

Abstract

When the court has ordered the debtor to be under receivership, the official receiver has duties to manage and collect the entire assets and properties of the debtor for distribution to the creditors equally as proportion of debts. However, there are some limitations and problems in the taking action especially an accession to information. Due to only get the information which the official receiver obtain from an explanation and the public examination of the debtor are not enough to know the fact about business and assets of the debtor. Therefore, there should be a concept that the creditor who has juristic relations and more familiar with the debtor than the official receiver and also has direct interest from the debtor's assets have a role to collect the assets including the information about the debtor, business and any assets to support operation of the official receiver.

In accordance with the ideas about the role of creditor to collect the debtor's assets, there are two different opinions as follows:

The first opinion, there is a concept to appoint the role of the creditor for collecting the assets of the debtor especially the petitioning creditor who is a petitioner for proceed the case with the debtor and he also has right to get information about the debtor. Moreover, the petitioning creditor is a first person who can receive payment over the all of the creditors. As it can be seen from Bankruptcy Act B.E. 2483, section 155 provided the petitioning creditor has the duties to assist the official receiver in collecting the assets of the debtor. Nevertheless, this concept should not be applied to the petitioning creditor solely, but also be applied to all creditors. Because, not only the petitioning creditor shall take the benefit from this process but it benefits all creditors. Thus, all of the creditors shall have duty to collect the assets of the debtor. In the case of creditor has the debtor's asset in his possession but he is not a secured creditor in the term of Bankruptcy Act. Otherwise, in the case of creditor knows about the debtor conceal or cover their assets, the creditor should has the duties to inform to the official receiver. If the creditor does not notice or inform this information, that creditor will take

an advantage over the other creditors and cause the damage to the debtor's assets. So, they should have legal sanction to apply to the creditor who neglect or fail to comply with the laws. For example, the creditor may lose the right to receive repayment pro rata on the assets that the creditor neglect or concealment.

Another option represents that all creditors should have right to participation with the process voluntarily to collect the assets of the debtor. With the reason that when the creditor chooses the bankruptcy process, it means the creditor requires the official receiver to manage and collect the assets for benefits of the creditors. If the bankruptcy process cause the duty of the creditor for collecting the assets and informing the information, business and any assets of the debtor to the official receiver, this process of bankruptcy will cause the creditor's obligations increasingly. Nevertheless, if the creditor is willing to assist to participate in collecting the asset, the laws should provide remuneration for the participated creditor. The remuneration shall be calculated as a percentage of the value of the assets which the creditor can pursue and collect, or provide the creditor regain the expenses which occur from pursuing and collecting step. Those remuneration and expenses shall be paid out of the assets of the debtor in order to motivate the creditor's participation. Moreover, it should provide the creditors' meeting to approve the remuneration and expenses simultaneously.

Nevertheless, to decrease the obligations of the creditor's role for collecting the assets of the debtor. Preliminary, they should be indicated that the petitioning creditor has the duties to collect the assets of the debtor to the time of the first meeting of creditors. The creditors' meeting may, if it deems to be difficult and complicate for the collecting of the assets of the debtor, appoint the agent or representative of the creditors for support operating of the official receiver. The creditors' meeting should provide the remuneration or expenses for the agent or representative of the creditors.

In the case of the creditors' meeting should not have the resolution to appoint the agent or representative of the creditors, the role of the petitioning creditor for the collecting the assets of the debtor should be terminated. After that, it should be

the right of the creditor to participate with the collective process. The creditors' meeting shall approve for the remuneration or the expenses to voluntary creditors. Those remuneration and expenses shall be paid out of the assets of the debtor as expenses of the operation of bankruptcy.

The remuneration shall be calculated as a percentage of the value of the assets which the creditor can pursue or collect.

The remuneration, expenses and fees in the collective process should specify to be the expenses of the operation of bankruptcy and have a preferential right in the same level with the expenses of the official receiver in managing the assets of the debtor as stated in section 130(2).