

THE WORLD BANK

GLOBAL JUDGES FORUM

COMMERCIAL ENFORCEMENT AND INSOLVENCY SYSTEMS

19-23 MAY 2003 ▪ PEPPERDINE UNIVERSITY SCHOOL OF LAW ▪ MALIBU, CALIFORNIA

BANGLADESH

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THE LAW OF BANKRUPTCY

Bangladesh Perspective

1. PREFACE

Bangladesh covering an area of 147.57 Km with territorial water of 12 nautical miles has an estimated population of about 130 Million. Like other developing countries Bangladesh also started efforts in formulating laws in the areas of insolvency and creditor rights systems. The relevant laws are annexed herewith as Annexures-A to C and a model judgment has been annexed as Annexure-D which may give an idea as to systems available in Bangladesh. Data based Statement in Annexure-E indicates overall position of cases in the country. Dhaka having the largest number of cases, the statistics show that the Court disposed of all cases filed there during the period from 1998 and 1999 excepting 60 cases of the years 1998 to 2001 in total (Upto date) pending due to interim orders of stay passed by the High Court Division in Writ Petitions preferred challenging different orders passed by the Bankruptcy Courts.

2. INTRODUCTION AND OVERVIEW

In Bangladesh there were two laws – The Insolvency (Dacca) Act, 1909 and the Insolvency Act, 1920. The Bankruptcy Act, 1997 enacted on 11-03-1997 coming into force on 01 August 1997 has repealed both the Acts and re-enacted the law on insolvency using the expression “bankruptcy” in place of “insolvency”. It may be said generally that the present law substantially follows the scheme and pattern of the Acts it repealed.

In popular usage a man is bankrupt when he is unable to pay his debts. But he cannot be called a bankrupt unless he is declared bankrupt by a competent Court.

In the middle ages the condition of a debtor was pitiable and the creditors could cut the debtor's body into pieces. Then came the law of imprisoning the debtor and subjecting him to stripes and hard labour and sometimes selling him, his wife and children. At a later stage if the debtor ceded all his fortune to his creditors, he was secured from being dragged to jail. Then came the stage when it was realised that not all defaults were deliberate and failure to pay may be due to misfortune of the debtor. To cover the situation the law of insolvency or bankruptcy was enacted. The law had three purposes – (1) to adjudicate a debtor as bankrupt and to protect him from harassment by the creditors ; (2) to arrange for realisation and equitable distribution of his assets among the creditors in the most expeditious and economical manner so that there may not be any scramble over the assets and some creditors getting undue preference to others and (3) to discharge the debtor after distribution of the assets and giving him a new lease of life free from the demands of his creditors so far with respect of unsatisfied debts. The present law has a further purpose of taking effective measures against defaulting borrowers of the banks in Bangladesh who are in many cases companies outside the reach of the old law of insolvency (as stated in the objects and Reasons of the Bill of the present enactment.)

Who can be declared Bankrupt

Any person, man or woman, who has attained majority and is not a lunatic can be declared bankrupt (1) when he is a debtor and his assets are insufficient to meet all his debts and (2) he has committed an act of bankruptcy.

The old law was applicable to natural persons and was not applicable to legal persons like companies and corporations. S.9 of the Insolvency Act, 1920 specifically excluded such legal persons from the mischief of that law. The present law has a further purpose of making provisions whereby the debts of companies and other legal persons may be realised through the mechanism of the bankruptcy law.

Act of Bankruptcy

To initiate a proceeding of bankruptcy it has to be seen whether the person proceeded against is a debtor and whether he has committed an act of bankruptcy S. 9 enumerates the acts of bankruptcy which are as follows:-

