IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 199

Bankruptcy No 3631 of 2023 (Registrar's Appeal No 102 of 2024)

In the matter of Section 316 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of M Akbar bin Mohamed Ibrahim

Between

Madina Beevi Abdul Jameel
… *Respondent* / *Claimant*

And

M Akbar bin Mohamed Ibrahim
… *Appellant* / *Defendant*

And

Official Assignee
… *Non-party*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Dismissal of bankruptcy application for "sufficient cause" — Section 316(1)(*e*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Madina Beevi Abdul Jameel
v
M Akbar bin Mohamed Ibrahim
(Official Assignee, non-party)

[2024] SGHC 199

General Division of the High Court — Bankruptcy No 3631 of 2023
(Registrar's Appeal No 102 of 2024)
Goh Yihan J
25 July 2024

2 August 2024

Goh Yihan J:

1 This was an appeal by the defendant (hereinafter referred to as the "appellant") against the decision of the learned Assistant Registrar ("AR") in HC/B 3631/2023 ("B 3631"), in which the learned AR made a bankruptcy order against the appellant, along with various consequential orders. While the appellant appeared in person before the learned AR below, he engaged counsel for this appeal. As such, the appellant raised issues that were not raised before the learned AR.

2 With these issues in mind, I dismissed the appellant's appeal. In short, unlike the High Court decision of *K Shanker Kumar v Nedumaran Muthukrishnan (Official Assignee, non-party)* [2023] SGHC 214 ("*K Shanker Kumar*"), I did not find that there was "sufficient cause" under s 316(3)(*e*) of

the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") to dismiss a creditor's bankruptcy application. I explain my reasons briefly in these grounds, so that parties do not mistake the discretion that a court possesses under s 316(3)(*e*) to be one that is without limit. In particular, where a debtor has made a conscious decision to challenge a bankruptcy application such that he is deemed unsuitable by the Official Assignee ("OA") for the Debt Repayment Scheme ("DRS"), any alleged misunderstanding as to the consequences of such a decision would generally not constitute "sufficient cause" under s 316(3)(*e*) for a court to dismiss a bankruptcy application.

The background facts

3 The learned AR made the bankruptcy order against the appellant based on a statutory demand issued by the respondent on 19 July 2023 for a sum of $32,655.96 (the "SD"). The SD was in turn based on a judgment which the respondent had obtained in a counterclaim against the appellant in MC/OC 1855/2022 ("MC 1855") on 10 May 2023. In particular, the said judgment was entered against the appellant due to his failure to comply with an unless order made in MC 1855 on 25 April 2023. For completeness, the unless order stated as follows:[1]

> 2. Unless the Claimant files and serves his Affidavits of Evidence in Chief of all his witnesses by 9th May 2023 or takes out a formal application for further extension of time with supporting Affidavit by 9th May 2023, the Claimant's claim and defence to counterclaim herein shall be struck out without further order.

[1] Affidavit of M Akbar Bin Mohamed Ibrahim dated 15 July 2024 ("Defendant's Affidavit") at p 10.

4 When the appellant did not comply with the SD, and further failed to set aside the SD in HC/OSB 66/2023, the respondent filed B 3631 on 28 November 2023 to seek a bankruptcy order against him. B 3631 was then adjourned on 15 February 2024 for the OA to assess the appellant's suitability for the DRS pursuant to s 316(9) of the IRDA.[2] Had the appellant been assessed to be suitable, he might have avoided bankruptcy.

5 On 16 February 2024, the OA sent a Notice to File the Statement of Affairs (the "Notice to File") to the appellant. By this Notice to File, the appellant was required to submit the Statement of Affairs, the Income and Expenditure Statement (the "I&E Statement"), the Debt Repayment Plan, as well as other required supporting documents online by 1 March 2024.[3] When the appellant did not submit the required documents by the deadline, the OA sent a Reminder to him. This Reminder indicated an extended deadline of 17 March 2024. When the appellant did not respond to this Reminder, it transpired that the Notice to File and the Reminder had been sent to the wrong address. The OA therefore resent the Notice to File and the Reminder to the correct address on 18 March 2024, with a new deadline of 1 April 2024.[4] The appellant submitted his Statement of Affairs and the I&E Statement on 31 March 2024.[5]

6 However, the appellant received an email from the OA on 19 April 2024, which requested that he resubmit the Statement of Affairs to indicate the outstanding debt owed to the respondent. The appellant was also asked to submit

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2 Affidavit of Chwee Cheng Foon dated 22 July 2024 ("Official Assignee's Affidavit") at para 5.

