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

[2025] SGHCR 17

Bankruptcy No 4826 of 2024

Between

National University Hospital (Singapore) Pte Ltd

… *Claimant*

And

Soh Keng Cheang Philip

… *Defendant*

Bankruptcy No 4826 of 2024 (Summons No 699 of 2025)

Between

National University Hospital (Singapore) Pte Ltd

… *Applicant*

And

Soh Keng Cheang Philip

… *Respondent*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Bankruptcy order — Power to review, rescind or vary orders — Section 7 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

TABLE OF CONTENTS

Version No 1: 29 May 2025 (11:14 hrs)

Version No 1: 29 May 2025 (11:14 hrs)

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National University Hospital (Singapore) Pte Ltd v Soh Keng Cheang Philip and another matter

[2025] SGHCR 17

General Division of the High Court — Bankruptcy No 4826 of 2024;
Bankruptcy No 4826 of 2024 (Summons No 699 of 2025)
AR Elton Tan Xue Yang
6, 14 February, 15 April 2025

29 May 2025

AR Elton Tan Xue Yang:

Introduction

1 In this application, the claimant invited me to rescind a bankruptcy order that I made against the respondent. The claimant was the creditor who had applied for the bankruptcy order against the respondent. The ground for the claimant's application for rescission of the order was not that the order was wrongly made or defective in any way, but that the claimant had essentially changed its mind and no longer wished to pursue the debt by way of bankruptcy proceedings. Unusually, the claimant's change of mind had occurred before the hearing of the bankruptcy application, but this was not conveyed to its solicitors in time for the hearing. Unaware of this fundamental change in instructions, the claimant's solicitors sought and obtained the bankruptcy order on an uncontested basis before me.

2 The claimant's application was brought under s 7 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). Section 7 confers on the court the power to review, rescind or vary any order made by the court when exercising its jurisdiction under the IRDA.

3 Given the broad language of s 7 and that – to my knowledge – the circumstances in which the court will exercise its powers to review, rescind or vary orders made in its insolvency jurisdiction appeared to be a matter of first impression before our courts, I reserved judgment to consider the matter carefully. Having done so, I rescinded the bankruptcy order and granted the claimant permission to withdraw the bankruptcy application. These are the detailed reasons for my decision.

Background

4 The claimant, National University Hospital (Singapore) Pte Ltd ("NUHS"), is part of the National University Health System, one of the three public healthcare clusters in Singapore. NUHS operates the National University Hospital ("NUH").[1] The defendant is Mr Soh Keng Cheang Philip ("Mr Soh"), a former patient at NUH who was engaged in litigation with NUH between 2014 and 2021.

5 The facts leading up to the bankruptcy hearing are largely unremarkable, but the events that transpired after I made the bankruptcy order are rather more unusual. I will narrate the facts in the order that they came to my knowledge.

[1] 2nd affidavit of Lee Tai Hsiung Shane dated 14 March 2025 ("NUHS' 2nd affidavit"), para 6.

Version No 1: 29 May 2025 (11:14 hrs)

Events leading up to the bankruptcy hearing

6 On 24 December 2024, NUHS filed a bankruptcy application (HC/B 4826/2024) against Mr Soh Keng Cheang Philip ("Mr Soh"). NUHS sought the appointment of Mr Goh Wee Teck and Ms Yap Hui Li of RSM SG Corporate Advisory Pte Ltd as the joint and several trustees of the bankruptcy estate. The application was filed on NUHS' behalf by its solicitors at the time, Ascentsia Law Corporation ("Ascentsia").

7 The bankruptcy application was premised on Mr Soh's failure to satisfy a statutory demand for the sum of $292,001.24. The debt arose from a series of court proceedings involving NUH and Mr Soh. In 2014, Mr Soh had commenced a suit against NUH, following a cervical decompression laminectomy at his vertebrae in NUH. Unfortunately, he experienced weakness and partial paralysis after the procedure. Mr Soh took the view that NUH had acted negligently by failing to diagnose a condition of peripheral neuropathy at an earlier stage and sought damages for negligence from NUH. On 26 October 2021, following a trial of the matter, the High Court dismissed Mr Soh's action in its entirety (see *Soh Keng Cheang Philip v National University Hospital (S) Pte Ltd* [2021] SGHC 243). He was ordered to pay outstanding hospital bills amounting to $26,463.73 and costs totalling $237,410.22. The remaining amounts in the statutory demand arose from interest and other costs.[2]

8 The hearing of the bankruptcy application was fixed before me on 6 February 2025 at 2.30pm (for reasons that will become clear, it is necessary to have regard to the timing of the hearing). Parties were notified on 20 January 2025 of the hearing date and time.

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[2] 1st affidavit of Lee Tai Hsiun Shane dated 19 December 2024 ("NUH's 1st affidavit"), para 3 and Exhibit A.

Version No 1: 29 May 2025 (11:14 hrs)

9 On 3 February 2025 at 4.16pm, Mr Soh tendered a signed letter to the court dated 2 February 2025, copying Ascentsia in his correspondence. Mr Soh stated that he was not in a position to attend the hearing on 6 February 2025. He explained that he has been permanently disabled since the surgery at NUH and at a high risk of sustaining falls. He has been a resident at the Woodlands Care Home since February 2018, unable to work and without any sources of income. All of his nursing home expenses and medical expenses were fully subsidised. Mr Soh further stated: "I have no desire to waste the Court's precious time by arguing against the application to make me bankrupt. The litigation that I lost drained me out in more ways than can be imagined and I am too tired to try again. I therefore leave this matter in the hands of the Court and if the Court takes the view that the Claimant's application should go through, then so be it. I will respect the Court's decision."[3] Enclosed together with the letter was a photograph of Mr Soh in convalescence, presumably at the nursing home he mentioned.

10 Having seen Mr Soh's correspondence, I took the view that it should be brought to Mr Soh's attention that the hearing would take place by way of video conference, such that his physical attendance at the Supreme Court would not be necessary. Correspondence was sent to Mr Soh to this effect on 5 February 2025, attaching the virtual hearing details which had already been provided to the parties earlier.

11 Mr Soh responded by way of email on 5 February 2025 at 10.57pm, being the evening the day before the hearing. This was a short missive stating: "I am truly grateful for the court's emails and efforts. But the Nursing Home

[3] Email from Mr Soh of 3 February 2025 at 4.16pm with copy to Ascentsia Law Corporation, enclosing a letter dated 2 February 2025 and a photograph.

Version No 1: 29 May 2025 (11:14 hrs)

has strict rules that disallow Zooming. I have tried to no avail. I am resigned to accepting whatever the court decides."[4]

12 The bankruptcy hearing in the afternoon of 6 February 2025 commenced at 2.37pm. Mr Soh was absent. Mr Low Hong Quan ("Mr Low") of Ascentsia appeared for NUHS. Mr Low submitted that the bankruptcy order should be made. He observed that the debt amount was sizeable and that Mr Soh had stated in his letter that he was unable to work and pay off his debts. Having been satisfied that the bankruptcy application was in order, and having had regard to Mr Soh's position as communicated in his correspondence, I made the bankruptcy order in the terms sought.

Request to withdraw the bankruptcy application

13 On 7 February 2025, a day after the bankruptcy hearing, Ascentsia wrote to "inform the Court that subsequent to the [bankruptcy] hearing, we have been instructed to withdraw the [bankruptcy application]". Counsel requested to appear before me to "make the necessary submissions". Neither the circumstances behind the request nor the legal basis for a withdrawal of the bankruptcy application following the making of the order were apparent from the letter. I directed that a hearing be convened on 14 February 2025.