- (a) If in Bangladesh or elsewhere, the debtor makes a transfer of all or substantial properties to a third person for the benefit of his creditor.
- (b) If in Bangladesh or elsewhere, he makes a transfer of his property or any part thereof, with the intent to defraud or delay his creditors.
- (c) If in Bangladesh or elsewhere, he makes any transfer of his property or any part thereof, which under the law of insolvency or any other law be void as fraudulent preference if he were adjudged bankrupt.
- (d) If with the intent to delay or defeat his creditors, the debtor (i) departs from or remains out of Bangladesh, (ii) departs from his dwelling house or usual place of business or otherwise absents himself, (iii) secludes himself so as to deprive his creditors of the means of communicating, or (iv) submits collusively or fraudulently to an adverse decree, judgment or order of any court or other authority.
- (e) If his property has been sold in execution of a decree for payment of money.
- (f) If he files a plaint for being adjudged bankrupt.
- (g) If he gives notice to any of his creditors that he has suspended payment of his debt.
- (h) If he is imprisoned in execution of a decree for payment of money.
- (i) If one or more creditors, having a valid and matured debt against the debtor for an amount of not less than Tk. 5 lacs (i.e. approximately US 10,000/00) has served notice demanding payment and the debtor has failed *pay* within 90 days of service of the demand.

3. BANKRUPTCY COURT, ITS POWER AND JURISDICTION

All the District Judges are bankruptcy courts and empowering them to authorise Additional District Judge to deal with and dispose of bankruptcy matters. Besides them, two other courts one in Capital City of Dhaka and the other in Port City of Chittagong have been established to deal with exclusively the Bankruptcy cases. Subject to the provisions of the Act, the bankruptcy courts shall under s.5 have full power to decide all questions, whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any bankruptcy, or which the court may deem it expedient or necessary to decide to do complete justice or to make a complete distribution of property.

Power to decide all question of title and priority includes the power to try a question of title raised on the basis of a transfer which took place prior to the presentation of the plaint for adjudication to decide all questions of title to property as between the Receiver and a stranger to decide a dispute between the purchaser of property from the Receiver and the alleged transferee from the bankrupt and hold that the transfer is fictitious or to decide the title of a stranger in possession when he is sought to be dispossessed by the purchaser from the Receiver or to set aside not only alienation by the bankrupt but also alienation by the bankrupt's transferees, if the transferees did not raise independent considerations and depended on the title of the bankrupt's transferee. There a transfer by a bankrupt is declared void, a subsequent transfer made by the transferee of the bankrupt is also void. Where the estate has devolved on the bankrupt by inheritance and there are creditors of his predecessor and also his creditors; the question of priority between the two classes has to be decided by the bankruptcy court.

The bankruptcy court shall have in respect of bankruptcy proceedings the same powers as they have in the exercise of original civil jurisdiction (s.6). Thus the bankruptcy court has power to set aside exparte order to order rustication similar to that conferred by s. 34 of the C.P. Code to review its orders or to allow amendment of the plaint but the bankruptcy court cannot refer to arbitration proceedings in bankruptcy. Where default is made by a debtor or other person in obeying any order or direction given by the court or given by the Receiver or any other officer of the court, the court may order such defaulting debtor or person to comply with the order or direction and upon finding of good cause therefor may make an immediate order for committal of such defaulting debtor or person in civil prison (s.7). The procedure of the court shall be governed by the Act and by the provisions of they Code of Civil Procedure except s.11 thereof. (s.8).

Appeal and review: From decisions and orders specified in s.96(5) appeal shall lie to the High Court Division within 60 days of the decision or order and to file the appeal notice should be given to the bankruptcy court within 10 days of the decision or order. Such appeal has to be disposed of within 60 days from the date of filing the Memorandum of Appeal. Against the non-appealable decision or order of bankruptcy court and from decision or order of the Receiver a review may be filed within 30 days of the decision or order to the bankruptcy court or the Receiver as the case may be and such review petition has be disposed of within 30 days of filing of the review petition. (s.99).

4. ORDER OF ADJUDICATION

Bankruptcy proceeding is initiated by filing of a plaint either by a creditor or by a debtor. No plaint can be accepted by a bankruptcy court against any governmental organization, charitable or religious body, statutory bodies whose principal object is not financial gain and autonomous bodies established by or with financial assistance of the government. (s.11(2)) Conditions to be fulfilled for filing of plaint by a creditor are specified in s.12. Important conditions are that the debt owed by the debtor must be Tk. 5 lacs (i.e. approx i.e. US \$ 10,000/00) or more and the plaint is filed within one year of committing the act of bankruptcy. In case of plaint by a debtor the conditions mentioned in s.13 have to be fulfilled. The plaint has to be presented in the bankruptcy court having jurisdiction in the local limits of which (a) the debtor ordinarily resides or carries on business or personally works for gain, or if he has been arrested or is in custody, or (b) in the case of a debtor not being an individual, its head office or registered office is situated (s.14). The plaint has to be verified in the manner prescribed by C.P. Code (s.15). Notice of filing of the plaint has to be given to the debtor.

