

ABSTRACT

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THE AUTHORITY OF A RECEIVER IN EXECUTION OF PROPERTY OUTSIDE THE BANKRUPTCY ESTATE IN BANKRUPTCY SETTLEMENT

When a legal entity secures a loan from the bank, the bank as a creditor needs to ensure the repayment from the debtor. The reason is because bank, being a financial intermediary body, raises funds from the public in the form of savings and channels them to the public in the form of loans or other forms in order to improve the standard of living of the people. Therefore bank as a creditor is willing to lend money to the debtor with the condition that the debtor provides certain collateral to guarantee the repayment to the bank. One of the most common form of collateral that has been used over time is mortgage. Mortgage gives the creditor a right to sell the property directly even if bankruptcy occurs. Therefore, when a legal entity is legally declared bankrupt, the creditor has all the right as separatist creditor to sell the mortgage that has been given by the debtor in order to get the repayment back. In bankruptcy, the role of a receiver is essential as receiver has the duty and the capacity to carry out the management and the settlement of the assets that are included in bankruptcy. The problem arises when a legal entity is declared bankrupt and there are certain challenges faced by separatist creditor to execute the mortgage. One of the limitations is a separatist creditor needs to execute the mortgage within 2 months after the start of insolvency period. If the creditor fails to execute the mortgage within given time, then the receiver has the right to execute the mortgage. As we know the receiver has the right to clear all the bankruptcy assets. However there are uncertainties faced by the receiver to execute a mortgage which is not included in bankruptcy asset.

Reference: 21 (1993- 2010)