

LOSING SHARES DURING THE TRANSFORMATION OF JOINT STOCK COMPANY INTO LIMITED LIABILITY COMPANY

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Article info

Received –

2019 October 14

Accepted –

2019 November 20

Available online –

2019 December 20

Keywords

Reorganization, legal entity, joint stock company, limited liability company, share, stake, transformation, restoration of corporate control, protection of rights

Subject of research. This article is devoted to the analysis of the problems arising at shareholders of joint-stock companies at reorganization in the form of transformation into limited liability companies. As the study of judicial practice over the past ten years shows, there are repeatedly controversial situations in connection with the non-receipt of shares in newly created limited liability companies by shareholders as a result of the completion of such reorganizations. This is partly due to unfair behavior of majority shareholders and/or management of joint-stock companies, partly due to insufficient regulation of reorganization in the form of transformation in the legislation, which leads to problems in law enforcement. **The purpose of the article** is to formulate the main directions of development of the legislation in terms of transformation of the rights of participation in corporations, concerning the constitutional principles of freedom of economic activity and protection of property rights on the basis of the analysis of existing judicial acts, doctrine and current legislation. **The scientific hypothesis** is that during the transformation of corporations, its participants should be provided with adequate and fair compensation for the right of participation lost as a result of the completion of the reorganization. Such compensation may exist in the form of the provision of funds or, in exceptional cases, other property (redemption of an interest) or the granting of rights to participate in the legal entity newly created as a result of the completion of the reorganization. The compensation mechanism should be based on voluntary choice; a member of the corporation shall not be disadvantaged by the terms of compensation. If the participant does not grant its participation rights for redemption, does not participate in the meeting of the participants of the corporation and does not exercise the will regarding the choice of compensation methods, the share of participation in newly created corporation is recognized as the only fair way of compensation. Transformation can't serve as a way to get rid of the so-called «dead» participants. **Description of research methods and methodology.** The study is based on the analysis of court decisions, which are identified by the results of monitoring of judicial practice. **Information about the main scientific results.** The study fully confirmed the correctness of the proposed scientific hypothesis. **Conclusions.** The study was conducted on the basis of judicial practice formed on disputes arising as a result of deprivation of shareholders' rights to participate in these joint-stock companies and non-receipt of shares in limited liability companies created as a result of reorganization. The study showed that this problem is relevant for all corporations as a whole. In this regard, proposals have been formulated to reform the legislation on corporations in general.

1. Introduction.

The consequence of the reorganization (in the vast majority recognized by the law forms) of the Corporation for the participant is to cease participation in the Corporation (an exception here are cases of accession, for member attaching of the Corporation and discharge).

There are currently no General provisions of the legislation regulating the procedure for termination of the rights of participation (membership) in corporations and the consequences of such termination. The corpus of General rights and obligations of participants of corporations (Art. 65.2 of the civil code) does not indicate any special rights of participants at the termination of participation in the reorganized Corporation.

Traditionally, the relevant issues are regulated in relation to certain types of corporations by special laws. Again, traditionally, the most advanced in this matter is the legislation on joint-stock companies (mainly in the form of provisions of the Federal law of December 26, 1995 No. 208-FZ "on joint-stock companies" (hereinafter - the Law on joint-stock companies)), and the legislation on the securities market (for details see: [1, pp. 771-802]).

But even within the framework of these legislative arrays, there are many gaps and "gray areas" in the field of interest to us. The most problematic form of reorganization was the transformation of a joint stock company into a limited liability company. There are many examples from judicial practice.

It can be seen from the texts of the relevant court rulings that as a result of the reorganization, the shareholders of joint-stock companies irrevocably and either without any compensation or with incomplete compensation lose ownership of the shares previously owned by them.

The problem has become so serious that the Bank of Russia was forced to issue a special explanation-information letter dated February 1, 2019 No. IN-06-28/11 "on granting shares (units) to shareholders in the reorganization of joint-stock companies in the form of transformation".

In this letter, the position of the state body is formulated very clearly: "shareholders who voted against the decision to transform a joint-stock company or did not participate in the vote on this issue and did not present their shares for redemption under article 76 of the Law (here we

mean Article 76 of the Law on joint-stock companies. – Ed.), including shareholders, the connection with which is lost, have the right to shares (shares) in the authorized (share) capital of the newly created legal entity in proportion to the number of shares belonging to them of the reorganized joint-stock company".