The court may at the time of making an order fixing the date for hearing the plaint filed by a creditor may, and the plaint filed by a debtor generally shall, appoint an interim Receiver to take charge of the properties of the debtor following the conditions set forth in s.64(1) and such Receiver shall have the power of a Receiver under Order 40 of the Code of Civil Procedure and also the powers specified in ss. 65 to 69 and 71 of the Act; as the court may direct. (s.23).

At the time of making order fixing a date for hearing or at any subsequent stage, the Court may order (i) a debtor other than an individual debtor to designate an individual as his representative to be called as Responsible Officer and in default the Court may itself designate one or more Responsible Officers who are owners of or Directors, Chief Executives in relation to the activities of the debtor, (ii) the debtor or Responsible Officer to prepare such report gather such property, enter in to or refrain from such transactions, appear at such meetings and hearings and take such other actions as the court deems appropriate, (iii) debtor or Responsible Officer to give security for his appearance in court, (iv) attachment by actual seizure of the whole or part of the property in possession or under control of the debtor, and (v) a warrant to issue for arrest of the debtor or Responsible Officer who has failed to comply with any order given under (ii) or (iii) above and has absconded or departed from the local limits of the jurisdiction of the Court or failed to disclose or has concealed, destroyed etc. with intent to delay or defeat his creditors or to avoid the process of the Court (S.24).

Duties of the debtor. On fixation of the date of hearing of the plaint and thereafter the debtor shall, as required by the bankruptcy court or the Receiver, (a) produce all books of accounts, (b) give such inventories of his property and such list of his creditors and debtors and of the debts due to and from them, (c) submit to such examination in respect of his property, his creditors and debtors, (d) execute necessary instruments in relation to

properties, and (e) generally do all such other necessary acts and things. (s.25(1). On fixation of the date of hearing of the bankruptcy plaint and upto the time the plaint is dismissed; or adjudication is made or adjudication is annulled or until the court otherwise directs, the debtor shall be barred from filing any civil case or take any legal action against any creditor in respect of any claim.(s. 25(2)).

Where a plaint is presented by an eligible creditor the debtor may within specified time file a short written objection. (s.27). At the hearing the court shall require proof of the debt of the petitioning creditor and of the debtor's act of bankruptcy. If all the necessary facts are proved the court will issue the order of adjudication. (s.30). By the order of adjudication a debtor is declared bankrupt. If the debtor appears and proves that he is not indebted or she is able to pay his debts or that he is nor a willful default (s.28(1)) or if he pays the amount dues to the petitioning creditor no order of adjudication will be passed 'Willful default' has been defined to mean a debtor who is liable for bank debt in excess of Tk. 5 lacs for a period of lat least one year after issue of formal demand.(s.28(1)).

Effect of order of adjudication. The order of adjudication passed by the bankruptcy court takes effect from the date of presentation of the plaint. The bankrupt is required to truly assist in realisation of his property and the distribution of the proceeds among his creditors. (s.31(1)). Upon passing of the order all the properties of debtor, except those exempted under se.32, vests in the Receiver or in the court liable to distribution among the creditors and are called "the Estate". (s.31(2)). No creditor can commence any suit or legal proceeding against the Estate or exempted property without the leave of bankruptcy court. (s.31 (3)), but it will not affect the right of a secured creditor to proceed against his security for realisation of his dues.(s.31(4)). A suit or proceeding relating to a claim for money or other property pending against the bankrupt on the date of passing of the order of adjudication shall be transferred to the bankruptcy court and appeals and revisions arising from such suits or proceedings shall be transferred to appellate court as specified in s.96 (s.33)

5. INTERIM PROCEEDINGS UPON ADJUDICATION

Protection order. An adjudged bankrupt may apply to the bankruptcy court for a protection order for protection from arrest and detention for any debt and the court may with notice t the creditors pas such an order (s.35(1)) in respect of all or some of the debts of the bankrupt and the court may revoke or renew such order. A debtor shall not be arrested or detained for the debt in respect of which the protection order is made and if the bankrupt is in custody shall be released. (s.35(3)). It is in the discretion of the court to grant or to make a limited order or not to make a protection order at all. But the court should not refuse protection to the bankrupt where prima facie the bankrupt has no means at all having been stripped of all his property which has become vested in the Receiver and there is no proof that he has concealed assets.