14 On 10 February 2025, Mr Soh wrote to the court again. Mr Soh stated that he agreed to the request to withdraw the bankruptcy application and that he would attend the hearing on 14 February 2025, having applied for urgent home leave from the nursing home to do so.[5]

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[4] Email from Mr Soh of 5 February 2025 at 10.57pm with copy to Ascentsia Law Corporation.

[5] Email from Mr Soh of 10 February 2025 at 7.49pm with copy to Ascentsia Law Corporation.

Version No 1: 29 May 2025 (11:14 hrs)

15 I received a further letter from Ascentsia on 12 February 2025, informing me that Mr Kelvin Poon Kin Mun SC ("Mr Poon") and Mr Wilson Zhu Ming-ren from Rajah & Tann Singapore LLP ("Rajah & Tann") had been engaged as NUHS' instructed counsel and would appear together with Ascentsia at the hearing.

Request to rescind the bankruptcy order

16 On 14 February 2025, Mr Poon, Mr Low and Mr Soh attended before me. Mr Poon informed me that NUHS was requesting that the bankruptcy order be rescinded pursuant to s 7 of the IRDA, and in the alternative that I should exercise my inherent jurisdiction to recall my decision and hear further arguments. Once the order was rescinded or recalled, NUHS' intention was to apply for permission to withdraw the bankruptcy application or otherwise ask that no order be made on the application. As to the factual circumstances underlying the request, these were briefly sketched out orally to me by Mr Poon. In essence, it appeared that NUHS had made a decision just before the hearing on 6 February 2025 not to proceed with the application, but the instructions had not reached Mr Low in time. Had they reached Mr Low in time, it was very likely that the bankruptcy order would not have been made. Mr Poon submitted that this was an "unusual situation" warranting the exercise of the court's discretion under s 7 of the IRDA to rescind the bankruptcy order.

17 I considered that it would not be proper for an application of this nature to be made only orally and gave directions for NUHS to file a formal application to seek the necessary relief. The application should be accompanied by an affidavit that should set out the detailed facts surrounding NUHS' decision no longer to pursue bankruptcy proceedings against Mr Soh (which was to be sworn or affirmed by a person in a position to provide such an account), as well

Version No 1: 29 May 2025 (11:14 hrs)

as written submissions addressing the legal basis for the application. I was also conscious that there appeared to be little to no guidance in the case law in Singapore on the exercise of powers that appeared, on a bare reading of s 7 of the IRDA, to be broad and sweeping, and some measure of caution was therefore required. On his part, Mr Soh informed me that he would not be filing an affidavit and that it would be difficult for him to attend a further hearing. I directed Mr Soh to write to the court after the filing of the application to indicate his position on the application and whether he would be attending the further hearing.

18 The application was filed by Rajah & Tann representing NUHS on 14 March 2025 as directed, with a supporting affidavit sworn by Mr Lee Tai Hsiung Shane ("Mr Lee"), Chief Financial Officer of NUHS. Rajah & Tann had filed a notice of change of solicitors a day before, on 13 March 2025, for its appointment as NUHS' solicitors in place of Ascentsia.

Application to rescind the bankruptcy order

19 In HC/SUM 699/2025, NUHS sought the following relief:

(a) pursuant to s 7 of the IRDA, for the bankruptcy order made on 6 February 2025 to be rescinded, or in the alternative, for no order to be made on the bankruptcy application;

(b) in the alternative, for the bankruptcy order to be recalled and leave granted for the bankruptcy application to be withdrawn pursuant to the inherent jurisdiction of the court; or

(c) such further orders or other directions as the court deemed fit.

Version No 1: 29 May 2025 (11:14 hrs)

20 Mr Lee's supporting affidavit shed light on the circumstances behind the application.[6] Mr Lee explained that after Mr Soh's unsuccessful litigation against NUHS, NUHS' finance department and solicitors made numerous attempts to reach out to him to recover the judgment debt. Despite these efforts, Mr Soh did not pay any portion of the monies owed. NUHS took the view that it was obliged, as a publicly funded healthcare institution, to make all reasonable efforts to recover sums due to it. As a last resort, it commenced the bankruptcy application against Mr Soh. After parties were notified on 20 January 2025 of the hearing date and time of the bankruptcy application, Ascentsia duly relayed this information to NUHS.[7]

21 On or around 31 January 2025, as part of NUHS' regular internal reviews on ongoing legal matters, NUHS' management was in the process of ascertaining further background on Mr Soh's latest financial and medical status. At this time, NUHS was aware of Mr Soh's letter to the court dated 2 February 2025, in which he had stated that he was a resident at Woodlands Care Home and that all of his nursing and medical expenses were fully subsidised (see [9] above).[8]

22 At 12.59pm on 6 February 2025 (being the day of the hearing), NUHS' medical social work team reported internally to confirm that Mr Soh was accurate in saying that he was in a nursing home and entirely reliant on subsidies. Mr Soh relied on the Medical Fee Exemption Card scheme to pay for his medical expenses. Placement on that scheme meant that Mr Soh had savings

[6] NUHS' 2nd affidavit, paras 6 to 33.

[7] NUHS' 2nd affidavit, paras 17 to 20.

[8] NUHS' 2nd affidavit, paras 21 and 22.

Version No 1: 29 May 2025 (11:14 hrs)

of $6,000 or less and monthly per capita family income of $800 or less, and was a resident of a publicly funded nursing home or shelter or disability home.[9]

23 NUHS' Chief Executive Officer, Professor Aymeric Lim ("Professor Lim"), was updated immediately after the team's report. At about 1.33pm, Professor Lim conveyed instructions that the bankruptcy application should be withdrawn immediately.[10]

24 At about 1.58pm, having received Professor Lim's instructions, staff from NUHS attempted to call Ascentsia to convey the instructions. They were unable to get through and attempted another call at 2.23pm. They managed to reach staff from Ascentsia but were told that the solicitor in charge of the hearing was already attending the hearing and could not be reached. Later that afternoon, Ascentsia informed NUHS that the bankruptcy hearing had taken place and the order was made. NUHS took advice and instructed Ascentsia not to extract the bankruptcy order.[11] What followed was Ascentsia's letter to the court requesting a hearing to withdraw the bankruptcy application and make submissions (see [13] above).

25 Mr Lee further explained in his affidavit that "on purely compassionate reasons, bearing in mind [Mr Soh's] physical condition and impecuniosity, [NUHS] does not wish for [Mr Soh] to have to bear any further burdens that may arise from a bankruptcy order".[12]

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[9] NUHS' 2nd affidavit, paras 23 to 25.

[10] NUHS' 2nd affidavit, paras 26 and 27.

[11] NUHS' 2nd affidavit, paras 29 and 30.

[12] NUHS' 2nd affidavit, para 40.

Version No 1: 29 May 2025 (11:14 hrs)

26 On his part, Mr Soh wrote to inform me that he would be attending the hearing of the application for rescission that had been fixed on 15 April 2025. While admitting some difficulty in understanding NUHS' submissions on the law, Mr Soh expressed gratitude to NUHS for its position and asked that the bankruptcy order be rescinded or recalled.[13]

27 I heard the parties on 15 April 2025 and ordered that the bankruptcy order of 6 February 2025 be rescinded. The bankruptcy application being back afoot, I granted NUHS permission to withdraw the application, with no order as to costs. I will elaborate on the parties' submissions below.

Court's power to review, rescind or vary orders under s 7 of the IRDA

History of the power

28 Section 7 of the IRDA provides as follows:

> **Power to review orders**
>
> **7.** The Court may review, rescind or vary any order made by the Court when exercising its jurisdiction under this Act.