3 Official Assignee's Affidavit at para 6.

4 Official Assignee's Affidavit at para 8.

5 Official Assignee's Affidavit at para 9.

other supporting documents. Contrary to the appellant's claim on affidavit that he "was not very sure of what was wrong with the [Statement of Affairs]",[6] the OA's email made it clear that the appellant had not declared the outstanding debt owed to the respondent and listed the other documents needed.[7] Later in the evening of 19 April 2024, the appellant emailed the OA, stating that "the Court have [*sic*] not informed [him] of [his] appeal" and that he did not owe the respondent any money. He further stated that it was the respondent who owed him money. As such, he "should not agree with the debt Restructuring scheme [*sic*]".[8] Tellingly, the appellant did not exhibit or refer to this email in his various affidavits.

7 Subsequently, on 22 April 2024, the appellant received a telephone call from the OA about his assessment for the DRS and the email he had sent to the OA on 19 April. The appellant and the OA gave different accounts of what happened during this call. Most importantly, while the appellant insisted that the OA did not tell him that he would be found unsuitable for the DRS, the OA averred that it did. After the call, the OA sent an email to the appellant with the Notice of Unsuitability for DRS (the "Notice of Unsuitability") on the ground that the appellant had informed the OA that "he would like to dispute the bankruptcy application".[9] On the very same day, the appellant responded to the OA by email, in which he stated that he wished to make a "Correction to your attached letter" and that he "may agree with the DRS if the court rejected by [*sic*] dispute/claims". [10]

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6 Defendant's Affidavit at para 16.

7 Official Assignee's Affidavit at para 10 and at p 25.

8 Official Assignee's Affidavit at para 11 and at p 28.

9 Defendant's Affidavit at para 21 and p 28.

10 Defendant's Affidavit at para 23 and p 30.

8 Given that the OA had issued the Notice of Unsuitability, and in light of the appellant's earlier failure to set aside the SD, the learned AR made the bankruptcy order against the appellant in B 3631 on 23 May 2024. The question raised in this appeal was whether the learned AR was correct to do so on the basis that there had been "sufficient cause" under s 316(3)(*e*) of the IRDA to decline making an order.

The applicable law

9 I begin with the applicable law, which the High Court set out in *K Shanker Kumar*. To begin with, s 316(3) of the IRDA provides that a court may dismiss a creditor's bankruptcy application based on the following grounds:

> (3) The Court may dismiss the application if —
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> (*a*) it is not satisfied with the proof of the applicant creditor's debt or debts;
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> (*b*) it is not satisfied with the proof of the service of the application on the debtor;
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> (*c*) it is satisfied that the debtor is able to pay all of the debtor's debts;
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> (*d*) it is satisfied that the debtor has made an offer to secure or compound for the applicant creditor's debt the acceptance of which offer would have required the dismissal of the application and the offer has been unreasonably refused by the applicant creditor; or
>
> (*e*) it is satisfied that for other sufficient cause no order ought to be made on the application.

10 As the Court of Appeal explained in *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 (at [16]–[17]), the applicable standard for obtaining a dismissal of bankruptcy proceedings is "no more than that for resisting a summary judgment application, *ie*, a debtor need only raise triable issues".

However, s 65(2)(*e*) of the BA (and accordingly, s 316(3)(*e*) of the IRDA) represents the court's residual discretion to dismiss bankruptcy proceedings *even if* it is satisfied that there are no triable issues (see the High Court decision of *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801 at [46], whose holding in this regard was not disturbed on appeal).

11 As to the situations where the court's residual discretion to dismiss bankruptcy proceedings can be invoked, the High Court decision of *Tang Yong Kiat Rickie v Sinesinga Sdn Bhd (transferee to part of the assets of United Merchant Finance Bhd) and others* [2014] SGHCR 6 is instructive. The court (at [12]) summarised foreign cases in which a bankruptcy petition was dismissed based on a similar "sufficient cause" provision or pursuant to the court's general power to dismiss a bankruptcy application:

> (a) the debtor has a reasonable prospect of being able to repay the debt: see *Re Latifah Bte Hussainsa, ex p Perbadanan Pembangunan Pulau Pinang* [2005] 2 MLJ 290 and *Re MS Ward* [1933] MLJ 69;
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> (b) the date of the act of bankruptcy was wrongly stated: see *Stephen Wong Leong Kiong v HSBC Bank Malaysia Bhd (formerly known as Hongkong Bank (M) Bhd)* [2011] 4 MLJ 207;
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> (c) there is a subsisting bankruptcy order made against the debtor *in the same jurisdiction* and the creditor did not act in good faith in bringing a subsequent bankruptcy petition: see *Sama Credit & Leasing Sdn Bhd v Pegawai Pemegang Harta, Malaysia* [1995] 1 MLJ 274;
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> (d) the judgment on which the debt is founded is unsound, unfair or in some manner defective: see *Re Victoria* [1894] 2 QB 387 and *Re Davenport* [1963] 1 WLR 817;
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> (e) the creditor is estopped from petitioning for bankruptcy: see *Re Stray* (1867) 22 Ch App 374 and *Re A Debtor (No 11 of 1935)* [1936] Ch 165;
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> (f) it is certain, as opposed to probable, that the debtor has no assets nor is there any hope of assets to accrue in future: see *Re Robinson* (1883) 22 Ch D 816;

