

Jordanian Court of Appeal Judgment on Avoiding Bankruptcy

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Article 295 of the Jordanian Commerce Law 1966 allows a merchant on the verge of bankruptcy to avoid bankruptcy and gain protection from creditors executing judgments against the merchant by initiating a court-sponsored settlement process with the creditors ('preventive composition').

However, the practical ramifications of this article have been that merchants use this to delay payment of debts without having any serious intention to follow up with the settlement process while at the same time preventing creditors from declaring these merchants bankrupt. In this article, we will discuss a recent judgment from the Court of Appeal which changes the practical usage of this article and sets certain conditions for merchants to qualify for its protection.

Facts of the case:

A judgment for the payment of the sum of JOD 1,603,000 (USD 2.26m) was enforced against the appellant in this case by the plaintiff in addition to all the fees and legal expenses.

The appellant failed to pay the above mentioned amount or offer a legal settlement. As a result the Head of the Execution Department ordered the seizure and sale of the assets of the appellant in a public auction in addition to sentencing him to 90 days in prison.

The appellant requested the Judge of the Execution Court to stop the enforcement of the judgment on the basis that he filed a motion for a preventive composition before the Court of First Instance.

Relying on Article 295 of the Commerce Law, the judge of the Execution Court approved the appellant's motion and ruled to stop the enforcement procedures.

The plaintiff appealed the judge's ruling, requesting that they proceed with the judgment.

The appeal was referred to the Court of First Instance in its capacity as the Court of Appeal. This appeal was looked into by two judges who accepted the appeal and reversed the judgment and ruled to proceed with the enforcement procedures.

Accordingly, the judge of the Execution Court issued a ruling to proceed with the enforcement procedures from where it paused.

The appellant requested again from the Judge of Execution to stop the judgment procedures as he had filed for the settlement precaution for bankruptcy, which the judge refused.

The appellant again appealed the judge's ruling. The appeal was referred to the Court of Appeal and looked into by a panel of five judges.

The Judgment:

The Court of Appeal determined that filing a motion for preventive composition after the beginning of the judgment procedures does not affect the position of the creditors as they remain separate and each of them possess the right to pursue their claim individually, nor does it change the

position of the debtor, who remains in control of his assets.

The Court of Appeal reached this conclusion based on the fact that Article 295 should not be considered alone, but must be interpreted along with the articles preceding it, starting with Article 292.

The Court found that by interpreting these articles together, the Commerce Law drew a clear path that has to be taken when it comes to filing for preventive composition. A motion must be filed after which the judge issues a preliminary decision regarding accepting the motion if the same contains all the requested formalities specified by the law. After verifying the formalities, and if the Judge finds the motion to be based on good merits, the judge summons the creditors to discuss the motion.

The Court found that applying Article 293 is essential as this article requests summoning the creditors which implies that the creditors should be formally notified of the motion, as well as Article 294 which requires publishing the decision issued by the Court in this motion. After following the procedures abovementioned, Article 295 may be enforced. Accordingly, the Court found that the creditors who are not entitled to proceed with the enforcement procedures against the defendant (the appellant), are those creditors who are aware of the procedures of the motion either by being summoned to discuss the motion in accordance with Article 293, or through the publishing of the decision in accordance with the same article.

Conclusion:

The Court of Appeal concluded that since the motion for the preventive composition was filed after proceeding with the enforcement, Article 295 does not apply and the enforcement proceedings could not be stopped. Anything contradicting with this would result in disrupting the execution of the judgment and allowing the debtor to evade it, which is contrary to the correct interpretation of the provision.

This judgment is to be welcomed because it reduces the scope for debtors to artificially prolong the enforcement of debts against their assets.