



Analytical studi the rules on bankruptcy and refined in the commercial code

Mohammadreza Marandi*, Seyyed Shahzad Bolandi Saadat, Zakkie Sultan Gheis, Hosein Bahari

Department of Law, Germe Branch, Islamic Azad University, Germe, Iran

ARTICLE INFO

Article history:

Received 02 July 2018

Received in revised form 03 Sept 2018

Accepted 14 Nov 2018

Keywords:

Bankruptcy,

Trader,

Treatment,

Leniency agreement,

The creditors,

The Iranian legal system

ABSTRACT

Objective: Bankruptcy the most important topics of the Commercial Code. **Methodology:** The effects and the negative effects it only stuck skirt bankrupt businessman or not, but depending on the extent of the scope trader or trading company, dealing with business partners or third parties and creditors and the company that will be affected and sometimes, if the extent of the company, to more bankruptcies and unemployed workers, and the consequences for the economy also leads to havoc. Due to the harmful effects of the law to deal with that is the idea. **Results:** The theoretical basis is very important in the discussion of bankruptcy until the dare say failure bankruptcy rules from the beginning until now, no study has theoretical basis and Now that the business is changing eighty years after the adoption of rules that need to be established in the wake of its bankruptcy in its rightful place. **Conclusion:** And relying on the experience of the past eight decades and pathology of the new design rules and efficient bankruptcy rules to isolate and prevent bankruptcy claims.

1. Introduction

Development of economic and commercial complex relations that in recent decades has been achieved in relations between individuals both inside and outside the country has been effective. Inaccuracies or indulgence, the trader may be faced with a situation that cannot perform its obligations. In this case, those who have trusted businessman, with his bankruptcy may also be in trouble. If the trader bankrupt as a result of events occurring that are irrelevant to how he is, the laws of such certificates businessman and difficult to get rid of it, but as a result of abuse or fraud and deception bankruptcy businessman, with he will be a great deal. Inability to pay debt on ordinary people, do not have economic consequences if they can not interfere in the affairs of a large number of businessmen and businesswomen government. will be macroeconomic. For these reasons, governments in the area of social order itself are responsible for the traders. The concept of bankruptcy law and the terms of its realization (Honorary, 2000).

The legal concept of bankruptcy in the Commercial Code Financial terms are not differentiated in the literature for bankruptcy. Some of these terms are unfavorable financial situation, failure, lack of success of the business, worse, bankruptcy, failure to pay the debt and so on. There are numerous definitions of failure Here are a few examples mentioned (Jamsaz, 2006).

2. Materials and methods

2.1 Fulfill the conditions of bankruptcy

According to Article 412 of the Commercial Code "bankrupt businessman or business as a result of suspension of the payment of funds is the result of his responsibility." In addition, the bankruptcy court can be declared under the following three conditions are necessary for the realization of bankruptcy*

* Corresponding author: Mohammadreza.Marandi@gmail.com

DOI: <https://doi.org/10.24200/jsshr.vol7iss01pp1-4>

2.2 Trader or merchantability

1- Stop trader or trading company is responsible for the payment of the funds.

2-Trader or trading company.

Trader according to the Commercial Code states a person who has a job is your typical business transactions. that the provisions of “Article 203” of the Commercial Code reform bill in part, on the general and specific companies and Article 202 of the Commercial Code on commercial companies, asserting that their insolvency, bankruptcy rules will be, trade law under the special name for the business as one of the seven companies have been registered.

3- Cessation of payment

The second condition is that the realization of the bankrupt trader or trading company in payment of debts or other obligations of its cash is interrupted, that is incapable of doing it. It is not necessary that the total assets of the funds to the merchant or commercial company is less, but not enough to pay the funds. So if a merchant or commercial company due to lack of access to their property or to sell goods or products do not have money and cannot pay the debt or other obligations of its cash Avoiding bankruptcy is to stop the payment will come.

4- Obtain bankruptcy court after hearing the verdict and sentencing of the two conditions above Bankruptcies trader or trading company acts (Article 11 commercial code). The competent court is a court of businessman in his residence located and trading company in court that the company is located in the center.

2.3 Of adjudication

Hara adjudication of works that can be described with the following topics:

1. The prohibition of interference in property
2. The ban on intervention in cases
3. Dion becoming Government Ministries
4. The revocation or invalidation of transactions
5. Being deprived of some rights
6. Extradition documents and merchandise
7. Purification

Note that a decree by which the trader has been declared bankrupt in the short to give the justice of his cause stated (Naser Rasaeenia, 2001).