However, this letter did not solve all the problems arising from the lack of clear regulation. In some of these cases the dispute was that the shareholder presents shares for redemption, some of them bathed or not bathed because of the restrictions established by clause 5 of Article 76 of the Law on joint-stock companies, while the outstanding part is not transformed into a stake in the limited liability company (admitted repaid). And this problem, as you can see, the corresponding explanation of the Bank of Russia does not cover. The Supreme Court noted that this approach does not comply with the law, noting that "all shareholders of the converted stock companies have the right to receive shares (stakes) in the authorized (share) capital in a newly created legal entity", and the recognition of shares redeemed deprives owners "the right to property in constitutional and legal sense, which is contrary to the provisions of article 35 of the Constitution and Article 235 of the Civil Code".

An interesting aspect of these cases is: what method of protection should a person use to ensure their interests? The range of claims, which was declared by persons who did not receive a share in a limited liability company as a result of reorganization, is different: compensation for losses, restoration of the right (in various variants), recognition of decisions invalid. This happens against the background of the updated in terms of reorganization since 2014, the civil code, where the opportunities to protect their rights through the "turn" of reorganization, cancellation of decisions are practically reduced to zero.

In General, as it seems, there is a solid reason to look at the consequences of reorganization in the form of transformation of joint stock companies into limited liability company in terms of termination of participation rights details (and through the prism to perform the overall implications of the reorganization of the Corporation in the form of transformation for its participants), indicating a problematic question: what are the consequences of termination of membership as a result of

reorganization for the member of the Corporation?

2. Legal regulation of the transformation of shares into shares in a limited liability company during the transformation or: how you can lose shares and not get a share.

The fate of the share in the transformation of a joint-stock company into a limited liability company is determined by the provisions of Article 20 Of the Law on joint-stock companies. In accordance with this article, the decision of the General meeting of shareholders of companies, reorganized in the form of transformation into limited liability company must contain, among other things, "the exchange of shares for shares of the participants in the Charter capital of a limited... liability...". This law does not contain any principles, conditions, restrictions for such exchange and/or for describing the formulas of such exchange in the decision of the Assembly. They are not contained in other regulations, explanations and other documents.

The reason for this is that the legislator has traditionally paid more attention (and is paying more attention) to the issue of securities to be placed during reorganization in the form of transformation, that is, two situations: first, when a unitary state organization in the process of privatization was transformed into a joint stock company or a legal entity of another organizational and legal form voluntarily (not as a result of privatization) was transformed into a joint stock company and, secondly, the conversion of bonds during these transformations.

The consequence of this state of regulation is that it creates fertile ground for unfair behavior of majority participants and management of the joint-stock company being transformed into a limited liability company (see about this: [2-5]).

In fact, if there are no restrictions, it can be assumed that the joint-stock company itself has the right to formulate the terms of the exchange in such a way as it deems appropriate (in fact, as the participants who made such a decision consider appropriate). So, it is possible to try to formulate conditions so that minority participants were put in unfavorable conditions or the problem of shareholders with whom communication is lost (which some authors call "sleeping", "lost", "corporate ballast") was solved (for more details

see: [6, p. 23-29; 7, p. 77-87; 8]).

Some courts have argued for unlimited formulation of the terms of the exchange. Thus, in the decision of the court of first instance in a well-known case arising in connection with the reorganization of CJSC "Lebyazhye-Chepiginskoye" (the decision of the arbitration court of Krasnodar region of may 17, 2018 in case No. A32-28239/17), we see the following motivation: "the current legislation establishes the possibility of a dispositive approach to the establishment of the rights and obligations of shareholders in the course of reorganization by converting a joint-stock company into a limited liability company, when their rights under the terms of reorganization may remain, change or cease. The current legislation does not establish a single procedure and conditions for the exchange of shares of the reorganized company for shares in the authorized capital of a limited liability company."

Let us try to specify the range of possible situations that, according to judicial acts, led to the non-receipt by the shareholder of a share in a limited liability company created as a result of the transformation of the joint-stock company:

1) the joint-stock company maintaining the register of shareholders refused to enter information in it about the new shareholder, and, in order not to comply with the court decision obliging to make a record, reorganized in the form of transformation, exchanging shares for shares of persons who have already sold them (the decision of the Arbitration court of the North-Western district of may 26, 2016 in case No. A21-3886/2015). It makes no sense to comment on this situation in detail; in fact, the reason for not receiving a share in the transformation was that formally, the person who purchased the shares did not become a shareholder, since the data about him were entered in the register;

2) shareholder shares before the reorganization (due to various reasons) without a legitimate reason, so the results of the reorganization a member of a limited liability company, he did not (the decision of FAS Moscow district on December 21, 2012 in the case № A41-47358/11, the decision of Arbitration court of the Moscow district from January 13, 2016 in the case № A41-70550/2014). This situation is similar to the first with the only difference that the

person was a shareholder, but ceased to be them against their own will;