> (g) the effect of the bankruptcy order is to stifle a claim, with a real prospect of success, which the bankrupt might otherwise have been able to pursue against the petitioning and only creditor to which the debtor was indebted: see *Re Ross (a bankrupt)* (No 2) [2000] BPIR 636; and
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> (h) there is or has been an abuse of the bankruptcy process by the creditor: see, for instance, *Bank of Scotland v Bennett* [2004] EWCA Civ 988.
>
> [emphasis in original]

12 As the High Court noted in *K Shanker Kumar* (at [13]), these examples are non-exhaustive. Indeed, in the High Court decision of *Lembaga Tabung Angkatan Tentera (Malaysia) v Ling Lee Soon* [2017] 3 SLR 414 (at [72]), the court held that "in deciding whether to exercise the court's power to dismiss a bankruptcy application for cause under s 65(2)(*e*) [of the BA], a court is entitled to take into account *any factor* and this includes the factors stated in ss 123(1)(*c*) and 123(1)(*d*) [of the BA]" [emphasis added]. Similarly, in the English High Court decision of *Re Micklethwaite* [2003] BPIR 101, the court observed that the court's power to adjourn or dismiss a bankruptcy petition is "unfettered" (at [6]), and "can be exercised if the making of a bankruptcy order might cause an injustice" (at [9]). However, it does not follow from the breadth of the court's discretion that it can be exercised on a whim; ultimately, the court's discretion is undoubtedly wide but must, of course, be exercised in a principled manner (see *K Shanker Kumar* at [14]).

My decision: the appeal is dismissed

13 With the above principles in mind, I dismissed the appeal for the following reasons.

The appellant's argument on appeal was not to challenge the underlying judgment debt

14 As a starting point, the respondent's main contention in this appeal was that the learned AR had correctly applied para 160(2) of the Supreme Court Practice Directions 2021, which provides that "[w]ithout limiting Rule 98 of the Bankruptcy Rules or Rule 68 of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020, on an application to set aside a statutory demand based on a judgment or an order, the Court will not go behind the judgment or order and inquire into the validity of the debt". The learned AR Wong Hee Jinn ("AR Wong") had, in a comprehensive and eloquent judgment, clearly explained that the underlying rationale of para 160(2) is that the bankruptcy court's function at the hearing of an application to set aside a statutory demand is *not* to conduct a full hearing of the dispute and adjudicate on the merits of the creditor's claim (see *Sundar Venkatachalam v Bharathi d/o Subbiah (Official Assignee, non-party)* [2024] SGHCR 6 ("*Sundar Venkatachalam*") at [71], citing the High Court decision of *Wong Kwei Chong v ABN-AMRO Bank NV* [2002] 2 SLR(R) 31 at [3]).

15 I respectfully agree with AR Wong's careful examination of para 160(2). However, AR Wong's helpful remarks in *Sundar Venkatachalam* were not relevant in this appeal because the appellant was not seeking to set aside the bankruptcy order by challenging the SD. Rather, the appellant was relying on the broad discretion in s 316(3)(*e*) of the IRDA to argue that the bankruptcy order ought not to have been made because he was a self-represented party ("SRP") who had been genuinely mistaken that he would still be able to request for the DRS even if the High Court were to "reject" his dispute in B 3631. However, to be fair to the respondent, the appellant raised these

arguments only after the respondent had tendered his written submissions for this appeal.

While the appellant should be given some latitude as a self-represented party, this does not extend indefinitely

16 Returning to the appellant's new case on appeal, I was of the view that while the appellant should be given some latitude as an SRP, this latitude did not extend indefinitely to excuse all of his conscious decisions. In this regard, the High Court in *Mak-Levrion Kah Kay Natasha (alias Mai Jiaqi Natasha) v R Shiamala* [2024] 4 SLR 616 made the following remarks on the latitude to be given to SRPs (at [10]):

> To begin with, while the defendant is a self-represented party ("SRP"), and the court may show greater indulgence to such a party, this indulgence is not to be expected as a matter of entitlement (see the Court of Appeal decision of *BNP Paribas SA v Jacob Agam and another* [2019] 1 SLR 83 at [103]). Indeed, in considering the degree of indulgence to be shown, such as in relation to compliance with procedural rules, a key consideration must be that "the absence of legal representation on one side ought not to induce a court to deprive the other side of one jot of its lawful entitlement" (see the High Court of Australia decision of *Nobarani v Mariconte* (2018) 359 ALR 31 at [47]). *To this, one might also consider the SRP's own conscious decisions taken along the way.*
>
> [emphasis added]

17 In the present case, I accepted that the appellant was generally unfamiliar with legal proceedings and processes. However, I did not think that the appellant could use this as a justification to reverse the effects of the conscious decision that he had taken to challenge the bankruptcy application.