3. Discussion and results

3.1 Treating a variety of bankruptcy and bankruptcy

In this section we will describe and evaluate the treatment of Vrshgsky and different types of bankruptcy.

3.1.1 Refined bankruptcy

Literally means purification purify, cleanse, insignificant, to purify extrusion (Amid, 2001). In terms of collection and treatment to determine.

The bankrupt property, and then cashed and divided among the creditors (Skini, 2005). Cleaning the property after bankruptcy act, "bankrupt businessman or business as a result of his inability to pay the funds that will be achieved"

In the legal system of the Islamic Republic of Iran, refined bankrupt property using the law accepts: 1. Qanvn business 2. Law of Administration for the treatment of bankruptcy (Noori, 2005)

3.1.2 Refining business law

Treatment is carried out under the Act by the administrator. Administrator appointed by the court which issued adjudication screw. The court also attempt to determine the member's supervisor to monitor the work of the administrator. Administrator, treatment in accordance with Articles 427 and following of the Commercial Code adopted in 1311 does.by their lawyer that they choose (President, 2010).

3.1.3 Purification treatment under the law office of bankruptcy

Department of Affairs has been established in areas of bankruptcy and the treatment by the Department of Water Management Law bankruptcy rules and regulations, it is performed (Samiee Nasab, 2009).

3.2 Types of bankruptcy

The bankruptcy of three types: ordinary bankruptcy, insolvency and bankruptcy fraud to blame (Saqary, 1997).

3.2.1 Normal bankruptcy

Ordinary bankruptcy caused by external factors or accidents without fault and without ill and fraud, merchant or commercial company to pay the funds to stop him (Soukooti, 2006).

3.2.2 Fault bankruptcy

The bankruptcy of guilt as well as legal and disrupt the fragile economic situation of the person concerned and handle other is bankrupt. Have a criminal aspect to determine the bankrupt businessman punished (Soutodeh Tehrani, 2002).

3.3 Bankruptcy fraud

Bankruptcy fraud, based on bad faith and acts with criminal intent arise. In bankruptcy fraud, in addition to the legal situation and the situation of the poor and broken bankrupt businessman under consideration and treatment is the subject of criminal prosecution and for the trader to determine punished. 3.1 Principles of Commercial Law no new legislative bill 883 of the Commercial Code with respect to the new legislation relating to bankruptcy rules, specifying the rules on bankruptcy legislation clearly does not have any theoretical basis, the provisions in the bill, not rights provided creditors businessman, not the disruption public order and the prevention of trade not conclusively determined the merchant. Mixed with bankruptcy and insolvency legislative rules of the mixing product is ineffective bankruptcy primarily with the philosophy of not adaptive. The ambiguity and delivered in the fourth book of the bill that deal with bankruptcy and preventive leniency has been developed. bankruptcy and insolvency has created an inefficient patchwork and facilities. Including the rules of any system of bankruptcy legislation is based on the actual status of trader, because the creation of such a criterion in the diagnosis stop or bankruptcy, exactly at odds with the most basic and most important principles governing the speed and reliability of trade rules, but the new bill incomplete and faulty, the actual situation is known merchant criteria for diagnosis stop or not stop him (Virtanen et al., 1993). Philosophy and due to the bankruptcy rules differ substantially from what is in this bill, in France, the interconnected insolvency process known as bankruptcy:

1-regardless of the lack of funds stop is a businessman, but that if no rules on the bankruptcy of disturbing public order, the mere failure to pay the trader should stop religion, but on the basis of the theoretical, if not solvency will be the trade-off will cause disruption of public order.