Creditors' committee. When the number of eligible creditors having claim of matured debt of at least Tk 5 lacs is more than 10, the court may form a Creditors'

Committee who may advise the Receiver in discharge of his function and the Receiver is, as far as practicable, to abide by such advice.(s.36)

Power of arrest after adjudication. At any time after adjudication, the court may order arrest of individual debtor or Responsible Officer on the application of the Creditors' Committee or the creditors or the Receiver if the individual debtor or the Responsible Officer absconds or departs from the local limits of the court's jurisdiction with the intent to avoid any obligation under the Act and may detain him in civil prison for three months. (s.37)

Schedule of creditors and provable debts. After adjudication all persons claiming themselves to be creditors shall present in prescribed form a summarized demand with particulars of debts and shall tender proof of such debt and the court shall frame a schedule of such persons and debts. (s.38). If some debts have not been included in the Schedule on the ground that their value is incapable of fair estimation and all debts and liabilities, present or future, certain or contingent at the time of adjudication in case of debtors other than individual debtors and at the time of discharge in case of individual debtors shall be provable under this Act unless the court otherwise determines.(s.39).

Annulment of adjudication. Where it appears that the adjudication order ought not to have been passed or the debts have all been paid in full, the court may annul the adjudication. (ss. 40 to 42).

6. COMPOSITION, ARRANGEMENTS AND REORGANIZATION

After an order of adjudication is made, the debtor can come to an understanding with the creditors regarding the payment of the debts. Such understanding or settlement may be of two types: (i) it may be a "composition" of the debts or (ii) it may be a "scheme of arrangement". When the debtor pays immediately, or by agreed instalments, some money to the creditors less than what is due to them and the latter agree to accept such lesser amount in full satisfaction of their claims, there is said to be a composition of the debts. On the other hand when the debtor and the creditors agree to a scheme by which the debts are gradually liquidated there is said to be a "scheme of arrangement".

A proposal for composition or arrangement submitted by a debtor to the court is to be examined by the Receiver who is to prepare a report on it. If two thirds in value of all creditors whose debts are proved resolve to accept the proposal, the court may after hearing and considering the report of the Receiver refuse to approve the proposal if it is of opinion that the terms of the proposal are not reasonable or not calculated to benefit the general body of creditors. (s. 43). No composition or scheme of arrangement shall be approved which does not provide for the payment of the debts specified in s.75 in priority to other debts. In cases other than those mentioned in sub-sections (1) to (6) of s. 43, the court has discretion either to accept or refuse the proposal. Thus even though the creditors do not consent to the proposal under s. 43(2), the court may approve the proposal under s.43(7), but some sort of exceptional circumstances would be necessary before the court can so approve. If the proposal is approved, the court shall specify the terms of approval

and about the order of annulment of adjudication and on approval by the court, the composition or scheme of arrangement shall

be binding on all creditors. (s.44). If the debtor fails to pay instalments in terms of composition or scheme or it appears to the court that the composition or the scheme cannot be implemented without injustice to the creditor or undue delay or the approval of the court was obtained by practicing fraud on the court, the court may annul the composition or scheme and re-adjudge the debtor bankrupt. (s.45).