29 The court's power to review, rescind or vary orders made in the exercise of its insolvency jurisdiction is of considerable vintage. It was present in s 71 of the Bankruptcy Act 1869 (32 & 33 Vict. c. 71) in England and, even at that time, described by Sir James Bacon, CJ in *Ex parte Keighley; In re Wike* (1874) L.R. Ch.App. 667 as simply "part of the law of bankruptcy [that existed] before" and an expression of "the practice of rehearing proper cases on proper materials [which] is of very considerable antiquity". The power was extended from the bankruptcy context to the winding up of companies by way of the Insolvency

[13] Email from Mr Soh of 21 March 2025 at 3.00pm with copy to Rajah & Tann Singapore LLP, enclosing a letter dated 21 March 2025.

Version No 1: 29 May 2025 (11:14 hrs)

Act 1986 (the "UK Insolvency Act 1986") and its accompanying rules, which consolidated much of the law relating to individual and corporate insolvency in the UK (see David Mohyuddin QC, *Schaw Miller and Bailey: Personal Insolvency: Law and Practice* (LexisNexis, 5th Ed, 2017) at para 1.2). Before that, the court did not have jurisdiction to grant an order to rescind the winding up of a company and could only stay the winding-up proceedings (see *Re Virgo Systems Ltd* (1989) 5 BCC 833 ("*Virgo Systems*") at 834; and *Re Metrocab Limited* [2010] EWHC 1317 (Ch) ("*Metrocab*") at [34]).

30 In the UK, the power to review, rescind or vary orders is now contained in s 375(1) of the UK Insolvency Act 1986 (for individual insolvency) and rule 12.59(1) of the Insolvency (England and Wales) Rules 2016 (for corporate insolvency). The English courts have developed a substantial body of case law on the interpretation of these provisions. As these provisions are *in pari materia* with s 7 of the IRDA, I consider that the English cases are useful to the interpretation of our s 7 but the principles may of course be adapted to meet our needs.

31 In Singapore, the same power has existed in our bankruptcy legislation since the Bankruptcy Ordinance 1888 (SS Ord No 2 of 1888) of the Straits Settlements (in s 85(1)). It remained on the pages of our statute books through the reforms of the Bankruptcy Act 1995 (Cap 20, 1985 Rev Ed), with its language remaining largely unchanged. With the passage of the IRDA in 2018, the power was extended from the bankruptcy jurisdiction to that of winding up. Prior to this, as well as the introduction of the power to terminate a winding up under s 186(1) of the IRDA, there was significant uncertainty as to whether a winding-up order once perfected could be set aside, rescinded or discharged (see *Interocean Holdings Group (BVI) Ltd v Zi-Techasia (Singapore) Pte Ltd (in liquidation)* [2014] 2 SLR 485 at [16]–[22] for the view that it could not, the

Version No 1: 29 May 2025 (11:14 hrs)

only possibility being a stay under s 279(1) of the Companies Act (Cap 50, 2006 Rev Ed), *cf Standard Chartered Bank (Singapore) Ltd v Construction Professional Resources Pte Ltd* [2019] 5 SLR 709 at [6]–[11] for the view that the court has the inherent power to set aside a winding-up order; see also *GVR Global Pte Ltd v Wayne Burt Pte Ltd and another* [2021] 3 SLR 546 at [15]–[16] and *Ascentury International Co Ltd v Viva Capital (SG) Pte Ltd* [2024] 5 SLR 434 at [12]–[14]).

32 Notwithstanding the long history of the statutory power in Singapore (at least in the bankruptcy context), there have been few cases touching on it, and in these cases the court's remarks have only been expressed *obiter*.

Application and scope of the power

(1) Nature of the court's discretion

33 The power under s 7 to review, rescind or vary applies to *any order* made in the exercise of the court's jurisdiction under the IRDA. This is plain from the language of s 7 itself. In the bankruptcy context, this means that the power applies to matters such as bankruptcy orders (s 309), orders to stay or dismiss bankruptcy proceedings (s 315), orders to set aside statutory demands (rules 67 and 68 read with rule 3 of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020), orders to annul or discharge a bankruptcy order (ss 392 and 394), and so on. In what appears to be the only local case considering the application of the power, the court in *Re Jeyaretnam Joshua Benjamin, ex parte Indra Krishnan* [2001] 1 SLR(R) 415 ("*Jeyaretnam Joshua Benjamin*") suggested (at [15]) that the power – which was then contained in s 7 of the Bankruptcy Act (Cap 20, 2000 Ed) – could be applied to consent orders made by the court under its bankruptcy jurisdiction. No conclusive view on that

Version No 1: 29 May 2025 (11:14 hrs)

issue was reached on appeal, which was dismissed on other grounds (see *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2001] 2 SLR(R) 733 at [21])).

34 The scope of the statutory power in the UK is worded in a similarly broad fashion (see *Fitch v Official Receiver* [1996] 1 WLR 242 ("*Fitch*") at 246E and *Papanicola (as trustee in bankruptcy for Mak) v Humphreys and others* [2005] 2 All ER 418 ("*Papanicola*") at [25]). The English courts have entertained applications for the exercise of the power in relation to a variety of insolvency-related orders, including bankruptcy orders (see *Fitch*), winding-up orders (see *Metrocab*), the dismissal of an application to set aside a statutory demand (see *In re A Debtor (No. 32-SD-1991)* [1993] 1 WLR 314 ("*In re A Debtor (1991)*")), a judgment under s 212 of the UK Insolvency Act 1986 for alleged misfeasance in the wrongful transfer of monies (see *Re Truewood Limited (in liquidation)* [2020] EWHC 2360 (Ch)), and an order for proceeds to be held on trust as part of the bankrupt's estate rather than post-bankruptcy income (see *Papanicola*).

35 The word "may" in s 7 also signals that it is a matter of the court's discretion whether to review, rescind or vary an order. It is notable that the language of s 7 does not place any fetters on the manner in which that discretion is to be exercised. The position is similar in the UK, where the court's discretion has been variously described as "absolute" (see *In re Izod; Ex parte the Official Receiver* (1898) 1 QB 241 at 254), "extremely wide" (see *Ahmed v Mogul Eastern Foods and another* [2005] EWHC 3532 (Ch) ("*Mogul Eastern Foods*") at [19]), and even "in theory at least, virtually unlimited" (see *Fitch* at 246E).

Version No 1: 29 May 2025 (11:14 hrs)

(2) Comparison to annulment and appeals

36 The unfettered nature of the power to review, rescind or vary an order can be usefully compared to the position governing the *annulment* of bankruptcy orders as well as *appeals*.

37 In relation to the power of annulment, the court is only able to annul a bankruptcy order if the order ought not to have been made based on any ground existing at the time the order was made (see s 392(1)(*a*) of the IRDA). In contrast, the power to review, rescind or vary an order can be exercised even if the order was properly made and there are no reasons to doubt its correctness as a matter of law (see *Fitch* at 246E–F). In addition, the power of annulment under s 392 is, of course, only exercisable in relation to bankruptcy orders, while that under s 7 is exercisable in relation to all orders in the exercise of jurisdiction under the IRDA.

38 The courts have emphasised that the jurisdiction to review, rescind or vary an order should not be conflated with that of annulment. In *Fitch*, the English Court of Appeal departed from the approach in *In re a Debtor (No. 12 of 1970)* [1971] 1 WLR 1212, where Russell LJ had remarked that the power to rescind a receiving order and set aside a bankruptcy (under s 108(1) of the Bankruptcy Act 1914, the version in force at the time) would only be exercised in circumstances "closely analogous to the expressly recognised circumstances which enable a bankruptcy to be halted or annulled" (at 1215). Millett LJ, giving the judgment of the Court of Appeal in *Fitch*, directly rejected that proposition, holding that the statutory discretion was "in terms unlimited" and that the effect of a rule of law as suggested by Russell LJ "would be to distort the nature of the inquiry upon which the court ought to embark" (at 248G–H). I elaborate further on *Fitch* below. The short point for present purposes is that the distinction

Version No 1: 29 May 2025 (11:14 hrs)

between the jurisdiction to review, rescind and vary an order, on the one hand, and to annul an order, on the other, is now well-established in the cases (see, for example, *Virgo Systems* at 834–835 and *Papanicola* at [15]–[17]).

