

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his "Fiqhi" Facebook Page

Answer to Question

Debt Guarantee with Compensation

To: Yusuf Abu Islam

Question:

Assalamu Alaikum... Our dear Sheikh and Ameer

May Allah protect you from all evil and harm, and give you empowerment over the land soon, Allah willing.

This is an urgent question if I may. Someone owes a large sum of money to a group of dealers. Another person offered to negotiate with these traders and expedite payment of their rights from his own pocket in return for lowering the value of the debt. The deductible amount shall then be distributed after the reduction by a certain percentage between him (mediator) and the debtor, i.e. the proportion between the mediator and the debtor shall be divided between them. Is this permitted? May Allah bless you and help you in all your matters.

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuhu

I understood from your question that you are in debt to merchants, and that someone wants to help you pay the debt to the merchants on your behalf, but he put a condition that he will make a deal with the merchants to reduce the debt value, and have a part of the discount, for example if the debt was 10000, he will negotiate it to bring down to 8000, and he wants to take 1000 from you, for example, i.e. half of the reduction in return for repaying the debt on your behalf. In other words, he wants to be your guarantee that you will repay the debt, so he pays it on your behalf for a return from you, which is a percentage of the discount that he can get from the merchants.

If my understanding is correct, this transaction is not permissible because its reality is the guarantee (Ad-Daman) that it to guarantee the repayment of the debt on your behalf, and the guarantee in Islam has conditions. One of these conditions is that the guarantee is not for a compensation. But in your case, he wants to be your guarantor in exchange for compensation. This transaction in this manner is not permissible. The evidence for the guarantee clearly explains that it is linking a liability to a liability, and that it is a guarantee of a permanent right to a liability. And it is clear that there is a guarantor, the guaranteed for, and the guaranteed to . it is clear that it does not constitute anything in return (compensation). This evidence is what Abu Dawood narrated from Jabir that he said:

«كَانَ رَسُولُ اللَّهِ ﷺ لَا يُصَلِّي عَلَى رَجُلٍ مَاتَ وَعَلَيْهِ دَيْنٌ فَأَتَيْتِ بِمَيْتٍ فَقَالَ أَعَلَيْهِ دَيْنٌ قَالُوا نَعَمْ دِينَارَانِ قَالَ صَلُّوا عَلَيَّ صَاحِبِكُمْ فَقَالَ أَبُو قَتَادَةَ الْأَنْصَارِيُّ هُمَا عَلَيَّ يَا رَسُولَ اللَّهِ قَالَ فَصَلَّى عَلَيْهِ رَسُولُ اللَّهِ ﷺ فَلَمَّا فَتَحَ اللَّهُ عَلَى رَسُولِ اللَّهِ ﷺ قَالَ أَنَا أَوْلَى بِكُلِّ مُؤْمِنٍ مِنْ نَفْسِهِ فَمَنْ تَرَكَ دَيْنًا فَعَلَيْ قَضَاؤُهُ وَمَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ».

“The Messenger of Allah (saw) would not say funeral prayer over a person who died while the debt was due from him. A dead Muslim was brought to him and he asked: Is there any debt due from him? They (the people) said: Yes, two dirhams. He said: Pray yourselves over your companion. Then Abu Qatadah al-Ansari said: I shall pay them, Messenger of Allah. The Messenger of Allah (saw) then prayed over him. When Allah granted conquests to the Messenger of Allah (saw), he said: I am nearer to every believer than himself, so if anyone (dies and) leaves a debt, I shall be responsible for paying it; and if anyone leaves property, it goes to his heirs.”

It is clear in this Hadith that Abu Qatada has included his liability to that of the deceased in the obligation of a financial right that is owed to the creditor. It is clear that the guarantee includes the guarantor, guaranteed for, and guaranteed to, and that, i.e. the guarantee that both agreed to, is being committed to the right of the liability without a return (compensation). The Hadith included the conditions of the validity of the guarantee, and its contract's terms.

Therefore, in your case it is permissible for that man to be your guarantor to pay off your debt, and it is permissible for him to agree with the you (the one with debt), but it is not permissible to get something in return, so it is not permissible that he wants something in return.

I repeat if my understanding of your question above is correct: this is what I believe is the answer in this matter and Allah knows best, He is Most Wise. But if my understanding of your question incorrect, explain it to me further so that I can try to answer to the correct reality, Allah willing.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

2 Jumada Al-Awwal 1439 AH

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/757303494466724/?type=3&theater>

The link to the answer from the Ameer's page on Google Plus:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/3D5TYDPTxRy>

The link to the answer from the Ameer's page on Twitter:

<https://twitter.com/ataabualrashtah/status/955552749118255105>