A debtor other than an individual debtor who is described as ‘eligible debtor’ may before or after adjudication apply to the court to reorganize his debts stating the grounds therein along with a plan of reorganization. The court shall have the report from the Receiver and the eligible creditors may file written objection or suggestion with regard to the proposal and if two-thirds in value of all the creditors give written consent to the reorganization plan, the court upon consideration of the report of the Receiver and the written objection and suggestion of the creditors and upon consideration of the national interest, interest of creditors and interest of the debtor make a reorganization order. In making the reorganization order the court may make modification in the plan or reorganization and may impose conditions as may be necessary to protect the interest of dissenting creditors, various classes of creditors and the general body of creditors. The reorganization order shall be binding on the debtor and all creditors so far as it related to any debt provable under the act. On making of the reorganization order, the order of adjudication, if already passed, shall stand annulled. (s.46(7)). The court may, however, modify or annul the reorganization order under circumstances specified in s. 46(13) and in case of annulment of the reorganization order, the court shall proceed to make an order of adjudication which shall relate back to the date of filing the plaint. It may be noted that an eligible debtor is not entitled to an order of discharge under Chapter V, but can have a discharge only pursuant to the terms of an approved plan of reorganization (s.46(11)(d)).

Discharge of Bankrupt

Chapter V deals with discharge of bankrupts. This chapter is applicable only in case of individual bankrupts. The order of discharge is an order by which the bankrupt is released from the burden of his pre-existing debts (except few specified debts) and is relieved of the personal disqualification, which follows from bankruptcy. From the date of the order of adjudication an individual debtor is an “undercharged bankrupt” and after the order of discharge, the term “bankrupt” cannot be applied to him.

Application and date of filing plaint filed by a debtor. The debtor shall be deemed to have applied for order of discharge and in other cases a bankrupt has to apply for order of discharge to the bankruptcy court within 60 days from the date of the order of adjudication. (s.50). The bankruptcy court may issue an order of discharge when it is satisfied that the bankruptcy was the result of mere misfortune and not of any act of his moral turpitude or gross negligence. (s.47 (4))

The bankruptcy court is to ask for the report of the Receiver regarding the conduct of the bankrupt and his dealings with his properties and it has to consider the report and the

matters specified in s.48 and also to hear, the creditors (s. 47(8)). In coming to a decision the bankruptcy court shall presume certain things specified in s.48 (8) and on conclusion of the hearing it may-

- (1) grant an absolute order of discharge;
- (2) refuse to pass any order of discharge;
- (3) pass an order of discharge but suspend the operation of the order for a specified period; or
- (4) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due from the bankrupt, or with respect to his after-acquired property.

If the bankrupt fails to apply for discharge or to appear during the hearing or the bankruptcy court determines that granting of discharge shall not be proper, it shall declare the debtor an undischarged bankrupt (s.49 (1) and where the debtor was released from the custody under the provisions of this Act. It may re-commit undischarged bankrupt to his former custody. (s. 49(7)).

An undischarged bankrupt shall after being declared as bankrupt shall after every 6 months submit to the Receiver an account of all moneys and property which have been acquired by him or which have come to his hand during the proceeding 6 months and shall pay over to the Receiver for the benefit of the estate so much of the said moneys or property as have not been spent for the maintenance of the bankrupt and his family and shall not leave Bangladesh. (s.50(2)). Failure to comply has been made punishable offence.(s.50(3)).

Effect of order of discharge. An absolute order of discharge (i) releases the bankrupt from all debts which were provable in bankruptcy and (ii) removes the personal disqualifications from which an undischarged bankrupt suffers, e.g., inability to hold certain posts. But the order of discharge does not release the bankrupt from (a) the debts due to the Government, (b) the debts or liability incurred by means of fraud or fraudulent breach of trust, (c) debt or liability in respect of which the bankrupt has obtained forbearance by means of fraud and (d) any order for maintenance in favour of wife or children of the bankrupt insolvent issued under the Code of Criminal Procedure. The bankrupt is bound to meet these obligations from his after-acquired property or earnings. (s.51(1)).

The order of discharge does not really terminate the bankruptcy proceedings. It terminates the bankruptcy proceedings only so far as the bankrupt is concerned. (47 IC 771). The court retains power to direct the distribution of the properties remaining in the hands of the Receiver and in case there was an error in their distribution the bankruptcy court has power to direct redistribution. A creditor who failed to prove his claim before

discharge can prove his claim after discharge provided there are assets in the hands of the Receiver and he can be paid without disturbing the previous distribution.