39 In relation to appeals, an appellate court will generally set aside a bankruptcy order only if it is satisfied that, either on the evidence before the court that made the order or on new evidence admitted in accordance with the rule in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"), the order should not have been made (see *Fitch* at 246G). In contrast, the common law has developed so to allow the power to review, rescind or vary an order to be exercised on the basis of evidence that need not, and – as reflected in the cases – often does not, satisfy the *Ladd v Marshall* requirements. Two cases serve to illustrate the point.

40 The first is *In re A Debtor (1991)*. The debtor, a trader in a small way of business, applied unsuccessfully to a district judge to set aside a statutory demand served by his former accountants for certain charges. He lodged an appeal but later withdrew this, and in its place filed an application to review the order dismissing the application. The application for review came before the district judge who had dismissed the setting-aside application. The application for review was accompanied by an affidavit sworn by one Mr Mulfakis, an accountant whom the debtor had instructed to review the creditors' charges. Mr Mulfakis opined that the amount charged by the creditors was grossly excessive and that a full investigation into the creditors' working papers was necessary. Unfortunately, the debtor submitted Mr Mulfakis' affidavit only on the day of the hearing of the application for review. The district judge took the view that there were no grounds for seeking a review of the order, that Mr Mulfakis' evidence should have been obtained in time for the hearing of the setting-aside

Version No 1: 29 May 2025 (11:14 hrs)

application, and accordingly that it was not material on which an application for review could be founded; the proper way forward was for the debtor to appeal.

41 On appeal, Millett J remarked that the district judge "[did] not seem to have recognised the distinction between a review and an appeal, or that the affidavit evidence of Mr Mulfakis *could not be admitted on appeal* because of the doctrine laid down in the well known case of [*Ladd v Marshall*]" [emphasis added] (at 318A–B). (Millett J did not elaborate on exactly why Mr Mulfakis' affidavit could not have been admitted on appeal under the *Ladd v Marshall* principles, but it seems safe to assume that, with reasonable diligence, the affidavit could and should have been obtained for use in the setting-aside application, and therefore would not satisfy this element of the test.) Millett J then put the point as follows (at 319A–B):

> The second question is whether fresh evidence is admissible upon an application under section 375, that is to say, evidence which could with due diligence have been obtained in time for the original hearing. In my judgment there is a significant distinction between an application under section 375 of the [UK Insolvency Act 1986] and an appeal. … *Where an application is made to the original tribunal to review, rescind or vary an order of its own, however, the question is not whether the original order ought to have been made upon the material then before it but whether that order ought to remain in force in the light either of changed circumstances or* ***in the light of fresh evidence, whether or not such evidence might have been obtained at the time of the original hearing****.* The matter is one of discretion, and where the evidence might and should have been obtained at the original hearing that will be a factor for the court to take into account; but ***the rationale of the rule in Ladd v. Marshall, that there should be an end to litigation and that a litigant is not to be deprived of the fruits of a judgment except on substantial grounds, has no bearing in the bankruptcy jurisdiction.*** *The very existence of section 375 is inconsistent with such a rationale.*
>
> [emphasis added in italics and bold italics]

42 Millett J found that the district judge had not exercised her discretion under s 375 of the UK Insolvency Act 1986 at all or, if she had, had exercised

Version No 1: 29 May 2025 (11:14 hrs)

her discretion wrongly. The district judge did not consider if the fresh evidence (being Mr Mulfakis' affidavit) should have been admitted and if it was cogent and would be sufficient, if unanswered, to show that the outstanding liability was disputed. The district judge also "[did] not appear to have recognised the difference between the appeal and review procedures and she seem[ed] to have considered that because the case had been previously investigated the only proper course now was to appeal it" (at 320G–H). Millett J allowed the appeal and remitted the matter to another district judge to consider whether the order for setting-aside should be reviewed.

43 The second case is *Fitch*. The debtors were adjudged bankrupt and they applied for a review of the bankruptcy orders, following an unsuccessful appeal. The evidence relied on in their application pertained to the fact that a large body of creditors, including the petitioning creditor, had formed the view following the making of the bankruptcy orders that it was no longer in the creditors' interests for the bankruptcy to continue. There was a business opportunity for the debtors that might be compromised if the bankruptcy orders against the debtors were to remain in place. That could in turn prejudice the recovery of a substantial amount for the estate. The judge dismissed the application for review. He took the view that the application followed what was essentially a reappraisal by the petitioning creditor of where its commercial interests lay, based on material that had been available throughout. As the material was available at the time the bankruptcy orders were made, the proper place for its deployment was on appeal from the bankruptcy orders.

44 The matter went before the Court of Appeal. Millett LJ, who gave the judgment of the court, observed that an application under s 375(1) of the UK Insolvency Act 1986 could be founded "on the discovery of further evidence which *could not* be adduced on appeal" [emphasis added] (at 246H). In his view,

Version No 1: 29 May 2025 (11:14 hrs)

since the creditors' change of mind had occurred after the bankruptcy orders were made, this was a factor that could not be taken into account on appeal. The judge was "wrong to stigmatise the applications as an attempt to have another appeal hearing. Section 375(1) provided *the only means* of giving effect to the creditors' wishes that the bankruptcies should be discontinued." [emphasis added] (at 247B). The bankruptcy orders were therefore rescinded.

45 I make two brief points on *In re A Debtor (1991)* and *Fitch* from the point of view of Singapore law and practice.

46 I begin with the point of law. The Singapore courts have received *Ladd v Marshall* as part of the approach to the adduction of further evidence on appeal but have developed and fine-tuned the approach so that an appellate court is able to strike the appropriate balance between the interests of finality of proceedings and the right of the applicant to put forth relevant and credible evidence to persuade the appellate court that the justice of the case lies with him (see *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [56]–[59]). In particular, in relation to evidence of matters that occurred after the trial or hearing that resulted in the decision of the court below that is being appealed, the *Ladd v Marshall* requirements need not be strictly satisfied and the court will strike the balance in favour of admitting such evidence as long as it is at least potentially relevant and seemingly credible (see *Anan Group* at [27] and *BNX v BOE and another appeal* [2018] 2 SLR 215 at [99]–[100]). It is therefore less obvious that, were the facts in *In re A Debtor (1991)* and *Fitch* to come before an appellate court in Singapore applying these principles, the appellate court could not or would not admit the further evidence.

47 The second is a point of practice. In Singapore, bankruptcy matters – the most common of which are applications for bankruptcy orders, to set aside

Version No 1: 29 May 2025 (11:14 hrs)

statutory demands, and to annul or discharge bankruptcy orders – are typically heard by assistant registrars at first instance. Assistant registrars hear and make orders in these matters pursuant to s 5 of the IRDA, which confers upon the Registrar all the powers and jurisdiction of the Court (s 5(*a*)) and deems any order or act done by the Registrar in the exercise of those powers and jurisdiction to be the order or act of the Court (subject to any appeal to a judge in chambers) (s 5(*b*)). Under s 3 of the IRDA, the General Division of the High Court is the court conferred with jurisdiction for all insolvency-related matters, including individual insolvency and bankruptcy matters. Accordingly, in making orders on bankruptcy-related matters, an assistant registrar exercises delegated jurisdiction devolved from that vested in a judge of the General Division of the High Court. A judge in chambers who hears an appeal from the assistant registrar's order under s 5(*b*) does not exercise *appellate* jurisdiction but rather *confirmatory* jurisdiction. In this regard, the position in the bankruptcy context is no different from that governing the powers and jurisdiction of assistant registrars more generally (see *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 at [16]). It therefore stands to reason that the *Ladd v Marshall* requirements would not, strictly speaking, apply in the context of appeals to a judge in chambers from decisions of assistant registrars.

