be entitled to bring an action before the court for taking measures to secure the creditors' claims and debtor's interests according to the Arbitration Procedural Code of the Russian Federation in the form of attachment of debtor's property, to impose a ban on the public sales for selling this property, etc. At the same time, aforesaid injunctions shall not be applicable if the relevant debtor's property is attached subject to claims, the enforcement proceedings on which is not suspended.

12. When the procedure of financial recovery or bankruptcy administration are introduced, new attachments and restrictions for disposing of the debtor's property, including the injunctions, may be imposed only within the framework of the bankruptcy proceedings. Exception will be made only for the restrictions for collection of outstanding payments imposed in the civil or arbitration proceedings as well as for reclamation of property from unlawful possession in the course of bankruptcy administration. These recoveries of property may be subject to attachment and other restrictions for disposing of debtor's property in the course of bankruptcy administration beyond a bankruptcy case. In other cases, the court bailiff shall file a petition with the court considering the bankruptcy case in order to impose an attachment on property.

13. Upon the application of the interested party, the court, considering a bankruptcy case, is entitled to impose injunctions for limiting the debtor's ability to dispose of the property in his ownership, according to Part 1, Article 93 of the Arbitration Procedural Code of the Russian Federation. With respect to the consideration of the aforesaid application, the interested party shall enjoy the rights and perform the duties of a party thereto (Article 41 of the Arbitration Procedural Code of the Russian Federation), in particular, he shall have the right to appeal against the refusal to impose such injunctions.

14. Upon receipt of a court decision to declare the debtor insolvent and to initiate the bankruptcy proceedings, the court bailiff shall issue an order to terminate the enforcement proceedings. If an enforcement document (except for the enforcement documents set forth in Part 4 of Article 96 of the Law on



Enforcement Proceedings, the enforcement proceedings on which is not terminated) is received by the Court Bailiffs' Service after the court decision is taken to declare the debtor bankrupt, the court bailiff shall, within three days upon receipt of the enforcement document, issue an order to dismiss the institution of enforcement proceedings.

15. When the state registration of the transfer of the debtor's right of ownership to real estate is suspended due to the earlier imposed attachment, the court decision to declare the debtor bankrupt shall not by itself result in the renewed state registration. As the powers of the head of the debtor company shall be assigned to the bankruptcy administrator when bankruptcy proceedings are instituted, the relevant application filed by the bankruptcy administrator may serve as the grounds to continue the state registration of the transfer of property to real estate after the attachment is revoked.

16. Article 196 of the Bankruptcy Law does not exclude the imposition of attachments and other restrictions related to the claims on the disputes over the protection of property possession or ownership. For imposing an attachment related to the aforesaid claims, the court bailiff shall file a petition with the court considering the bankruptcy case.

17. As the bankruptcy administrator shall act in the interests of creditors as well, he shall immediately notify the debt collectors of the receipt by him of the enforcement and of the requirement for the creditors to submit their claims within the bankruptcy case. The term for submitting claims by such parties to a bankruptcy case shall be calculated not earlier than the aforesaid notice is served upon them by the bankruptcy administrator. If no petitions are filed by the debt collectors to include their claims in the register of creditors' claims, the bankruptcy administrator shall hand over to them the enforcement documents upon their applications.

18. In the course of the supervision procedure, the court orders for collecting the outstanding payments shall be enforced pursuant to the generally accepted procedure provided for by the Law on Enforcement Proceedings. In the procedure of financial recovery, there may be imposed the attachments on debtor's property as well as that provided for in Article 80 of the Laws on Enforcement Proceedings and other restrictions on the debtor's ability to dispose of the property in his ownership only by a decision of the court, considering the bankruptcy case. In the procedure of external administration, there may be imposed the attachments on the debtor' property beyond the bankruptcy case for the enforcement of court orders to collect the outstanding payments. After a decision is taken by the arbitration court to declare the debtor bankrupt, the enforcement proceedings is not terminated under the enforcement documents for collecting outstanding payments pursuant to Part 4 of Article 96 of the Law on Enforcement Proceedings. At the same time, the court bailiff is not entitled to perform enforcement actions to recover the debtor's property, except for the collection of the funds kept on the debtor's account with the bank, pursuant to the procedure established by Article 8 of the Law on Enforcement Proceedings subject to the priority provided for by item 2 of Article 134 of the Bankruptcy Law.

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