Disqualification of undischarged bankrupt. An undischarged bankrupt shall be disqualified in the following matters until the order of adjudication is annulled or the court makes an order discharging him:-

- (a) election as a member of Parliament or of a legal authority or other statutory body or sitting or voting in the proceedings thereof;
- (b) appointment of a Judge, Magistrate, Justice of Peace or any other office in the service of the Republic or acting as such;
- (c) appointment as a Receiver or acting as such;
- (d) obtaining loan from bank or financial institution.

Administration of Property

Secured creditor. The present Act has omitted the definition of secured creditor. However, the language of s. 54 leaves no doubt that the expression in s.54 means a person whose claim for money is secured by mortgage of, or charge or lien on a property. Thus a bank lending money against the personal guarantee of a borrower or a third person is not a secured creditor. The position of secured creditor is different. Where he realises his security, he may prove for the balance dues deducting the amount realised. But if he has not realised the security before the order of adjudication the property subject to the security vests in the Receiver who subject to the direction of the court finally determine the realisable value of the property and if it sufficient to satisfy the secured creditor's claim proved in court, the Receiver shall sell the property and pay the secured creditor and the balance, if any, shall form part of the Estate. If the realisable value is not so sufficient, the Receiver shall, at the option of the secured creditor, sell the property and pay the proceeds to the creditor subject to some deductions or deliver such property to the secured creditor and the secured creditor may claim against the Estate for the deficiency along with other creditors. The secured creditor may relinquish his security in favour of the Estate and may prove for whole debts. (s.54).

Method of proof of debts. Under s.56 a debt may be proved by delivering or sending by registered post to the court an affidavit verifying the debt and specifying the documents by which it can be substantiated.

Effect of bankruptcy on previous transactions. Under s. 58 no person shall be entitled to the benefit of execution of a decree against the property of the debtor as against the Receiver, but the sale proceeds in execution sale held prior to the date of presentation of the bankruptcy plaint shall be exception to this. This section shall not affect the right of secured creditor and a good faith purchaser of the property of a debtor in execution sale shall in cases acquire good title against the Receiver. The expression in all cases, in s. 58(3) means in all cases of execution sale before or after filing of bankruptcy plaint. Where an executing court is notified before sale of a property of debtor that bankruptcy plain has

been filed by or against the debtor, the executing court shall pass order vesting the property to the Receiver if the bankruptcy court is in possession of it.(s.59).

Avoidance of certain transfers. The bankruptcy court may by order nullify any transfer of property by a debtor or his successors made within 15 years if it is satisfied that the transfer was made to defeat any debt owned by the debtor (s.60), but the court cannot pass such order in respect of (i) a transfer in favour of a transferee for a proper value consisting of goods; (ii) a transfer of property acquired by way of inheritance or (iii) a transfer made, at any time within six years immediately preceding the order of adjudication, in favour of a person who proves that at the time of transfer the debtor was able to pay, without the aid of the transferred property, all the claims made in the bankruptcy proceeding.

Avoidance of fraudulent preferences. Fraudulent preference means any act of the debtor by which one creditor is preferred to another in the matter of payment of his dues. Such preference can be shown by transfer of property, payment of money or otherwise. A fraudulent preference is an act of bankruptcy.

Under s.61 a transfer of property or payment made or obligation incurred shall be deemed to be void as against the Receiver and may be nullified by the bankruptcy court if (a) the debtor was unable to pay his debts as they fell due at the time of transfer or payment was made or obligation incurred, (b) the transfer, payment or obligation is in favour of a creditor and had the effect of giving a preference to that creditor and (c) the debtor is adjudged bankrupt, or a reorganization order is made on a plaint presented within a year after the date of such transfer or payment made or obligation incurred. However, the court shall not nullify any payment made to a creditor in the ordinary course of business and the right of the person who in good faith and for valuable consideration has acquired title through or under a creditor of the bankrupt.