48 That being said, it remains clear that the restrictions on the adduction of further evidence on appeal as developed by the Singapore courts would apply to any *further* appeal from the decision of the judge in chambers. They would also apply in relation to appeals from decisions of a judge on corporate insolvency matters, which are not typically heard by assistant registrars (see, for example, *Anan Group* which concerned an application to adduce further evidence on appeal from a winding-up order).

Version No 1: 29 May 2025 (11:14 hrs)

Requirements for the court's exercise of discretion

"Exceptional circumstances"

49 At common law, the courts have introduced a requirement that the discretion to review, rescind or vary an order will only be exercised in "exceptional circumstances" (see, for example, *Fitch* at 249A, *Papanicola* at [25] and *Metrocab* at [36(iii)]). The courts have also repeatedly emphasised that the discretion will only be exercised with caution (see *Metrocab* at [36(i)] and *Re Thirty-Eight Building Ltd* [2000] BCC 422 ("*Thirty-Eight Building*") at 425); indeed, "with the utmost caution and rarely" (see *Re Piccadilly Property Management Ltd* [1999] 2 BCLC 145 ("*Piccadilly Property Management*") at 163F). In this manner, the courts have tempered, without limiting by exhaustive definition, the breadth of the powers and discretion conferred on them.

50 I will attempt to distil principles on when the facts disclose circumstances that warrant the exercise of the discretion. I will also identify examples of cases that usefully illustrate the application of those principles. Finally, I will summarise those principles.

(1) Change of circumstances or fresh evidence involving a material difference to the outcome

51 When an application is made to review, rescind or vary an earlier order of the court, the question for the court is not whether the original order ought to have been made on the material then before it, but whether that order ought to remain in force in light of either (a) *changed circumstances*; or (b) *fresh evidence*, whether or not such evidence might have been obtained at the time of the original hearing (see *In re A Debtor (1991)* at 319A and *Fitch* at 246H). There is no true limit on the type of factors that can be taken into account; they can include, for example, changes that have occurred since the making of the

Version No 1: 29 May 2025 (11:14 hrs)

original order and significant facts which, although in existence at the time of the original order, were not brought to the court's attention at that time (see *Papanicola* at [25]).

52 Crucially, the change of circumstances or the fresh evidence (as the case may be) must involve a "material difference" to what was before the court that made the original order, and therefore justifies the court in changing its mind (see *Papanicola* at [25] and *Metrocab* at [36(iii)]). The point was put by Patten J in *Mogul Eastern Foods* (at [25]) in the following way: "The availability of new evidence may justify the review of that earlier decision if it is material which, in the judgment of the court hearing the application, is *likely to have led the judge at the earlier hearing to reach a different conclusion*. The realities are that if the judge hearing the application for … rescission reaches that view, it will only be because he has been presented with material sufficiently new and different in nature as to cause him to reach that conclusion. In a sense, *the probative effect of the new material is likely, in practice, to determine whether the application in discretionary terms is justified*." [emphasis added].

53 For the new evidence to involve a material difference to the court's decision, it must be credible and cogent (see *Mogul Eastern Foods* at [28] and *In re A Debtor (1991)* at 320E). This does not mean that the evidence must be incontrovertible; the question is whether, if left unanswered, it would lead to the different outcome that the applicant seeks through her application (see *In re A Debtor (1991)* at 320E).

54 The onus is on the applicant to demonstrate the existence of circumstances or evidence that justify the exercise of discretion in her favour (see *Papanicola* at [25] and *Metrocab* at [36(ii)]).

Version No 1: 29 May 2025 (11:14 hrs)

55 *Mogul Eastern Foods* provides a good example of a case involving *fresh evidence* that warranted the exercise of the discretion. The appellant, one Mrs Ahmed, was a partner of a business running a convenience food store. The convenience store was operated on premises owned by a company, Mogul Eastern Foods Ltd. After Mogul Eastern Foods Ltd was wound up, its liquidator discovered an item in the company's balance sheet under the heading "debtors" for the sum of £42,412, which referred to the convenience store. The liquidator believed that the partners in the convenience store must therefore have been indebted to the company in that sum. A statutory demand for the sum followed by a bankruptcy petition were issued against Mrs Ahmed.

56 At the bankruptcy hearing, Mrs Ahmed's solicitors requested an adjournment to obtain confirmation of evidence that the item in the accounts did not actually represent a debt due from the partnership, but rather the written down value of fixtures and fittings which belonged to Mogul Eastern Foods Ltd and were being leased by the convenience store in addition to the shop premises. The deputy district judge refused the request for an adjournment and made the bankruptcy order. Mrs Ahmed then applied under s 375 of the UK Insolvency Act 1986 for the order to be annulled or rescinded. At the hearing of the application, she produced evidence from Mogul Eastern Foods Ltd's accountant that the figure represented the fixtures and fittings as opposed to a book debt due from the convenience store to the company. The judge hearing the application considered it inappropriate for Mrs Ahmed to file an application under s 375 as opposed to an appeal and therefore dismissed her application.

57 On appeal, Patten J found that the evidence from Mogul Eastern Foods Ltd's accountant, which was not before the deputy district judge who made the bankruptcy order, could not reasonably have been produced before that judge given the refusal of the adjournment. After a consideration of the accountant's

Version No 1: 29 May 2025 (11:14 hrs)

evidence, Patten J found that the various errors in the accounts revealed serious incompetence on the part of the accountant and hence that a judge hearing the bankruptcy application, faced with the totality of the evidence, ought to have taken the view that the debtor had established a sufficient issue in relation to the debt to justify the dismissal of the petition. He allowed Mrs Ahmed's appeal.

58 An example of a *change of circumstances*, offered as a basis for the rescission of a bankruptcy order, is *Fitch*. As mentioned above, a substantial body of creditors supported the application by the debtors for the bankruptcy orders to be rescinded. One of the debtors, a Mr Fitch, had offered his services in partnership with Mrs Fitch, who was the other debtor and his wife, as a negotiator to a company concerned in the development of a leisure complex through a joint venture. Mr Fitch was to act as an intermediary to negotiate the obtaining of funds for the joint venture from an investor. If the negotiations were successful, he would be paid a substantial success fee as well as consultancy fees during the development period of the complex. The creditors were concerned that the investor was likely to withdraw from the negotiations if the investor came to find out that the person through whom all the negotiations were being conducted was the subject of a bankruptcy order.

59 The judge below refused the application for rescission, one of the reasons being the judge's view that there was no change in circumstances since the bankruptcy hearing. The only change was that of the attitude of the petitioning creditor, and that did not derive from any change in the underlying circumstances but from a reappraisal by the petitioning creditor of where its commercial interests lay, based on material that had been available throughout. On appeal, Millett LJ disagreed with this reasoning. It was not merely the petitioning creditor but rather a large body of creditors that now supported the rescission of the bankruptcy orders (at 246H–247A). In Millett LJ's view, "[t]he

Version No 1: 29 May 2025 (11:14 hrs)

fact that the underlying circumstances which led the creditors to support the rescission of the bankruptcy orders had been known at the time the orders were made did not prevent their change of attitude from being both new and relevant". Had this been the position at the hearing of the bankruptcy application, the bankruptcy petition would have been dismissed (at 247B). The appeals were allowed and the bankruptcy orders rescinded.

60 An example of a case where the court found *neither* a change of circumstances nor new evidence justifying the exercise of discretion is *Papanicola*. The bankrupt, one Mr Samuel Mak, continued to run a business after he was made bankrupt. Mr Mak entered into a contract with a company known as Readygame, for Readygame to provide certain payment services to his business. A registrar held that a particular sum received by Readygame should be held on trust for Mr Mak's bankruptcy estate and not be mixed with Readygame's other funds. The registrar subsequently rescinded that order and, in its place, declared that the sum should instead be regarded as post-bankruptcy income of Mr Mak, such that Mr Mak's trustee in bankruptcy would have to apply for an income payments order under the UK Insolvency Act 1986.

