Journal Homepage: - www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI: 10.21474/IJAR01/18254
DOI URL: http://dx.doi.org/10.21474/IJAR01/18254

RESEARCH ARTICLE

DECLARING THE BANKRUPTCY OF THE DECEASED IN ARAB LAWS

Dr. Zubaida Abdel Hadi Etim
Prince Sultan University - Riyadh.

Manuscript Info

Manuscript History
Received: 30 November 2023
Final Accepted: 31 December 2023
Published: January 2024

Key words:-
Declaration, Bankruptcy, Merchant, Dead, Arab Laws

Abstract

A bankruptcy lawsuit is a procedural lawsuit to prove that a merchant has stopped paying a commercial debt due to a disturbance in his financial position, which exposes his creditors to danger, and to seize all his money in preparation for selling it to pay off the creditors' debts. Therefore, it has economic and social effects. However, it guarantees the rights of creditors, even if the original is to declare the bankruptcy of the merchant who is unable to pay his debts. However, the question is: Is it permissible to file a bankruptcy lawsuit against the bankrupt merchant who is dead? Therefore, this study aimed to identify the legal procedures for declaring a deceased merchant bankrupt in Arab legislation. The study used the comparative descriptive analytical approach by tracking and analyzing the rules for declaring a dead merchant bankrupt. The most important recommendation is the necessity of presenting the judicial precedents related to the subject of the study to benefit from them.

Introduction:-

In order to declare a bankruptcy ruling, the commercial regulations require the issuance of a ruling by the competent court. This ruling has implications for the debtor in his property and may affect his person. The debtor is deprived of exercising some of the rights that were guaranteed to him before the declaration of bankruptcy, and his hand is restricted from his property[1] These funds are handed over to another person who takes the place of the bankrupt person in managing them, disposing of them, and liquidating them under the supervision of the judiciary. As for the creditors, they join in one group under the leadership of the one to whom the authority to supervise and liquidate the funds has been delegated. Each of them is prohibited from initiating unilateral lawsuits or executing against the debtor's funds, and the deadlines also expire. Debts andinterest shall cease to apply, and the custodian of those funds shall have the right to initiate the lawsuit brought by or against the bankrupt**.**The impact of bankruptcy is not limited to the creditor who filed the lawsuit but extends to others. Since this ruling has a collective effect, the legislator permitted every interested party to appeal it, and this was not limited to the two parties to the dispute, as is the case in rulings in general.

[1]BENGUERRACH, K. .(2021) The effects of bankruptcy on creditors' rights - a comparative studyDoctoral dissertation

Corresponding Author:- Dr. Zubaida Abdel Hadi Etim
Address**:-** Prince Sultan University - Riyadh.

Declaration of bankruptcy ruling:

Declaring the state of bankruptcy to all means that all creditors become aware of the state of the bankrupt debtor, for the purpose of warning them and protecting them from dealing with the bankrupt debtor. By declaring the state of bankruptcy, certain effects ensue that are specified by bankruptcy regulations[2].

Bankruptcy is known in the Saudi system. The debtor has stopped paying his debts in light of Article (103) of the Commercial Court Law, which defines “the bankrupt as one whose debts have consumed all his funds and is unable to pay them,” which can be defined as enforcement on the funds of the debtor who stops paying his debts on their due date.

The Arab Model Project defined it in Article Four Hundred and Ninety-Four as the cessation of payment of commercial debts as a result of financial business disturbances (2022).

A person's personality begins at conception and ends with his death. If a person's legal personality ends with his death, that personality may extend beyond death until the liquidation of his estate. The word deceased includes the actual deceased and the de jure deceased.Commercial systems have taken this into consideration, as the death of the debtor is not considered an obstacle to not filing a bankruptcy lawsuit, but with the difference in conditions,Article (103) of the Saudi Commercial Court Law defines it: “The bankrupt is the one whose debts have consumed all his money and he is unable to pay them.” Article 105 states that the true bankrupt is the one who works in the trade industry. …….) Article 106 stipulates that a negligent bankrupt is a merchant who is extravagant in his expensesArticle (494/1) of the Model Arab Project, which corresponds to Article (550) of the current Egyptian Commercial Law, stipulates:

“In the event of bankruptcy, every merchant is required, in accordance with the provisions of this law, to maintain commercial books if he stops paying his commercial debts as a result of the disruption of his financial business.”

Article (645/1) of the UAE Commercial Transactions Law of 1993 AD, with “....... It is permissible to declare bankruptcy for any merchant who stops paying his commercial debts on their due dates due to a disturbance in his financial position and the destabilization of his credit.”

Article (443) of the Syrian Commercial Law of 2007 stipulates: “Any merchant who stops paying his commercial debts, and every merchant who does not support financial confidence in him except by means that clearly appear to be illegal,” is considered in the event of bankruptcy[4].

Article (22) of the Sudanese Bankruptcy Law stipulates: Taking into account the conditions specified in this law if the debtor commits an act of bankruptcy, the court may... declare his bankruptcy.