3) the reorganization was carried out with the violations specified in Art. 60.2 of the civil code (resolution of the Arbitration court of the North-Western district of July 5, 2017 in case No. A56-30280/2016). As can be seen from the analysis of this resolution, the joint stock company had three participants (34%, 33% and 33%, respectively); the decision to transform was made only by one of the participants, the rest were not present at the meeting; accordingly, the only participant who made the decision became as a result of the completion of the reorganization the only participant of the limited liability company, providing false information during the state registration;

4) stock shareholders were exchanged for shares in the limited liability company created as a result of the completion of the reorganization in the form of transformation of the company because of the availability of alternatives described in terms of exchange (in the decision of shareholders' meeting), and either select a shareholder of one of the alternatives, or the non-participation of shareholders in the meeting due to the fact that companies have long with him lost contact. For example, the decision of the General meeting of shareholders States that the authorized capital of the created limited liability company is formed by exchanging shares for shares of only those participants who participated in the meeting and voted "for" the transformation, and those who did not participate in the meeting or participated, but voted "against", can satisfy their interests exclusively by presenting shares for redemption (see, for example: the decision of the Arbitration court of the North Caucasus district of April 25, 2019). in case No. A32-8838/2018, decision of the Arbitration court of the North-Western district of 30 April 2019 in case No. A56-87228/2017). In concrete cases there are modes of such situations. For example, in one of the cases, the shareholder's shares were not exchanged for shares on the grounds that the shareholder's representative at the meeting, who voted against the transformation, "objected to the reorganization on the merits and against the shareholder's allocation

of shares in the company" (resolution of The arbitration court of the Volga district of April 12, 2016 No. F06-7684/2016 in case No. A12-26775/2015). In support of such conclusions, courts sometimes refer to the dispositivity of regulation, which is allegedly contained in Article 20 of the Law on joint stock companies. In the already mentioned decision of the arbitration court of Krasnodar region of May 17, 2018 in case no. A32-28239/17, we read the following conclusion: "the procedure for converting shares into shares when converting into a limited liability company, approved at the meeting, according to which only shareholders who voted "for" the reorganization become participants of the company, and the shares of shareholders who voted against or did not participate in the meeting can be presented for redemption and/or repaid, fully meets...the norms of the law»;

5) part of the shares of the shareholder that were not repurchased, due to the restrictions established by clause 5 of article 76 of the Law on joint-stock companies, were not exchanged for shares in the limited liability company created as a result of the completion of the reorganization in the form of transformation of the company, either because the relevant conditions specified in the decision on reorganization, or due to the fact that the company has calculated the shares for redemption by action aimed at the rejection of property rights (see: judgment of the Arbitration court Severo-the Caucasian district from 12 December 2018. in case no. A32-28239/2017). In the specified case the court noted among other things: "courts having established that Lysenko N. I. participated in the General meeting of ZAO "Swan-Chepiginskogo" 22.06.2016 and voted against the reorganization in society, rightly pointed out that voting against the reorganization, plaintiff could not realize the legal consequences of such actions, namely, that in the case of exceeding the total cost charged to the share buyback, the value corresponding to 10% of the net asset value, he will have redeemed not all shares and in proportion to the applicable law, with unredeemed shares will be redeemed as "not voting" for the reorganization. In addition, Lysenko Ni. did not withdraw its share repurchase requirement after the decision was made that not all shareholder-owned shares would be acquired»;

6) the shareholder voted against the reorganization in the form of transformation (or did not participate in the meeting), did not present shares for redemption, shares were not exchanged for shares. This situation should be highlighted because in some cases it is not clear whether the non-receipt of a share (failure to exchange shares for shares) in a limited liability company was a consequence of the content of the decision of the General meeting of shareholders. Therefore, it should be taken into account as a separate situation and the one when the decision did not contain restrictive conditions of exchange, but the exchange did not take place for any reason (error, intentional actions, etc.). The described situation in some cases leads to irretrievable losses for the shareholder due to the omission of the limitation period (for example, see: resolution of the FAS of the Moscow district of November 29, 2012 in case No. A40-77866/10-134-596, decision of the Arbitration court of the West Siberian district of March 20, 2019 in case No. A45-28932/201). In the latter case, the former shareholder, the court also "blamed" the absence of an active life position: "the provisions of the Law on joint-stock companies assume an active position of the participant companies, who must show interest in the activities of the latter, to act with reasonable care and diligence in the exercise of their rights provided by law, including the right to participate in managing the Affairs of society, General meeting, reviewing all documentation of society. Improper attitude of participants to the exercise of their rights, lack of prudence and care in the exercise of their rights entails negative consequences for participants. With due diligence, reasonable and conscientious behavior, the plaintiff had the opportunity to learn about the existence of the contested decision, having read the information contained in the Unified state register of legal entities, and promptly apply to the court for protection of his alleged violated rights." Apparently, according to the court, the duty of the shareholder is to regularly monitor events in the life of the company, including, in this case, by constantly monitoring the website of the Federal tax service, which could help him to get "an objective opportunity to learn about the company's decision to reorganize in the form of

transformation". Where the court derived the corresponding duty is unclear. At least, the law to which the court referred does not give any grounds for these conclusions.