61 Mr Mak's trustee in bankruptcy appealed against the registrar's decision to rescind his earlier order. Laddie J observed (at [31]) that there had not been any change of circumstances or new material. The only factor relied upon by Readygame was that its representative, one Mr Humphreys, had not attended before the registrar at the hearing so that the registrar's decision was not made at a "full hearing". Readygame argued that the absence of such a "full hearing" was an exceptional circumstance, as presentation of arguments at a "full hearing" would constitute new material. Laddie J rejected the submission (at [34]). He found that there had indeed been a "full hearing" before the registrar; the fact that Mr Humphreys did not attend – and, in fact, had decided not to

Version No 1: 29 May 2025 (11:14 hrs)

attend – did not alter that fact. There was nothing new that Mr Humphreys had sought to put before the court, only the same materials but better presented. As such, "[n]ot only were there no exceptional circumstances, there were no relevant circumstances" (at [35]). Laddie J allowed the trustee's appeal.

62 Specifically on the issue of Mr Humphrey's non-attendance, Laddie J added the useful observation that the power to vary or rescind an order under s 375 could be exercised whether or not the applicant attended or was represented at the hearing where the original order was made. But where the applicant did not attend and subsequently said that this contributed significantly to the alleged error in the original order, it would be incumbent on the applicant to explain why he did not attend and what steps he took to bring the matter back speedily to court. Were it otherwise, Laddie J observed, "a party intent on delay could decline to attend a hearing and then simply apply for rescission later and at his leisure" (at [37]). Mr Humphreys had taken none of the required steps.

(2) Rejection of abusive attempts to reargue the matter in the absence of exceptional circumstances

63 The next point is really a corollary of the first. The court will not entertain applications to review, rescind or vary its order simply on the basis that the applicant wishes to present essentially the same facts and the same arguments but more forcefully or attractively. If that is all the applicant seeks to do, the proper forum is an appeal (see *Papanicola* at [26]). The jurisdiction to review is not intended to enable an unsuccessful party to have a second attempt to convince the court of its case (see *Thirty-Eight Building* at 425). Accordingly, in order to protect its own process from abuse, the court may, in the exercise of its discretion, decline to rescind an earlier bankruptcy order when it is clear that the bankrupt is not seeking to raise any new argument or new evidence, but is merely seeking to reargue the points already decided against him at the

Version No 1: 29 May 2025 (11:14 hrs)

bankruptcy hearing; an appeal would be his appropriate remedy (see *Mogul Eastern Foods* at [19]).

64 This also means that it would be "inappropriate – save in the most exceptional circumstances – for a judge to exercise that power to substitute his own decision for that of another judge of co-ordinate jurisdiction reached on the same material after a full consideration of the arguments. The power to review is not to be used in order to hear an appeal against a judge of co-ordinate jurisdiction." (see *Re R S & M Engineering Company Limited* [1999] 2 BCLC 485 at 492).

65 *Metrocab* and *Thirty-Eight Building* are instances of the court dismissing applications to rescind earlier orders for the reason that the applicant was simply seeking to reargue the matter.

66 In *Metrocab*, the applicant sought to have winding-up orders rescinded on, amongst other grounds, the fact that certain contracts had since been concluded and meant that the companies could now pay all of their undisputed debts as they fell due and had a viable future. Deputy Judge Marshall QC rejected the argument, finding that the Registrar, when considering whether the winding-up orders should be made, had been aware of the impending conclusion of at least one of the contracts and had declined to adjourn the petitions further to allow this to occur and for funds to be realised thereby. The situation before the deputy judge was, therefore, not significantly different from that before the Registrar. This was not "an exceptional case in which the circumstances relied upon [were] materially different from those before the courts making the original orders" (at [38]).

Version No 1: 29 May 2025 (11:14 hrs)

67 *Thirty-Eight Building* involved an application by the liquidators to review, rescind or vary an earlier order made by Deputy Judge Williamson QC on an application for determination of a preliminary point of law, concerning whether a declaration of trust was potentially voidable under the UK Insolvency Act 1986. The deputy judge found that the arguments advanced by the liquidators in the application were all additional arguments in relation to points already canvassed before her on the application for determination of the preliminary point of law (at 425). The liquidators did not urge any exceptional circumstances as to why they should be allowed to advance further arguments, save for citing some further authorities. Given that the application was nothing more than the liquidators' second attempt to convince the court of their case, the deputy judge was not prepared to exercise her discretion to entertain the application.

(3) Consideration of all relevant factors, including those weighing against rescission or variation

68 In the exercise of its discretion, the court will take into account any countervailing factors that may weigh against the rescission or variation of the order. The court will not close its eyes to any other relevant change of circumstances or evidence brought to its attention.

69 *Ross v The Commissioners to Her Majesty's Revenue & Customs* [2012] EWHC 1054 (Ch) provides an illustration of the court's approach. The revenue and customs authority filed a bankruptcy petition against the debtor, a Mr Ross, following unpaid tax and insurance liabilities. A bankruptcy order was made and Mr Ross appealed unsuccessfully. Mr Ross then applied to rescind the bankruptcy order on the basis that, shortly after the making of the bankruptcy order, the revenue and customs authority allowed a terminal loss relief claim such that the petition debt was reduced from £319,000 to £44,841. He argued

Version No 1: 29 May 2025 (11:14 hrs)

that the reduction of the petition debt was an exceptional circumstance which allowed the bankruptcy order to be revisited.

70 The application came before Norris J. Norris J observed that a relevant factor in the exercise of the discretion as to whether the order should be rescinded would be the interests of the other unpaid ordinary unsecured creditors (at [14]). Their position should be taken into account, although it would not be right to suggest that they had the right to overrule the preference of the petitioner to pursue the petition (at [15]). Norris J held that the mere reduction in the size of the petition debt after the making of the bankruptcy order would not, of itself, be a circumstance that was exceptional and warranted a review or rescission of the bankruptcy order. As he put it, "[a]*ll changes in circumstance fall to be taken into account*; one does not simply take into account the reduction in the size of the petition debt. When exercising its jurisdiction under section 375, the court is entitled to take into account any increases in other debts falling to be proved in the bankruptcy." [emphasis added] (at [29]). Based on the Official Receiver's latest statement, the total proofs in the bankruptcy amounted to £1.98m. It was insufficient for Mr Ross to show that the petition debt was reduced if the other proven debts had risen and there was no enhanced prospect of paying anyone (at [30]). In the result, Mr Ross had not established the conditions necessary for the exercise of jurisdiction under s 375 of the UK Insolvency Act 1986. The application was dismissed.

71 Another example is *Papanicola* (see also [60]–[62] above). As mentioned, the circumstance relied upon by the applicant was that its representative Mr Humphreys was not present at the earlier hearing. Laddie J found that the applicant had failed to explain why Mr Humphreys had been absent at the earlier hearing and failed to show that he had acted with reasonable speed notwithstanding the delay in the filing of the application for rescission (at

Version No 1: 29 May 2025 (11:14 hrs)

[37]). These were factors "which *point strongly against the exercise of the discretion* in Mr Humphreys' favour" [emphasis added] (at [36]–[37]).

72 Importantly – and in a similar vein as to a delay in the bringing of the application – where the application is founded on new evidence that could have been made available at the hearing where the order was made, the court will take into its exercise of discretion the applicant's failure to produce it at the earlier hearing as well as any explanation the applicant gives for the failure to produce it then (see *Papanicola* at [25], *In re A Debtor (1991)* at 319B and *Metrocab* at [36(iii)]). I am of the view that the court should also consider whether there is any prejudice occasioned to the respondent by the delay in surfacing the evidence, especially such prejudice as cannot be compensated by costs.

