



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : BALLB/BBALLB

SEMESTER : VIIIth

SUBJECT : Banking law

SUBJECT CODE: BAL -802/BBL-802

LECTURE : 9

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Suspension of Business and Winding up of Banking companies.

Banking Regulation Act, 1949

37. Suspension of business

(1) The High Court] may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:

PROVIDED that the 163[High Court] may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the 163[High Court] shall call for a report from the Reserve Bank on the affairs of the banking company; on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

(3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.]

(4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.]

The Suspension of Filing for Dissolution and Winding Up of Companies by the Court

In terms of the Companies Act, a company may be dissolved in one of two manners: either on a voluntary basis, which may take place either by way of a members' winding up or a creditors' winding up, or, by Court order.

A dissolution of a Maltese company by the Court may be initiated by means of an application filed with the Registry of the Civil Courts of Malta (Commercial Section) either by the company following a decision of the general meeting of its members, or by its board

of directors, or by any debenture holder, creditor or creditors, or by any contributory or contributories.

By way of legal notice 373 of 2020 (the “Legal Notice”), published on the 15th of September 2020, the right granted under article 218 of the Companies Act to any debenture holder, creditor or creditors to file an application for dissolution and consequential winding up of a Company by the Court has been suspended and shall remain suspended for a period of forty (40) days following an order of the Minister, responsible for the registration of commercial partnerships, to lift such suspension.

Any application for a dissolution or winding up of a Company which has been submitted by any debenture holder, creditor or creditors on or after the 16th of March 2020 shall also be stayed for a forty (40) day period until such order has been lifted by the respective Minister.

Nevertheless, the suspension or stay of an application submitted for the dissolution or winding up of a Company, shall not prejudice’s the Court’s power to order the filing or hearing of such application whenever it is satisfied *prima facie* that the circumstances claimed within the application for the winding up of the company arose prior to the 16th of March 2020.

Moreover, the applicability of the provisions of article 316 of the Companies Act, that is, where an action for alleged wrongful trading may be instituted against the directors of a company who “*knew, or ought to have known prior to the dissolution of the company that here was no reasonable prospect that the company would avoid being dissolved due to its insolvency*”, are also being suspended and shall remain suspended for a period of forty (40) days until such order has been lifted by the respective Minister.

The Legal Notice goes on to state that the steps a director ought to take with a view towards minimizing the potential loss to the company’s creditors during the suspensions mentioned above, and established by the Legal Notice, shall exclude the filing of an application in court for the dissolution and consequential winding up of the company of which he is director, and of which he is entitled to file in term of Article 218 of the Companies Act, or incurring debts in good faith on behalf of the company during its ordinary course of business, unless it is shown that such actions or omissions were deliberately intended to prejudice the *pari passu* ranking of creditors of the company which existed prior to the act or omission thereof.

We believe it is quite evident that the intention of the Minister when publishing this Legal Notice was to safeguard companies and shareholders, who have been hard hit during the COVID-19 pandemic, from frivolous applications submitted by their respective creditors to have companies wound up if such companies have not been settling debts owed to them. In such circumstances, and during a pandemic for which no company could have prepared, creditors should be more forbearing, and when possible, reach an amicable solution for the repayment of debt due and avoid legal action where possible.

MCQs

Q.1. Who is the Adjudicating Authority for dealing with the liquidation matter of corporate persons:

- A National Company Law Tribunal
- B Insolvency and Bankruptcy Board of India
- C Company Law Board
- D Delhi High Court

Q.2. Who is the Adjudicating Authority for dealing with the liquidation matter of a Limited Liability partnership:

- A Insolvency and Bankruptcy Board of India
- B National Company Law Tribunal
- C Delhi High Court
- D Company Law Board

Q.3. Can an Adjudicating Authority order the liquidation of a corporate debtor even after approving the resolution plan:

- A Yes, if the resolution plan is contravened
 - B The Adjudicating Authority may order the liquidation of a corporate debtor even after approving the resolution plan on receiving an application from a third party who is unaffected by such liquidation
 - C Yes, the Adjudicating Authority may order for the liquidation of a corporate debtor if the committee of creditor does not approve the resolution plan after its approval by the Adjudicating Authority
 - D No, the Adjudicating Authority cannot order the liquidation of a corporate debtor after approving the resolution plan
- MCQs for Limited Insolvency Examination 2

Q.4. What are the actions consequent upon the passing of the liquidation order by the Adjudicating Authority:

- A Public Announcement
- B Intimation to the authority with which corporate debtor is registered
- C Public Announcement and Intimation to the authority with which corporate debtor is registered
- D Public Announcement and Intimation to the Regional Director

Q.5. Under which of the following condition can an Adjudicating Authority order the liquidation of corporate debtor:

A When the committee of creditors of corporate debtor decides to liquidate after the confirmation of resolution plan

B When half of the committee of creditors of corporate debtor decides to liquidate before the confirmation of resolution plan

C When half of the committee of creditors of corporate debtor decides to liquidate after the confirmation of resolution plan

D When the committee of creditors of corporate debtor decides to liquidate before the confirmation of resolution plan