Read more importantly, under article 883 confirm the adequacy of the property business in accordance with the law, ie according to the majority of the board of creditors to ask them to present or to the date of the general meeting of creditors had to (Article 1007) as well as contracts favoring preventive Toys rejected a petition of bankruptcy is. Section 896 is to be confiscated in favor of the demand, as well as in Article 887 bail, and bail that they pay enough religion to make their demands known to have been bankruptcy. in particular, no one of them, but the rationale for these rules, the inability to manage the business in perform best in general, including, prevent trade disruption of public order. rejected and therefore his property confiscated in favor of the applicants' financial and business standing, what other creditors think? And yet what is the difference between ordinary claims and bankruptcy claims will be sought. Read more importantly, under article 883 confirm the adequacy of the property business in accordance with the law, it according to the majority of the board of creditors to ask them to present or to the date of the general meeting of creditors had to (Article 1007) as well as contracts favoring preventive Toys rejected a petition of bankruptcy is. - Legislator in Article 1007 provides, at a meeting of the board of creditors demanded only that they had been Creditors are invited to the meeting date or time, that is, to ask his creditors, the day after the meeting had to be involved in determining the fate of the trader not yet Creditors rights that creditors are being sought after board meeting, to be trampled on. So that they are deprived of some assumptions even filed bankruptcy 1024) and the deadline for creditors to object to the terms of the minutes of the Board and the decision that (as of 1019 competing and 1027, ten days after the publication (1019) or one week after the adoption (1027 appointed time for holding the meeting of creditors and adoption). The decision will be more than twenty days. And we are asking a lot of this time may actually have no role in decision making. Article 1023 decreed that none of those who reject their demands before the date of bankruptcy, the exclusion of these creditors to interfere in the decisions of the businessman does not appear to mind. Article 1016 states that the General Assembly of the creditors in the decision:

A) The adequacy or inadequacy of property businessman to stop his debts.

B) Accept or reject the request for leniency preventive contract. 1013 also brought the matter: the calculation of the debt and debt liabilities to creditors day meeting of the General Assembly had to be considered. It is very unclear what the adequacy or inadequacy of the property business to his debts related to the General Assembly that their creditors will decide on this issue!

On the other hand, they have no stake in the property business to remain open and other point is that, according to the opposition of 1023, Tlbkarany that they are seeking after the date of bankruptcy is rejected, can, despite the sufficient assets to pay the debts of his business or contracts favoring preventive bankruptcy lawsuit against him, and so the situation will be precarious business.

4. Conclusion

It is not wanted and can pass the theoretical fundamentals and even contradictory rules inconsistent with established principles governing the bankruptcy has been granted.

The theoretical basis is very important in the discussion of bankruptcy until the dare say failure bankruptcy rules from the beginning until now, no study has theoretical basis and Now that the business is changing eighty years after the adoption of rules that need to be established in the wake of its bankruptcy in its rightful place

And relying on the experience of the past eight decades and pathology of the new design rules and efficient bankruptcy rules to isolate and prevent bankruptcy claims.

REFERENCES

- Amid, H., 2001, Amid Persian culture, Tehran, Amir Kabir Publications.
 Honorary, J., 2000, insolvency and bankruptcy filtration, printing, Tehran, Phoenix Publishing.

- Jamsaz, M., 2006, the theoretical principles of separation of state and nation's economic rights, *Journal of Banking and Economics*, Tehran University, 19 (69).
- Naser Rasaeenia, N., 2001, commercial law, printing, Tehran, light sound.
- Noori, M., 2005, to investigate the legal and insolvency law, bankruptcy and insolvency, printing, Tehran, Ferdowsi.
- President, H., 2010, Business Law, Volume IV, printing, Tehran, publisher of Mizan.
- Samiee Nasab, M., 2009, "Analysis of the economic functions of government to achieve economic justice in an ideal Islamic economic model" of political knowledge, (2).
- Saqary, M., 1997, Business Law, Bankruptcy theoretical and practical, printing, Tehran, Inc. Release.
- Skini, R., 2005, commercial law (Bankruptcy and treatment of bankrupt), Eighth Edition, Tehran.
- Soukooti, R., 2006, "The Impact of adjudication on transactions before stopping bankrupt businessman", *Journal of Faculty of Humanities and Social Sciences University of Tabriz*.
- Soutodeh Tehrani, H., 2002, Business Law, Volume IV, Fifth Edition, Tehran, publishing of Justice.
- Virtanen, P., Viitasalo, J. T., Vuori, J., Vaananen, K., & Takala, T. E. 1993. Effect of concentric exercise on serum muscle and collagen markers. *Journal of Applied Physiology*, 75(3), 1272-1277.

How to Cite this Article:

Marandi M., Bolandi Saadat S.S., Sultan Gheis Z., Bahari H., Analytical studi the rules on bankruptcy and refined in the commercial code, *UCT Journal of Social Sciences and Humanities Research* 7(1) (2019) 1–4.