(4) Requirement of candour in the presentation of the application

73 In the cases involving winding-up orders, the courts have repeatedly cautioned that the application must be presented with candour and in a manner that does not mislead the court (see, for example, *Metrocab* at [36(iv)(b)], *Credit Lucky Limited v National Crime Agency (formerly the Serious Organised Crime Agency)* [2014] EWHC 83 (Ch) ("*Credit Lucky*") at [31(5)(b)], and *Diamond Hangar Limited v Stansted Airport Limited* [2019] EWHC 224 (Ch) ("*Diamond Hangar*") at [10(5)(b)]). The point was put with force by Judge Colyer QC in *Piccadilly Property Management* (at 169E): "I say now, and loud and clear, that, in my view, candour and full disclosure are to be expected of any applicant who seeks the rescission of a winding-up order in order to promote a [company voluntary arrangement]. The applicant in relation to such an application is asking the court to undo an order already made, an order which, *prima facie*, the

Version No 1: 29 May 2025 (11:14 hrs)

creditor was entitled to as of right. Any such applicant must come wholly clean with a court."

74 This requirement naturally underpins the point discussed just above, that the court will take into account any countervailing factors that point against the exercise of the discretion. The requirement of candour in the presentation of the application and the surrounding facts ensures that the court is "in possession of all material facts and has not been left in doubt" (see *Metrocab* at [36(iv)(b)]). There are consequences to non-compliance: if the application has been presented in a misleading way, "that in itself would be a ground for not exercising the discretion in favour of the application" (see *Harish Bhanderi v HM Commissioners of Customs and Excise* [2004] EWHC 1765 (Ch) ("*Bhanderi*") at [72]). I see no reason why the requirement of candour in the presentation of the application should not apply equally to applications to review, rescind or vary orders made in the court's bankruptcy jurisdiction.

75 The case law shows that the courts have not been hesitant to reject applications if they are presented in a misleading way. *Metrocab* and *Piccadilly Property Management* are good examples.

76 In *Metrocab* (see also [66] above), Deputy Judge Marshall QC found that the sole director of the companies, a Mr Siddiqi, had made misleading statements about the ability of the new contracts to put the group back into a sound financial position. Mr Siddiqi had omitted details of an important funding shortfall and failed to correct the misleading impression in his evidence (at [43(ii)]). The deputy judge also harboured "grave doubts as to the purposes behind the applications" and considered that the more reasonable inference was that the applications were brought in order to prevent any proper investigation

Version No 1: 29 May 2025 (11:14 hrs)

by the liquidators into the affairs of the companies (at [48]). The applications for rescission of the winding-up orders were dismissed.

77 *Piccadilly Property Management* involved, among other things, an application to review and rescind a winding-up order. After reviewing the evidence, Judge Colyer QC held that there were cogent reasons not to grant the relief sought. In particular, there was a "very strong suspicion" that the group was run in such a way as to create the opportunity to write off large sums whenever this was desired and so that certain friendly creditors would be preferred in liquidation (at 166G–H). The judge was "not satisfied as to the candour of the proponents of the scheme" and found that the company had been "demonstrably careless and less than candid in some of its evidence or representations at different stages" (at 168C–E), to the extent, in fact, that it was "willing to hurl almost any evidence at the court or the creditors without exercising proper care to its accuracy and content" (at 169C). The application was dismissed.

(5) Discretion to review the order to correct obvious injustice

78 As the categories of cases in which the court may review, rescind or vary an order are not closed, the court may exercise its discretion to do so where this is demanded by the justice of the case. Again, the court will not lightly exercise its discretion on this ground; the requirement of "exceptional circumstances" continues to apply. In *Bhanderi* at [71], Collins J referred to the exercise of the discretion on "exceptional circumstances where justice demands that the order be rescinded". Similarly, in *Thirty-Eight Building* at 425, Deputy Judge Williamson QC explained that apart from cases of changed circumstances or the introduction of fresh evidence, there may be "very exceptional circumstances

Version No 1: 29 May 2025 (11:14 hrs)

where it might be necessary to correct an obvious injustice" (see also *Leicester v Stevenson* [2022] EWHC 2381 (Ch) at [15]).

79 An indication of this may perhaps be found in *Jeyaretnam Joshua Benjamin*, which appears to be the sole local case touching on the power under s 7 of the IRDA (then s 7 of the Bankruptcy Act (Cap 20, 2000 Ed)). After bankruptcy petitions were served on the debtor, the parties entered a consent order under which the debtor was to pay off the debt by instalments. If the debtor failed to make any of the payments, the creditors would be entitled to restore and proceed with the bankruptcy petitions. The debtor defaulted on the instalments and the bankruptcy proceedings resumed, concluding in a bankruptcy order. The debtor appealed against the bankruptcy order on the basis that his breach of the terms in the consent order did not furnish grounds for the making of a bankruptcy order. He argued in the alternative that the court should overrule the bankruptcy order in reliance on s 7 of the IRDA.

80 Tan Lee Meng J found that the assistant registrar had made the bankruptcy order on the ground that the debtor was unable to pay his debts, and not because he had defaulted on the instalment arrangement (at [9]–[12]). The appeal was dismissed on this basis. Tan J went on to address the debtor's argument that the consent order should not be enforced because it was extorted from him. He found that this was an unsubstantiated assertion and could not be sustained. Nevertheless, on the question of whether a consent order could be set aside by the court in the exercise of its powers under s 7, Tan J expressed the view that it could be: "[w]hile a consent order is, without more, binding, it must be noted that in the case of bankruptcy proceedings, the court has the power under s 7 of the Bankruptcy Act to review, rescind or vary any order made by it under its bankruptcy jurisdiction. The court will intervene *if a consent order is used as an engine of oppression against a debtor who is not unable to pay his*

Version No 1: 29 May 2025 (11:14 hrs)

debts." [emphasis added] (at [15]). However, given that the debtor in this case was unable to pay his debts, the question of rescinding or varying the bankruptcy order did not arise. Tan J's remarks, while *obiter*, suggest that the court may exercise its discretion under s 7 to relieve oppression brought about by an abuse of the court's process.

81 Another example is perhaps *Virgo Systems*. At the hearing of the petition for winding up, no representative of the company attended and the winding up order was made. It turned out that the address at which the statutory demand and the winding up petition were served was that of the agency that had assisted in the incorporation of the company. Despite instructions by the shareholder and director of the company to its accountants to update the company's registered address, the accountants had neglected to do so. As a result, the company's management was not aware of the statutory demand or the winding-up petition until the order was made and the official receiver got in touch with the company's accountants regarding the company's affairs. The company then applied for the rescission of the winding-up order, accompanied by proof that its assets exceeded its liabilities and that the debt owing to the petitioning creditor would be paid. Peter Gibson J thought this "entirely an appropriate case for the court to rescind an order which would serve no useful purpose" (at 835).

82 In a similar vein, *In re Calmex Ltd* [1989] 1 All ER 485 involved the mistaken registration of a winding-up order against a company known as Calmex Ltd. The petitioner had intended to wind up an unrelated company called Calmex Fashions Ltd. Hoffmann J held that the order could be rescinded as it was a nullity (see also *Piccadilly Property Management* at 161D, describing this as "the simplest and clearest example" of when an order may be reviewed for reasons other than the occurrence of further events since the order was made).

Version No 1: 29 May 2025 (11:14 hrs)

Summary of principles

83 I summarise the principles on the power under s 7 of the IRDA to review, rescind or vary orders made in the court's insolvency jurisdiction and the court's exercise of that power:

(a) The power to review, rescind or vary orders under s 7 of the IRDA applies to any order made in the exercise of jurisdiction under the IRDA.