Therefore, the Saudi system and commercial legislation require a person to declare bankruptcy:
- The person must be in debt.
- Stop paying debts.

Provision 83 of the Saudi Bankruptcy Law of 2018" If a bankrupt or defaulting debtor dies before submitting a request to open a bankruptcy procedure, his heirs - after agreeing with the creditors to establish a company and transfer the assets of the estate to it - may submit to the court a request to open the appropriate bankruptcy procedure for that company.Article 135 of the Saudi Commercial Court Law stipulates: “If the merchant dies before a decision is given regarding his bankruptcy, the authority to seize his estate, divide it, and confirm its debts rests with the Sharia Court. However, if he dies in bankruptcy, seizing his estate and selling it is within the jurisdiction of the Commercial Court, as stated above, because his estate is overwhelmed with his debts, so the heirs have no right to it.”

---

[2]Bareq Abd, & Heba Al-Fahham. (2022). Bankruptcy is terminated by barter. Journal of Kufa Studies Center, 1(67), .

[4]Alshammari, F. N., & Sadeq, A. A. (2023). Restructuring troubled commercial projects under the new Kuwaiti Bankruptcy Law No. 71 of 2020 - a critical comparative study. International Review of Law, 12(1).

Based on Article (135) of the Saudi Commercial Court System, if the merchant dies before issuing the bankruptcy ruling, the authority to seize his estate, divide it, and confirm its debts rests with the Sharia Court. However, if he dies in a state of bankruptcy, seizing his estate and selling it is within the jurisdiction of the Commercial Court, as stated above, because his estate is exhausted. With his debts, the heirs have no right to them. The creditor may submit his request to the Commercial Court to issue an order to manage the estate of the deceased, as the effects of declaring bankruptcy apply to the orders related to managing his money, selling it, and collecting its value. The court does not issue an order declaring bankruptcy, but rather the order is to manage the estate of the deceased debtor[5].

The court has discretionary authority to issue an estate administration order, provided that it must take into account the following:
- It is a guaranteed right for every creditor to apply for the administration of the estate
- The debt owed by the deceased must be undisputed
- That the estate is immersed in debt[6]. and the Sharia Court in Saudi Arabia. Refusal to issue an order to administer the estate of a deceased bankrupt in two cases:
- If it appears to the Sharia Court that there are reasonable reasons preventing the issuance of an estate management order, it has discretionary authority in which it is not subject to the supervision of a higher court in assessing those reasons, such as the lack of seriousness of the applicant.
- If the existing estate is sufficient to pay the debts, the matter does not need to be managed by the court.Upon issuing the administration order, ownership of the deceased bankrupt’s property will be transferred to the court and it will be managed in the same way as the bankrupt debtor’s property is managed. It will be sold and the proceeds distributed to the creditors. In distributing the proceeds of the sale, the court takes into account the provisions of Islamic Sharia, taking into account the expenses of preparing the deceased and paying the debts owed by him. Paying bequests to those to whom he bequeathed, paying management expenses, and the surplus is then delivered to the heirs to be divided according to legal shares.

Article (**1/495**) of the Model Arab Project, which corresponds to Article (**646**) of the UAE Commercial Transactions Law, corresponding to Article (**1/448**) of the Syrian and Kuwaiti Commercial Law, stipulates that a merchant may be declared bankrupt after his death or retirement from trade if he dies or retires from trade while he is If you stop paying. The application for bankruptcy must be submitted within the year following death or retirement from business. This period does not apply in the event of retiring from trade except from the date of deletion of the merchant’s name from the commercial register[7]

Position of comparative commercial legislation:
Article (**1/495**) of the Model Arab Project, which corresponds to Article (**646**) of the UAE Commercial Transactions Law, corresponding to Article (**1/448**) of the Syrian and Kuwaiti Commercial Law, stipulates that a merchant may be declared bankrupt after his death or retirement from trade if he dies or retires from trade while he is If you stop paying. The application for bankruptcy must be submitted within the year following death or retirement from business. This period does not apply in the event of retiring from trade except the date of deletion of the merchant’s name from the commercial register, Article (94/1) of the Sudanese Bankruptcy Law of 1929 AD stipulates:

“Every creditor of a deceased debtor whose debt would have been sufficient to establish a bankruptcy petition against that debtor if he were alive may submit to the court a petition to issue an order to administer the deceased debtor’s estate by the law.........”.

The commercial regulations set the period necessary to submit a request to declare the bankruptcy of a deceased debtor to be one year, with the Saudi system remaining silent about stating the time frame for submitting a request to administer the estate of the deceased bankrupt, despite the importance of specifying a time period so that the door to

[5]Rajab, R. n. A. a. S., & Rajab Nadi Abdel Khaleq Salem. (2023). Common elements in bankruptcy crimes. Journal of Legal and Economic Research - Menoufia, 57(1), 447-492.
[6]Reporter, Wathiqi, &Maharyar. (2020). Shinasei: The concept of insolvency and bankruptcy and their effect on interpreting the law. Jurisprudence and Fundamental Studies, 18(6), 153-179.
[7]Call of Kazem Muhammad Jawad Al-Mawla. (2014). Jurisdiction for the bankruptcy of the exempted company. Journal of Kufa Studies Center, 1(34).

bankruptcy is not open, and out of respect for the memory of the deceased by hastening to bring down the curtain on his commercial life as soon as it is open. To infinity, and taking the initiative to decide on the estate so that the heirs do not remain in doubt about its fate for a long time, this period is considered a period of forfeiture[8].