3. Ways to protect the rights of former shareholders of joint-stock companies reorganized in the form of transformation into a limited liability company: positions of courts and other state bodies.

The examples given are, of course, very different, "related" only to the result: the failure of the shareholder to receive its share in the limited liability company created as a result of the reorganization. These differences explain the complexity in describing possible ways to protect violated rights.

Let us list those requirements that were most often used by former shareholders to protect their rights:

1) compensation of losses (resolution of the FAS of the East Siberian district of February 10, 2011 in case No. A74-140/2008). This way of protecting rights, oddly enough, is practically not found in judicial practice. Apparently, due to the fact that for former shareholders the most acceptable way is to obtain a share in a limited liability company, and not monetary compensation for lost shares. Theoretically, taking into account the changes of the civil code in terms of reorganization in 2014, when the opportunities for further reorganization were significantly reduced (see art. 60.1 CC trades abroad), this way to as times should was become the main. However this did not happen;

2) recognition of the right to a share in a limited liability company (resolution of the FAS of the Moscow district of 21 December 2012 in case No. A41-47358/11). The wording, as can be seen from the analysis of judicial acts, had some differences. In some cases, a claim was filed for recognition of ownership rights to a share in the authorized capital of a limited liability company in a certain amount (resolution of the Arbitration court of the North-Western district of may 26, 2016 in case No. A21-3886/2015), in others-the requirement to recognize the ownership right of a person to a share in a certain amount and determine the shares of participants in the authorized capital of a limited liability company in a certain way (the decision of the Arbitration court of the Moscow district of March 22, 2018 in case No. A41-61651/17). We will note that in

some judicial acts the requirement (claim) about recognition for the person of the right to a share in limited liability company was considered through a prism of other way of protection, from among listed in art. 12 of the civil code, - restoration of the situation that existed before the violation of the law (decision of the Arbitration court of the North-Western district of may 26, 2016 in case No. A21-3886/2015). In this case, the courts obviously used to protect the interests of the affected shareholders the Institute of so-called restoration of corporate control (for details see: [9, p. 70-79; 10, p. 142-206; 11, p. 85-89; 12, p. 106-121; 13, etc.]), which is clearly evident from the motivational parts of the rulings, which use the legal positions of the Supreme Arbitration Court of the Russian Federation .

In the first of the specified decisions motivation of court was the following: "according to item 1 of Art. 12 of the Civil code of the Russian Federation protection of civil rights is carried out, including, by recognition of the right. In the area of corporate relations implementation of the method of protection under article 12 of the Civil code of the Russian Federation, can be expressed in the form of awarding the plaintiff respective shares in the authorized capital of economic partnership or a society on the basis that he is entitled to such participation in a business partnership or society, which he would have had, if the defendant complied with the requirements of the law, acting reasonably and in good faith... upon termination of the activities of the defendant UAB "Pomianowska manufacture" as a legal entity, the shares issued by it in circulation as securities representing to its owner a certain set of property rights (the right to receive dividends, the right to receive a part of the property of the joint-stock company at its liquidation) are cancelled. Disputed shares as objects of civil rights ... ceased to exist... the Case file confirms that the plaintiff has fulfilled its obligations to pay the authorized capital of JSC "Pominovskaya manufactory" and as a participant of JSC "Pominovskaya manufactory" received a share amounting to 50% of the authorized capital of JSC "Pominovskaya manufactory" ... the plaintiff-Voronchenko V. G. as a participant of LLC "Pominovskaya manufactory" received a share

amounting to only 25% of the authorized capital of LLC "Pominovskaya manufactory", the remaining 25% of the plaintiff's shares went to the company's account and subsequently resold them to the General Director of the company defendant Gromov Victor Vladimirovich under the contract of sale of 03.11.2011 year. Courts of the first and appellate instance established that the plaintiff transactions on alienation of shares Voronchenko V. G. did not make and did not make decisions on redistribution of shares, and also concerning 50 shares belonging to it on the property right that is confirmed by case materials. Thus, the plaintiff, having a 50% stake in CJSC "Pominovskaya manufactory" had the right to obtain the same control over LLC "Pominovskaya manufactory" - a share of 50% of the authorized capital of the company, if his rights were not violated by unfair actions of the company, expressed in the illegal transfer of 25% of the plaintiff's shares to the company's account, as well as their further resale. The disposal of 25 shares of CJSC "Pomianowska manufacture" of the possession of the plaintiff against his will, and also in wrongful actions of the company represented by General Director of ZAO "Pomianowska Manufactura"... exclude good faith in their latest acquisition."