S. 63 specifies certain bonafide transactions which shall not be affected by any provision of the act.

Realization of Property: - Receiver and his powers and duties. The bankruptcy court may appoint interim Receiver upon admission of plaint. However, the court shall upon making of an order of adjudication either confirm the appointment of interim Receiver or appoint a Receiver where no interim Receiver is appointed or the appointment of interim Receiver is not confirmed. (s.64). S.65 generally confers the power on the Receiver to act, sue and be sued on behalf of the Estate, to hold property of every description, make contracts, compromise or refer to arbitration any claims by or against the Estate, enter into engagements binding on the Estate. Subject to any direction given by the bankruptcy court, the Receiver shall administer the Estate and collect, sell and liquidate the Estate or any part thereof and distribute the proceeds to the creditors and others entitled (s.65(2)). The Receiver is to act under the general direction and superintendence of the court (s.65(3)) and subject to any direction of the court, the Receiver shall remove any person having unauthorized possession or custody of any property of the Estate, if necessary with police help obtained through bankruptcy court.(s.65(4)). The bankruptcy

court has the exclusive jurisdiction to determine whether any person is in unauthorized possession of the property of bankrupt. (s. 65(4) Proviso).

As it is the duty of the Receiver to realise the properties of the bankrupt and distribute the same among the creditors with all convenient speed, he is empowered, without leave of court, (a) to sell all or any part of the property of the bankrupt, (b) to give receipts for any money received by him, (c) to claim, prove and receive money or any other thing on behalf of the Estate, (d) to deal with any right or property to which the debtor is entitled and (e) to exercise any power exercisable by a Receiver under other provisions of the Act. (s. 71(1)). He is further empowered, with the leave of the bankruptcy court, (a) to carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same, (b) to institute, defend or continue any suit or other legal proceedings relating to the property of the bankrupt, (c) to employ an Advocate to take any proceedings or do any business, (d) to accept as the consideration for the sale of any property a sum of money payable at a future time subject to stipulations as to security, (e) to mortgage or subject to stipulations as to security, (e) to mortgage or pledge any part of the property of the Estate for the purpose of raising money for the payment of his debts proved, (f) to refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon, (g) to make such compromise or other arrangement, as he considers necessary, with creditors or persons claiming to be creditors, (h) to make such compromise or other arrangement, as he considers necessary, with respect to any other claim made or capable of being made against the Estate, and (i) to divide in its existing form amongst the creditors, according to its estimate value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold. (s. 71(2)). The Receiver shall account to the bankruptcy court and pay over all moneys and deal with all securities in such manner as may be prescribed or directed by the court.

The Receiver shall examine the debtor or the Responsible Officer in respect of the Estate, investigate the conduct of the debtor or Responsible Officer, submit reports to the court on matter specified in s.67, take part and give assistance in the prosecution of any debtor or any person charged with any offence under the Act. With respect to a debtor other than an individual debtor, the Receiver shall prepare and file in court a list of officers, directors, partners, owners and any other persons who appear to be liable to contribute to the Estate for having received any unlawful benefit from the debtor's property (s. 67 (2)). The Receiver may in consultation with Public Prosecutor take necessary steps to institute criminal against the debtor or any other person guilty of offence under the Act or under ss. 421 to 424 of the penal Code.

For the management of the Estate, the Receiver is required to take physical possession, if necessary with the assistance of the court, of all documents and books of accounts of the Estate, and of such article or item of property as are capable of being taken over and the Receiver shall take constructive possession of such documents and items of property of the Estate as are not capable of being taken over physically (s. 68(1)) and every document and item of the Estate shall be preserved and managed by him for the best interest of the creditors and for the distribution thereof among the creditors and in this matter he shall have regard to the desire of the creditors. (s. 68(2)(3)).

Immediately after passing of the order of adjudication the Receiver shall prepare and file in court a list of persons who are prima facie indebted to the bankrupt and issue notice upon them to appear in court. In the hearing the Receiver is to prove the debt and the court on being satisfied may make an order allowing the Receiver to realize the debt. (s.69).

At any time after passing of the order of adjudication, the bankruptcy court or the Receiver may on the application of the Creditors' Committee or any creditor issue notice upon any person calling for information regarding the properties of a bankrupt and requiring production before the court or the Receiver any document in his custody or power relating to the debtor or to the Estate, dealings or property.(s.72).

The Receiver shall discharge his functions using his discretion and having regard to the directives given by any resolution of the creditors in general meeting and, by any advice given the Creditors' Committee. (s.73).

The court may appoint a manager or other official to assist the Receiver in the management of the properties of the bankrupt.

