

Abstract

This study aims at defining the legal provisions that regulate the role of Bankruptcy Court in cases of bankruptcy in Palestine. It bases itself on the laws that are in force, comparative laws and other legal literatures. The study tries to shed light on points of strength and weakness in these sources. It finally comes out with recommendations that might be useful to the Palestinian legislature when passing laws on bankruptcy. The study may form a reference that might be helpful to the Palestinian practitioners in dealing with bankruptcy issues. Additionally, it will enrich the Palestinian legal library, especially that it might be the first of its kind.

The study is based on the effective Palestinian commercial laws and other laws that are partially related to the Commercial Law in addition to other commercial laws in Arab and foreign countries. Civil and Commercial Procedures Law, Commerce draft Law and other laws in Arab and foreign countries are examples. Besides, the study makes use of other legal literatures and studies on the commercial law in general and on bankruptcy rules in particular. It also makes use of court decisions.

The study is divided into two chapters. Chapter one concentrates on the competent court and ways to declare bankruptcy. Chapter two identifies the role of the court in bankruptcy cases. Additionally, it defines the role of the court during the uncertainty period and its role in the administration of bankruptcy. The study concludes with a summary of the ideas and the main points discussed earlier and some

recommendations as follows:

1. The availability of clear legal texts that handle judicial cases is better than leaving matters to personal interpretations and general rules. Under such situation, cases may be appealed and prolonged, a matter that may influence the rights of the creditors and commercial credit in the country.
2. The Bankruptcy Law effective in the Gaza Strip does not refer merchants to the court located inside their area exclusively.
3. The Jordanian Commercial Law and the Bankruptcy Law that is effective in the Gaza Strip fell short in dealing completely with bankruptcy cases.
4. Bankruptcy Law that is in force in the Gaza Strip mentions details that must be dealt with by the Civil Procedures Law.
5. This Law gives powers to parties other than the judiciary. These powers must be given to judges. This may be ascribed to the political situation.
6. Both laws do not handle the authority given to the Appeal Court with respect to revoking a judgment issued previously on bankruptcy declaration if the causes that lead to the issuance of such a judgment have vanished.

RECOMMENDATIONS

1. The Palestinian Commercial Law must include the necessary details included in the Egyptian new law. This would facilitate and accelerate the process of bankruptcy declaration and save the time of the concerned parties.
2. Agreements should be concluded between countries that have

commercial exchange between each other. These agreements aim at giving the judgments on bankruptcy issued in one country the same power in another country.

3. Without prejudice to the other parties' authorities, the court should be empowered to study cases related to bankruptcy and impellent bankruptcy rules on them.
4. Even if bankruptcy conditions are met, the court must not be obligated to declare someone's bankruptcy. The court must have discretionary power that entitles it not to declare bankruptcy if certain conditions are met. The court may give the bankrupt a chance to restore. This must take place under the Court's control so that the rights of creditors are maintained and his economic situation is also maintained.
5. In the event that the merchant insists on declaring bankruptcy without the necessary conditions met, a provision that gives the Court the right to fine him must be added. This procedure is taken the concerned person pretends bankruptcy.
6. The Court's right to revoke the bankruptcy judgment one month after it had been issued if the causes have vanished must be provided for.
7. The Court must be given the right to automatically consider permissible annulment if serious damage condition- as an additional condition to the conditions of the obligatory the annulment- has been met. It must be also given such a right if affects the bankruptcy assurance.
8. A provision proving for the Office of the General Attorney's right to demand the declaration of bankruptcy of the debtor must be added.
9. An article revoking an issued bankruptcy judgment if the debtor

becomes capable of meeting all his debts before the judgment has become *res judicata* must be added.

10. The work of the bankruptcy agents must be regulated. Being a lawyer who is not convicted of a misdemeanor, felony, robbery, breach of trust, usurpation of properties, embezzlement or false testimony must be precondition for being bankruptcy agent.
11. Bankruptcy controller must meet the conditions provided for by the comparative laws. The controller must not be partner, spouse, brother in law or relative from the first to the fourth degree of the bankrupt person.
12. The Law gives the Court discretionary power to obligate the attorney to publicize a sentence that rejects bankruptcy declaration request.
13. The Law provides for expanding the period of time during which a person may give up trade from one year to one year and half. This occurs in the event the trader tries to evade bankruptcy regulations and harm the creditors. In this case he must leave it to the will of the court to consider the following two aspects: evading bankruptcy regulations and harming the interests of creditors.
14. The Law gives the court discretionary power that lasts 6 months in case of the compulsory enforcement. This power is given due to considerations of inevitable destruction.
15. Unlike other laws, this Law uses the term "contract invalidity" instead of the term "nullification" used by other laws like the Jordanian law. Nullification in this context is not a real nullification that draws the contractors back to the pre-contracting stage. Rather, it does not apply to creditors.
16. For practical and economic reasons we stress the fact that the

Law provided for the inheritors' right to request bankruptcy declaration of the deceased. The Court listens to appellants and then issues a decision on bankruptcy declaration.

17. The Law provides for right of the bankrupt to withdraw bankruptcy declaration application. But the Court may consider the case if necessary conditions are met. Therefore, withdrawing the application is of no value.

18. The Law identifies the amount of 10000 Jordanian Dinars as a minimum amount for investors. We support this tendency as clarifies the way the Court deals with traders and the terms to be met to act as a trader.

19. The Law leaves it to the court to decide on the number of newspapers it wants to publicize bankruptcy declaration based on every trader's conditions.