As can be seen, by using such a method of protection as the restoration of the right, in this case, many problems related to the challenge of reorganization, which took place in the judicial practice of that time, were bypassed (and the situation arose before the large-scale changes of the civil code in terms of reorganization in 2014). The court stated as a principle that a shareholder who has lost corporate control in a joint-stock company, which has undergone reorganization in the form of transformation after such loss, which, accordingly, led to the termination of this joint-stock company and the creation on its basis of a new legal entity-a limited liability company, has the right to restore corporate control in the form of obtaining a share in the successor-a newly created limited liability company, even though the reorganization was not previously challenged, "defamed". In fact, for this purpose this method as a reaction to the violation, and was formulated by the Supreme Arbitration Court of the Russian Federation. It is impossible not to agree with A.V. Kachalova that "restoration by

court of the corporate control lost in connection with carrying out reorganization of economic society ... allows to return to the participant possibility of acceptance of corporate decisions without the reference to intermediate ways of protection of the rights..." [11, p.87]. In a more General form, however, S. V. wrote about it earlier. Sarbash: "... the use of such a method as the restoration of corporate control, seeks to achieve the goal in the most direct, short way, bypassing the multi-stage, consistent application of a set of other methods of protection. In this sense, the restoration of corporate control is based on the true purpose of the participant of the legal entity that has lost this control. He is not so important intermediate consequences of the use of this long list of methods of protection in their various combinations, as the ultimate goal: to regain the ability to make corporate decisions, lost in connection with illegal and unfair actions of third parties" [9, p.77].

In essence, the use of the idea (let us emphasize this-not the doctrine-it is too early to talk about this, not a legally recognized and described in the norm method of protection, namely the idea formed in the bowels of the judicial system to solve complex cases in the absence of a clear regulation) allowed the court in the above situation to "jump" over the need to challenge the reorganization and its consequences, immediately starting to eliminate the negative consequences for the affected participant of the discontinued Corporation.

Conclusions about the possibility of recognition of the right to a share in a Corporation formed as a result of the reorganization of another Corporation in which corporate control was lost (i.e., "restoration of corporate control") are found in scientific research. For example, I. A. Nazimov in 2014 gave in my thesis, this definition of restoration of corporate control: "an independent method of protection of civil rights, aimed at restoring the situation that existed before the violation of law by returning injured party corporations lost interest in a Corporation, or its assigns, the amount of which is equivalent to the lost proportion" [13, p. 8].

The second of these cases is extremely interesting – the decision of the Arbitration court of the North-

Western district of may 26, 2016 in case No. A21-3886/2015. The matter is that in this case the decision on reorganization was made in December, 2014, i.e., after large-scale reform of provisions of the civil code of the Russian Federation about reorganization (since September 1, 2014 the Federal law of May 5, 2014 No. 99-FZ came into force). However, despite a significant change in regulation, the court's approach to resolving the dispute was the same: "jumping" through the completed reorganization procedure. The court applied a similar motivation, as in the above example: "article 12 of the civil code provides for such a way to protect civil rights, as the restoration of the situation that existed before the violation of the right. In the area of corporate relations implementation of this protection method can be expressed in the form of awarding the plaintiff respective shares in the authorized capital of economic partnership or society, on the basis that he is entitled to such participation in a business partnership or society, which he would have had, if the defendant complied with the requirements of the law, acting reasonably and in good faith... the courts came to the reasonable conclusion that, that the plaintiff was deprived of the opportunity to exercise the right of exchange purchased their shares on the share capital of the company due to misconduct of the predecessor Companies and the abuse of rights to the detriment of the corporate rights of R. I. Kutuzov As the origin of the plaintiff's corporate rights with respect to OJSC "Beltranssnab" confirmed entered into force court decision on the case № A21-2204/2014, courts rightly have recognized his right to share in the authorized capital of the company which he would have had, if the defendant complied with the legal requirements and acted in good faith."

There is every reason to believe that the courts will continue to ignore the special grounds of invalidity of reorganization (recognition of its failure). To do this, in the absence of special provisions in the legislation can be found reason: the Concept of development of civil legislation of the Russian Federation, approved by decision of the Council under the RF President for codification and enhancement of civil legislation of 7 October 2009 it provided for the following: "it is expedient to introduce for cases of reorganization in violation of

the law the possibility of restoration by the court of the participant of the legal entity of the lost corporate control (primarily for cases of full or partial deprivation or loss of interest in the reorganized legal entity). The persons who have received benefit from the specified situation, can be obliged to return the corresponding (additional) share of participation to the victim". This conceptual provision of the civil law reform has not been fully implemented, but, as can be seen, has been successfully used in dispute resolution, especially given the extremely ambiguous results of this reform in terms of reorganization.