After sale of the properties of the bankrupt, the Receiver shall distribute the proceeds in order of priority set forth in s.75. In the order of priority first comes the taxes and other debts of like nature due to the Government and then comes the wages and salaries, not exceeding Tk. 2000/= due to any clerk, servant, labourer or workman in respect of his services rendered to the debtor during the period of 6 months immediately before the filing of the plaint.

The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act and of the expenses of the proceedings taken thereunder. (s.82).

If the debtor or any creditor or any other person is aggrieved by any order, decision or act of the Receiver, he can file application within 30 days of such order, decision or act before the bankruptcy court which may confirm, reverse or modify the complained order, decision or act. (s.83).

In the absence of a Receiver, the court may exercise all the powers of the Receiver.

7. OFFENCES AND PENALTIES

Chapter VII deals with offences committed by debtors, creditors and other persons and provides penalties therefor. S. 92 provides that where a person committing an offence under this Act is a company, the offence shall be deemed to have been committed by the owner, Director, Manager, Secretary or other officer or agent of the company unless he proves that the offence has been committed his knowledge or that he exercised due diligence to prevent commission of such offence and the expressions 'company' and 'director' have been given extended meaning to include business firm, society or establishment and partner of such business firm.

8. CONCLUSION

Starting in a limited jurisdiction within the Municipal areas of Dacca our country started journey towards implementing its law on 12 March 1909 enacting the Insolvency (Dacca) Act 1909. The jurisdiction being extended the Insolvency Act 1920 was enacted on 25 February 1920 applicable for the whole country. The present law – the Bankruptcy Act 1997 coming into force from the 1st August 1997 repealing the aforesaid two Acts has made the provisions more upto date in reorganising the insolvency and creditor rights with supplementary legislation of Artha Reen Adalat Ain (Money Debt Court Act), 2003. Bangladesh is thus on its way in its strides to achieve the goal of developing the areas of insolvency and creditor rights systems, marching ahead hand in hand with other members of the community of nations and Inshaallah by the grace of God we do hope to succeed.

ANNEXURES A Artha Reen Adalat Ain (Money Debt Court) Act 2003.

B Amended Provisions: Sections 89A and 89B in the Code of Civil Procedure.

C The Bankruptcy Act 1997

D Statement of cases in Bangladesh under the Bankruptcy Act 1997.

NB Because of mechanical difficulties the Annexures A to D are being sent by Post Mail, along with another copy of the Country Report. Annexure E however is enclosed herewith.

Annexure-E

**STATEMENT OF PENDING AND DISPOSED OF CASES IN
BANKRUPTCY COURTS IN BANGLADESH**

From 1998 to 2002

District	Year	Pending	Disposed of	Balance
Dhaka	1998	30	7	23
	1999	57	25	32
	2000	90	21	69
	2001	79	5	74
	2002	122	6	116
Chittagong	1998	59	17	42
	1999	52	31	21
	2000	61	33	28
	2001	28	15	13
	2002	30	2	28
Cox's Bazar	1999	1	-	1
	2000	1	-	1
	2001	1	-	1 Stayed
	2002	1	-	1 Stayed
Khulna	2000	10	-	10
	2001	14	1	13
	2002	14	-	14
Munshigonj	1998	1	1	-
	2001	12	-	12

	2002	18	15	3
Kishoregonj	2000	1	-	1
	2001	1	-	1
	2002	1	-	1
Jessore	2002	-	1	-
Barisal	2002	2	2	-
Nilphamari	2001	2	-	2
Rajshahi	2002	7	-	7
Pabna	2002	10	10	-
Feny	2002	1	1	1
Natore	2002	1	1	1
Chandpur	2001	1	-	1
Gaibandha	2001	2	-	2
	2002	2	-	2

Total Pending=177

The courts in Dhaka and Chittagong districts are in fact specially and specifically constituted as Bankruptcy Courts. In other districts filing of Bankruptcy cases being meagre, the respective District Judges have been made Ex-Officio Bankruptcy Courts, who take cognizance of cases and try the same. Out of 62 other districts (in Bangladesh there are 64 districts) only in 13 districts some cases have been filed as indicated in above statement.