The Unified Arab Commercial Project and Egyptian, Emirati, and Syrian law allow heirs the right to submit a request to declare their legator bankrupt, provided that two conditions are met:

If his death occurred while he stopped paying

This means that he stopped paying during his life and died while he was still stopping it. If his business was disturbed while he was alive, he continued to pay until his death. Likewise, if he borrowed to pay, it is not permissible for him to be declared bankrupt, even if the estate he left behind was clearly insolvent and the intention was to pursue The merchant goes bankrupt after his death.

The application for bankruptcy must be submitted during the year following his death:

The right to declare the bankruptcy of a deceased merchant is guaranteed to the heirs, creditors, the court, and the Public Prosecution,The period specified for submitting that application is within one year of his death, otherwise**,** their right will be forfeited, as stated in Article (**2/495**) of the Arab Commercial Project, corresponding to Article (**2/551**) of the Egyptian Commercial Law of **1999**AD**.**The merchant's heirs may request his bankruptcy after his death, taking into account the period mentioned in the previous paragraph. If some of the heirs object to the declaration of bankruptcy, the court must hear their statements and then decide on the request according to the interests of those concerned."How to petition for the bankruptcy of a deceased merchant. In the event of the merchant's death, the bankruptcy declaration notice shall beannounced to all of the heirs in the domicile in which their deceased died" Article 551/3 of the Egyptian Commercial,If the debtor dies while the protective settlement procedure or protective settlement for small debtors is in effect, the court may - upon the request of any of his heirs or creditors - temporarily appoint a trustee included in the list of trustees to manage the business of the deceased debtor until the establishment of a company or termination of the procedure in accordance with the provisions of Chapter (Sixteen).) of the system, and any of the creditors and heirs may propose the name of the trustee to the court.

Conclusion:-

The research concluded that the Arab system allowed the bankruptcy of a merchant who stopped paying in the event of his death, and the bankruptcy request could be submitted by the heirs or creditors with interest. The regulations set a statute of limitations in which a bankruptcy declaration lawsuit should be filed. The study recommends the necessity of recording judicial precedents related to declaring bankruptcy in order to benefit from them in theResearch and codification of legal rules.

The Reviewer:-

-BENGUERRACH, K.2021 .( ) The effects of bankruptcy on creditors' rights - a comparative studyDoctoral dissertation.

-Bareq Abd, & Heba Al-Fahham. (2022). Bankruptcy is terminated by barter. Journal of Kufa Studies Center, 1(67), 485-510

-The righteousness of the law. (2000). The ruling on bankruptcy in Islamic law. Al-Adab Journal, (48), 181-220

-Bin Hassan, Kulthum, Kahlawi, Fatiha, Belatrous, & Muhammad/supervisor. (2016). Debtor bankruptcy (Doctoral dissertation, Ahmed Draya University - Adrar).

- Abdul Jabbar Ali Muhammad. (2011). Declaring the company's bankruptcy and its legal effects in Iraqi law. Journal Of AL-Turath University College, (10).

- Qutbi, Baba, Zulikha, Mouneh, & Younis/framer. (2023). The role of internal audit in reducing the risk of bankruptcy of small and medium enterprises (Doctoral dissertation, Ahmed Deraya University - Adrar).

- Al-Droubi, & Ali Muhammad Muhammad. (2022). The specificity of the bankruptcy of organized entities in the Saudi system.

- Al-Shammari, Fahd Neama, Sadiq, & Abdul-Wahab Abdul-Latif. (2023). Restructuring troubled commercial projects under the new Kuwaiti Bankruptcy Law No. 71 of 2020 - a critical comparative study.

[8]Al-Shammari, Fahd Neama, Sadiq, & Abdul-Wahab Abdul-Latif. (2023). Restructuring troubled commercial projects under the new Kuwaiti Bankruptcy Law No. 71 of 2020 - a critical comparative study.

- Al-Qudabi., Kh. B. M. B. A., & Khalid bin Muhammad bin Abdulaziz. (2023). The effects of debtor bankruptcy in the Saudi system: a comparative study. Journal of the Faculty of Sharia and Law in Tafhana Al-Ashraf - Dakahlia, 27 (2), 1563-1600.
- Call of Kazem Muhammad Jawad Al-Mawla. (2014). Jurisdiction for the bankruptcy of the exempted company. Journal of Kufa Studies Center, 1(34).
- Hamadou, Naima, Si Tayeb, & Fazia. (2016). Bankruptcy provisions in Algerian law (Doctoral dissertation, Mouloud Mammeri University).