(b) The power to review, rescind or vary an order is discretionary. The onus is on the applicant to satisfy the court that the discretion should be exercised.

(c) The court will exercise the discretion with caution and only in "exceptional circumstances". There is no true limit on the factors that the court may take into account when exercising its discretion. In general, the question for the court is whether the order ought to remain in force in the light of either (i) *changed circumstances*; or (ii) *fresh evidence*, whether or not such evidence might have been obtained at the time of the original hearing. The change of circumstances or fresh evidence (as the case may be) must involve a *material difference* to what was before the court that made the original order, such that it justifies the court in changing its mind.

(d) For the new evidence to make a material difference to the court's decision, the evidence must be credible and cogent. This does not mean that the evidence must be incontrovertible; the question is whether, if left unanswered, the evidence is such that it will lead to the different outcome sought by the applicant.

Version No 1: 29 May 2025 (11:14 hrs)

(e) Where the application is founded on new evidence that could have been produced at the hearing where the order was made, the court will take into its exercise of discretion the applicant's failure to produce it at the earlier hearing as well as any explanation the applicant gives for her failure to produce it then. The court will also consider any prejudice occasioned to the respondent by the delay in surfacing the evidence, especially such prejudice as cannot be compensated by costs.

(f) The court will not entertain applications to review, rescind or vary its order simply on the basis that the applicant wishes to present essentially the same facts and the same arguments but more forcefully or attractively. The proper forum for that is an appeal. In the same way, the court will not entertain an application that is essentially an appeal against a decision made by a judge of co-ordinate jurisdiction.

(g) In the exercise of its discretion, the court will also consider any countervailing factors that may weigh against the rescission or variation of the order. The court will not close its eyes to any other relevant change of circumstances brought to its attention.

(h) The power to review, rescind or vary an order can be exercised whether or not the applicant attended or was represented at the hearing where the original order was made. But where the applicant did not attend the earlier hearing and subsequently suggests that this contributed significantly to the alleged error in the original order, it is incumbent on the applicant to explain why she did not attend and what steps she took to bring the matter back speedily to court.

(i) An applicant seeking the review, rescission or variation of an order is expected to present the application and the surrounding facts

Version No 1: 29 May 2025 (11:14 hrs)

with candour and in a manner that does not mislead the court. This means that full disclosure of all relevant circumstances is required. If the application has been presented in a misleading way, that in itself would be a ground for not exercising the discretion in favour of the applicant.

(j) The court may also exercise its discretion to review, rescind or vary an order where this is demanded by the justice of the case. The exercise of discretion on this ground will again only be warranted in exceptional circumstances, such as where the court's intervention is necessary to correct obvious injustice or prevent an abuse of the court's process.

84 I add for completeness that in the context of applications for the rescission of winding-up orders, so that the company in question is free to resume trading, the courts have identified additional factors to be considered (see *Metrocab* at [36(iv)], *Credit Lucky* at [31(5)] and *Diamond Hangar* at [10(5)]). As the matter before me concerns a bankruptcy order, it is unnecessary for me to say anything further on these matters.

Application to the facts

85 Considering the present application in the light of the foregoing principles, I found the appropriate outcome to be clear. The question was whether I should exercise my discretion under s 7 of the IRDA to rescind the bankruptcy order. The unusual circumstance here was that, unlike *Fitch* (see [58]–[59] above), this was not a case involving a change of circumstances or new evidence arising *after* the order had been made. The relevant change of mind by the creditor, NUHS, had occurred *before* the making of the bankruptcy order, albeit barely an hour before the commencement of the hearing where the order was made.

Version No 1: 29 May 2025 (11:14 hrs)

86 It was therefore necessary for me to consider the reasons why the change of circumstance or new evidence was not surfaced to me at the hearing on 6 February 2025. This appears to have been the unfortunate consequence of certain events for which, in my judgment, no blame can be laid at the door of either party or counsel. NUHS had undertaken to verify Mr Soh's claim in his letter to the court dated 2 February 2025 that he was a resident at Woodlands Care Home and that all his nursing and medical expenses were fully subsidised. (Mr Soh's letter was dated 2 February 2025 but was sent to the court, as an attachment to his email, with Ascentsia on copy only on 3 February 2025 at 4.16pm (see [9] above).) The verification was done by a team of medical social workers from NUHS and it involved ascertaining that Mr Soh was on the Medical Fee Exemption Card scheme. As it turned out, the team was only able to confirm these matters on the cusp of the hearing on 6 February 2025. There was no dilatoriness in NUHS' conduct thereafter. Professor Lim gave instructions in short order for the bankruptcy application to be withdrawn, and NUHS then sought to contact Ascentsia to relay these instructions but could not reach Ascentsia immediately. When it could, it learned that Mr Low of Ascentsia was already in the hearing before me. All these events were communicated to me in Mr Lee's supporting affidavit in a manner that I found to be candid, detailed and objective.

87 Nor did I find that there was any dilatoriness in the filing of the application for rescission. NUHS' request to "withdraw" the bankruptcy application was submitted only a day after the hearing, and I gave directions at the further hearing on 14 February 2025 for the application to be filed.

88 There was no doubt that the order should be rescinded on an application of the principles governing the exercise of discretion under s 7 of the IRDA. I agreed with Mr Poon that, compared to *Fitch* where the creditors' change of

Version No 1: 29 May 2025 (11:14 hrs)

mind only occurred after the order was made, this was an *a fortiori* case for the rescission of the order given that NUHS' change of mind occurred before the order was made and it was only due to the vagaries of events that the necessary instructions were not conveyed to Mr Low. The true situation was that NUHS did not intend to proceed with the application. Had things panned out differently, it would have sought permission to withdraw the application at the hearing and I would granted that permission. To use the language of Patten J in *Mogul Eastern Foods* (see [52] above), had the full set of relevant circumstances been placed before me at the hearing on 6 February 2025, a different result would undoubtedly have been reached.

89 I also saw no countervailing factors that weighed against the exercise of the discretion in this manner. Should Mr Soh have any other creditors, the rescission of the bankruptcy order would not prevent them from bringing their own bankruptcy applications against him. On their part, the private trustees Mr Goh Wee Teck and Ms Yap Hui Li of RSM SG Corporate Advisory Pte Ltd confirmed that they did not object to the application for rescission, had not taken steps to administer the bankruptcy estate, and did not require any consequential orders on their fees.[14]

90 If it were necessary, I would also have found that the justice of the case warranted the exercise of the discretion in favour of the application. It would be an obvious injustice for the order to remain in place, given the events leading up to the making of the order. NUHS has agreed not to pursue the debt by way of bankruptcy proceedings on compassionate grounds, given Mr Soh's physical

[14] NUHS' 2nd affidavit, para 39 and exhibit LTH-9 (email from Ms Yap Hui Li of 12 March 2025 at 6.16pm).

Version No 1: 29 May 2025 (11:14 hrs)

condition and impecuniosity, and I saw no reasons why the court should stand in the way of a result of that kind.

Conclusion

91 For the foregoing reasons, I allowed the application for rescission of the bankruptcy order. With the bankruptcy order set aside, I then granted NUHS' request for permission to withdraw the bankruptcy application. I made no order as to costs, as none was sought by either party.

92 Finally, I record my appreciation to Mr Poon and his team for their very helpful submissions and the fair and candid manner in which the circumstances behind the application were explained to me.

Elton Tan Xue Yang
Assistant Registrar

Kelvin Poon Kin Mun *SC*, Wilson Zhu Ming-ren and Jung Sangbum (Rajah & Tann Singapore LLP) for the claimant;
The defendant in person.

Version No 1: 29 May 2025 (11:14 hrs)