So, let's look at the conclusions that were made in the decision of the Arbitration court of the Moscow district of March 22, 2018 in case No. A41-61651/17. Here the court to implement the idea of restoring corporate control used a reference to the new (after 2014) regulation-art. 65.2 of the civil code: "by virtue of paragraph 3 of article 65.2 of the Civil code of the Russian Federation, unless otherwise established by this Code, a party to a commercial Corporation, which lost against their will, as a result of unlawful actions of other participants or third persons the right to participate in it, has the right to demand the return of his shares acquired by other persons, the payment of fair compensation determined by the court, and also damages for the expense of the persons responsible for the loss of shares... Thus, this provision of law provides for a special method of protection of the rights of the person, whose share in the authorized capital of the economic company was withdrawn against his will. In this case, the rights of a person who considers himself the owner of the disputed share are subject to protection regardless of the invalidation of previously committed legally significant actions with this share. Thus, courts lawfully rejected arguments of society about election by the claimant of an inadequate way of protection of the right... The courts found that belonging to Cocaina S. N. 10 pieces of ordinary registered uncertified shares of CJSC Vibropress were converted into a 100% stake in the authorized capital of LLC Vibropress with a nominal value of 10 000 rubles. However, the rights of Medvedeva TS. as a shareholder of JSC "Vibropress", and the fact of the succession of the

LLC "Vibrating" against JSC "Vibropress" was established in the framework of the case № A41-17154/16... the courts of first and appeal instances have come to a legitimate conclusion on satisfaction of the requirements for recognition of plaintiff's rights of ownership of the share in the amount of 40% of the share capital of LLC "Vibropress" and the simultaneous deprivation Cocaina S. N. the rights to the... share This action aimed at the restoration of corporate rights of the plaintiff in society."

In another case, where the plaintiff, whose shares were not repurchased in full, and, accordingly, were not exchanged for participation shares (the decision of the Arbitration court of the North Caucasus district of September 5, 2019 in case No. A63-24446/2018), decided to defend his rights by demanding that the defendant be obliged to redeem his shares. Rejecting satisfaction of the specified requirements, the court among other things noted that " recognition of not bought shares extinguished would deprive the claimant of the right to property in constitutional-legal sense that contradicts provisions of article 35 of the Constitution and article 235 of the Civil code. Thus, the plaintiff may apply to the court with a separate claim for the purpose of receiving shares in the share capital in the newly established legal entity in case of failure of one Zaparenko N. N., as a shareholder of the transformed joint-stock companies, in obtaining shares in the share capital of the company in respect of the unredeemed part of the stock".

The resolution does not specify the nature of the claim, but, rather, it again may be the recognition and restoration of corporate control, because the reorganization "turn" it is impossible that the timeframe for use of the mechanism of article 60.1 of the civil code of the Russian Federation passed, and the application of this mechanism in reality would not get a stake – it is based on the priority use of this method, as damages.

A similar problem will have to be solved by the court and the resonant case with the reorganization of CJSC "Lebyazhye-Chepiginskoe". In the definition of Judicial Board on economic disputes of the RF Supreme Court of August 29, 2019 No. 308-ЭС19-3746 on case № A32-28239/2017, judges very clearly defined his attitude to the situation with the redemption of stock and the rejection of exchange in

a situation when not all shares were repurchased in force restrictive covenants clause 5, article 76 of the Law on joint-stock companies "forced withdrawal from the owner of the property is not allowed except the cases stipulated by item 2 of article 235 of the civil code. In this regard, article 75 of the Law on joint-stock companies shall apply to the system interpretation, as with the provisions of the Constitution and the civil code, which proceed from the inadmissibility of deprivation of the right of ownership without a statutory base, which in this case was absent. Thus, all shareholders of the transformed joint-stock company have the right to receive a share (shares) in the authorized (share) capital in the newly created legal entity". The specified legal position is faultless, however we will note that from it the main thing is unclear: how to satisfy interests of the victim?

Again, as I think, it will be about restoring corporate control, recognition of the law. The basis for this conclusion is the ruling of the Supreme Court of the Russian Federation of July 9, 2018 No. 305-ES18-9335 on the previously cited example with the reorganization of CJSC "Vibropress" (the decision of the Arbitration court of the Moscow district of March 22, 2018 in the case No. A41-61651/17). In this definition, the judge very clearly stated that "rules of law applied by courts correctly" and refused LLC "Vibropress" the transfer of cassational complaint for consideration in judicial session of Judicial Board on economic disputes of the Supreme Court.