18 First, the evidence showed that the appellant had informed the OA that he wanted to challenge the bankruptcy application. In this regard, the appellant emailed the OA on 19 April 2024 that "the Court have [*sic*] not informed [him]

of [his] appeal" and that he did not owe the respondent any money. Importantly, the appellant stated that it was the respondent who owed him money. As such, the appellant said that he "should not agree with the debt Restructuring scheme [*sic*]". This was a clear admission by the appellant that he fully intended to challenge the bankruptcy application. Indeed, the appellant's email to the OA supported the OA's account of the telephone call between the parties on 22 April 2024. Given that the appellant had indicated that he would not agree with being placed on the DRS, it was more believable that the OA had told the appellant that he would be found unsuitable for the DRS because he wanted to dispute the bankruptcy application. While the appellant did later send an email on the same day to the OA after he had received the Notice of Unsuitability to point out that he "may agree with the DRS if the court rejected by [*sic*] dispute/claims", this did not refute the OA's account of the telephone call. The appellant had thus been given ample notice of the OA's intention to assess him unsuitable for the DRS based on his indicated course of action.

19 Second, given that the appellant had informed the OA that he intended to challenge the bankruptcy application, it was irrelevant that he did not know that he would no longer be eligible for the DRS should he be unsuccessful in his challenge and be made a bankrupt. This was because the appellant had consciously decided to challenge the bankruptcy application. He would therefore have had to deal with the legal implications that flowed from this conscious decision. This remained the case even though he was a layperson because, were it otherwise, it would be all too easy to dismiss a bankruptcy application under s 316(3)(*e*) of the IRDA so long as a bankrupt claims that he or she did not understand the legal consequences of actions he or she had deliberately taken. In any event, the OA's letter to the appellant dated 3 March

2024 stated clearly that the purpose of the DRS was to avoid bankruptcy.[11] It had to follow thus that if the appellant were to be made a bankrupt, there would then no longer have been any scope for the DRS to apply.

20 Third, at the hearing before the learned AR below, the appellant did not mention that he had not known that he would be taken off consideration for the DRS once he disputed the bankruptcy application. Instead, the appellant simply informed the learned AR that he was disputing the bankruptcy application and that he was "not given the outcome of my affidavit which I had given to the Court".[12] Even considering the appellant's lack of familiarity with court processes, it was telling that he did not mention his supposed misunderstanding of what the OA had said during the telephone call on 22 April 2024. If that had truly been his belief, the appellant would surely have pointed that out to the learned AR.

21 Taken collectively, it appeared to me that the appellant had committed to the OA that he wanted to dispute the bankruptcy application on 19 April 2024 and that he did not agree to being placed on the DRS. Having taken such a position, he was then informed by the OA during the phone call on 22 April 2024 that he would be assessed unsuitable for the DRS and that the bankruptcy application would be referred to the court for determination. The formal Notice of Unsuitability from the OA duly followed on the same day. The learned AR then rightly granted the bankruptcy order since the appellant did not raise any cogent grounds to dispute the bankruptcy application below. While the appellant may have been an SRP, it was important that he be held responsible for his conscious actions. In my judgment, there was no "sufficient cause" to disturb

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11 Official Assignee's Affidavit at p 13.

12 Certified Transcript 23 May 2024 at p 2 line 16.

the learned AR's decision to make the bankruptcy order against the appellant. More broadly, it was also important that s 316(3)(*e*) of the IRDA could not be used by parties to reverse the effects of their conscious decisions that turned out to be disadvantageous to them.

Conclusion

22 For all of these reasons, I dismissed the appeal with costs to the respondent fixed at $8,000 all-in.

Goh Yihan
Judge of the High Court

Anand s/o K Thiagarajan (AKT Legal Chambers) for the claimant;
Mohammed Shakirin bin Abdul Rashid, Umar Abdullah bin Mazeli and Nur Amalina binte Saparin (Adel Law LLC) for the defendant;
Lim Jian Yi (Insolvency & Public Trustee's Office) for the Official Assignee.