

Belarus: Improvements on property sale in insolvency proceedings

On November 13, 2019, the Resolution of the Ministry of Economy of the Republic of Belarus dated April 01, 2019 No. 9 “On electronic auction for the sale of property in economic insolvency (bankruptcy) proceedings” entered into force (the “Resolution”).

The Resolution does not contain transitional provisions so that it shall be applied to any auction in insolvency held from November 13 (including the property transferred for sale earlier, or rebidding).

This Resolution enshrined the so-called “Dutch” auction - for decrease. Auctions in such a format help to attract more bidders, quickly sell poorly sold property, involve unused objects in the economic turnover, which will improve business in the country as a whole. It will also increase and improve the turnover of bankruptcy assets (i.e. the debtor's property) since even the most expensive low-liquid asset will find its buyer with a price reduction of 80%. Electronic auction also ensures transparency of the bidding process itself.

The essence of such an auction in Belarusian insolvency proceedings is that the initial and minimum prices (below which the object cannot be sold) are set and starting from the second hour, in the absence of bids, the price is reduced by one step, which cannot be less than 5% of the initial price. The minimum price shall not be less than 60% of the initial one, and not less than 20% of the initial price - for rebidding.

Though the Resolution has been recently adopted, the practice has already revealed a number of gaps and application issues.

One of the gaps was the absence of a body authorised to set a minimum price. But the Ministry of Economy has published an official explanation,



which refers it to the competence of the meeting of creditors. The meeting can also decide to transfer the competence to the creditors' committee or the anti-crisis manager.

Some of the provisions of the Resolution are in contradiction with the provisions of the law on insolvency (bankruptcy) proceedings (e.g., electronic auction is held without creating a commission). The judicial authorities are of the opinion that bankruptcy proceedings should be conducted only in accordance with the legislative acts on insolvency (bankruptcy), but not with the ministries' acts, as it is prescribed by the Economic Procedural Code. Moreover, some anti-crisis managers also stand on this position on penalty of administrative and criminal liability for violation of the legislation on insolvency.

The Department for Sanitation and Bankruptcy of the Ministry of Economy (the “Department”) clarified the status of these documents (the Resolution, letters and information on the official sites of the Ministry of Economy and the

Department); this is the official position of the Ministry of Economy and the Department, and it is a guide to action for anti-crisis managers.

According to the Department data, only about 30-35% of bankrupt companies' property sales are carried out through an electronic auction. The Director of the Department has set a task for the anti-crisis managers to bring the number of electronic auctions to 70% by summer 2020.

Following the results of the World Bank's research “Doing Business” in 190 countries, Belarus ranks 74th in the section “resolving insolvency”. Despite the rapid duration (on average 1.5 years) and low financial costs of the procedure, the debt repayment ratio is low. However, compared to 2019, the Ministry of Economy notes an increase in the debt repayment ratio. The introduction of the Dutch auction method will help improve this indicator. ■



DARYA GAIDUCHYK
Associate, International Law Firm COBALT, Belarus



ANNA GRITSEVICH
Junior Associate, International Law Firm COBALT, Belarus



SOME OF THE PROVISIONS OF THE RESOLUTION ARE IN CONTRADICTION WITH THE PROVISIONS OF THE LAW ON INSOLVENCY (BANKRUPTCY) PROCEEDINGS