The Supreme Court of the Russian Federation regarding the rights of shareholders when transforming the company into a limited liability company similar to the approaches previously made by the Bank of Russia information letter of 1 February 2019 number IN-06-28/11 "On all shares to shareholders during the reorganization of joint stock companies in the form of transformation". Here, the regulator assessed the legality of formulating a decision on reorganization in terms of the terms of the exchange in such a way that the shares of only those shareholders who voted "for" the reorganization were subject to exchange.

Based on references to the most General provisions of article 1 of the Civil Code, the Bank of Russia stated that "the decision to distribute shares

(units) in the authorized (share) capital of the newly created legal entity only among the shareholders who voted "for" on the reorganization of the joint-stock company in the form of transformation is actually aimed at excluding shareholders who voted "against" on this issue or did not participate in the vote from the joint-stock company, which is contrary to the civil code and the Law". It is also interesting that the regulator came to the defense of shareholders that joint-stock company is lost, noting: "under article 75 of the Law the right of shareholders who did not participate in the vote on the question of reorganization of the company, to demand redemption of their shares, cannot be regarded as a guarantee of rights and compensation for the shareholders that lost or which did not implement this law, any failure to provide such shareholders the right to receive shares (stock) in the authorized (share) capital in a newly created entity." As a General rule, the regulator stated: "shareholders who voted against the decision to transform a joint-stock company or did not participate in the vote on this issue and did not present their shares for redemption under article 76 of the Law, including shareholders whose connection is lost, are entitled to shares (units) in the authorized (share) capital of the newly created legal entity in proportion to the number of shares they own in the reorganized joint-stock company."

It would seem, though surrogate (without changing the law), but aimed at protecting the interests of the affected persons solution found. There is, however, something doubtful about this benign picture, to say the least.

First, in Article 65.2 of the Civil Code is about the loss of shares of the Corporation that existed at the time of loss shares, and there is at the time as claims on its return, and the decision of the court on the return share. This norm is not formally designed for cases of return of the share in the organization created as a result of reorganization of Corporation in which the share is lost.

Secondly, the application of this rule may be practically difficult in cases where a significant amount of time has passed since the reorganization and the shares have changed significantly. But giving a person a share in a limited liability company almost inevitably leads to the deprivation of the share of

other participants, whose fault in this may not be. Thus, we can fall into a trap: protecting the rights of one person from the groundless decision of his property, we will deprive this property also groundlessly other persons. The use of such methods as the recognition of the right, the restoration of the situation that existed before the violation of the right, without a formal reference to article 65.2 of the civil code also does not solve the problem, because it "suffers" from the same disadvantage;

Thus, we can fall into the trap: protecting the rights of one individual from the arbitrary decisions of his property, we will deprive this property also wrongly of others. The Use of such methods as the recognition of the right, restoring the situation that existed before the violation of law, without formal reference to article 65.2 of the civil code does not solve the problem, since "suffering" the same defect;

3) recognition of reorganization in the form of transformation of a joint-stock company into a limited liability company failed in accordance with Art. 60.2 of the Civil Code (resolution of the Arbitration court of the North-Western district of July 5, 2017 in case No. A56-30280/2016). Application of this method means that the lost share of the person is subject to restoration in the person restored as a result of recognition of reorganization failed. Formally, the application of this method looks the easiest way to protect, besides fully fit into the mechanisms of contesting the reorganization in the current civil code. However, in reality, there are several limitations to its application. First, the terms of use of this article : "the decision on reorganization was not taken by the participants of the reorganized Corporation, as well as in the case of submission for state registration of legal entities created by reorganization, documents containing obviously unreliable data on reorganization." It is obvious that if the condition on the exchange of shares for shares only voted "for" reorganization was an integral part of the decision, then article 60.2 of the civil code "will not work". Secondly, the restoration of the share of participation in the restored joint-stock company can also lead to negative consequences for bona fide persons (also see: [14,

p. 105-108]).

4. Approaches to solving problems, both in the current regulation and in terms of proposals for the development of legislation.

As can be seen from the analysis, in the absence of clear regulation in the protection of the rights of shareholders deprived on various grounds of shares in joint-stock companies reorganized into limited liability companies, and did not receive fair compensation for such loss in the form of participation rights in newly created limited liability companies, the Russian courts have found several ways to protect the rights. Unfortunately, despite the fact that some of these methods (restoration of corporate control) was the result of serious theoretical reflection, the problem cannot be considered solved. The identified methods of protection, despite their simplicity and apparent effectiveness, are not able to solve all the problematic issues that have arisen, and in some cases can lead to negative consequences for the rights of third parties.

Strictly speaking, the solutions found are a palliative, a temporary measure that, according to our national tradition, can often exist for more than a significant period of time.

The same palliative-in form, let us emphasize this-is the attempt to "close" the shortcomings of regulation (its absence, frankly speaking) through the explanations of the Bank of Russia-the information letter dated February 1, 2019 No. IN-06-28/11 "On the provision of shares (units) to shareholders in the reorganization of joint-stock companies in the form of transformation". This letter is written in an excellent legal style, contains absolutely correct explanations. But that's not the law. From the point of view of improving the current regulation without changing the current legislation, we can recommend another palliative solution in order to prevent such situations in principle: to use the mechanisms of legislation on state registration of legal entities. In 2015, the Federal law of August 8, 2001 No. 129-FZ "on state registration of legal entities and individual entrepreneurs" was supplemented with a new basis for refusal of state registration (podp. "x" item 1 art. 23), according to which the basis for such refusal may be (in terms of reorganization) non-compliance with the procedure

for reorganization of a legal entity established by the legislation of the Russian Federation. We devoted a significant part of the earlier work to the analysis of the shortcomings of this formulation [15], however, this rule has one advantage, which can help just in preventing the completion of reorganization in the form of transformation, the conditions of which do not correspond to the above explanations of the Bank of Russia. Such an approach would cut off attempts to use reorganization as a means of getting rid of unwanted or "dead" shareholders, and for cases of blatantly unfair conduct, either restoration of corporate control or, if it is impossible to use it, compensation for losses would be used as the main method of protection.

For the future, however, it is fundamentally wrong to leave the studied part of legal regulation in this state. Here absolutely clear legal decisions are necessary, and, at first regarding transformations of joint-stock companies and limited liability companies (as the most problematic sphere where that is called "spark"), and then-for corporations as a whole, based on the following postulates taking into account the approach so far used in the legislation-transformation as a form of reorganization entails as consequences the termination of the reorganized person and creation as a result of the new legal entity:

1. the transformation of the Corporation entails the need to satisfy the interests of its participants related to the ownership of a certain interest, that is, compensation for the loss of participation caused by the termination of the reorganized entity;

2. the right may provide for a waiver of compensation, expressed voluntarily and explicitly, the participant of the Corporation shall not be disadvantaged by the terms of compensation;

3. refusal of compensation should be an exceptional case and the right should provide consequences of refusal both for the person refusing it, and for other participants of Corporation; if the participant at Corporation one, refusal of compensation is impossible (excluding regulation of corporations with absolute state participation which are subject to privatization);

4. the main principle of compensation: the

participants of the reorganized Corporation should be provided with compensation for the right of participation lost as a result of the completion of the reorganization, adequate and fair;

5. compensation may be in the form of the provision of funds or, in exceptional cases, other property (redemption of interest) or the granting of rights to participate in the newly created as a result of the completion of the reorganization of the legal entity;

6. if a member of a Corporation does not provide its participation rights for redemption in the fixed period and the order does not participate in the meeting of the Corporation and does not exercise the will in respect of choice of remedies, the only fair method of compensation recognized provision of shares in the newly created Corporation;

7. if a member of a Corporation does not provide its participation rights for redemption in the fixed period and the order in part, the refund of failure participation rights to repurchase acknowledges the granting of shares in the newly created Corporation (for failure to repurchase part);

8. if the full redemption is impossible on the basis of legislative restrictions (for example, in the case of proportional redemption), the method of compensation for the unbought participation rights is the provision of an interest in the newly created Corporation (on the unbought part).

If the legislator will subsequently be perceived different approach to the regulation of the consequences of conversion as a form of restructuring – the transformation does not entail the termination of the reorganized entity, that in principle, the following approaches to building regulation.

The first. All the participants of the reorganized Corporation are its members, but with the features of the legal regime for participation shares in the Corporation the appropriate legal form. That is: the person was, for example, a shareholder, and will become a member of a limited liability company;

Second. In addition to the basic compensation, the participant reorganized the Corporation is given the right of redemption, based on the fact that the legal status of the organization as determined by its legal form will change substantially, and, accordingly, will change the legal status of its participant. Therefore,

the participant should be able to terminate the participation in the Corporation, having received appropriate monetary compensation. In the same logic, the participant should be given the right to refuse compensation, however, also in exceptional cases.

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BIBLIOGRAPHIC DESCRIPTION

Gabov A.V. Losing shares during the transformation of joint stock company into limited liability company. *Pravoprimerenie = Law Enforcement Review*, 2019, vol. 3, no. 4, pp. 91–104. DOI: 10.24147/2542-1514.2019.3(4).91-104. (In Russ.).