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

[2025] SGHCR 11

Bankruptcy No 3583 of 2024 (Summons No 215 of 2025)

Between

DBS Bank Ltd

… *Claimant*

And

Li Yuan

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Stay of proceedings]
[Insolvency Law — Bankruptcy — Adjournment]

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v
Li Yuan

[2025] SGHCR 11

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30 April 2025

AR Perry Peh:

Introduction

1 In HC/SUM 215/2025 ("SUM 215"), the debtor asked that the bankruptcy proceedings brought against her by the creditor in HC/B 3583/2024 ("B 3583") be stayed until 31 March 2025, on the ground that she expects to receive funds by that date which will enable her to repay the debt in full. In the meantime, the debtor was prepared to make an immediate payment of US$100,000, which is approximately one-fifth of the debt.

2 What the debtor effectively sought in SUM 215 was more time to repay the debt. This is not uncommon – at the hearing of bankruptcy applications, debtors often seek adjournments to have more time to repay the debt on the ground of expected incoming cashflow. The question is whether such a request can enliven the court's discretion to order that the bankruptcy proceedings be

stayed pursuant to s 315(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("the IRDA"), which states:

> The Court may at any time, for *sufficient reason*, make an order staying the proceedings on a bankruptcy application, either altogether or for a limited time, on such terms and conditions as the Court thinks just.
>
> [emphasis added]

3 Having considered the parties' submissions, I answered this in the negative. In my view, for "sufficient reason" under s 315(1) of the IRDA to be shown, the circumstances which a debtor identifies as grounds for the stay must have a reasonable prospect of either (a) putting into question the legal foundation of the bankruptcy application or (b) resulting in the dismissal of the bankruptcy application. A debtor's request for more time to repay the debt reinforces the fact of the debtor's inability to repay the debt and confirms that the bankruptcy application has been brought with good grounds and is properly maintained. This does not constitute "sufficient reason". I therefore dismissed SUM 215.

4 However, after considering the grounds cited by the debtor, I was satisfied that an adjournment of B 3583 until a date after 31 March 2025 was warranted. In the event, the debt was repaid in full, and I granted permission to the claimant to withdraw B 3583 with no order as to costs. In these grounds, I set out my reasons for SUM 215 as well as the adjournment of B 3583 which I had granted.

Background

5 The creditor-claimant in B 3583, DBS Bank Ltd ("DBS"), extended banking facilities ("the Facilities") to the debtor-defendant, Ms Li Yuan

("Ms Li"). The Facilities were secured by 1,760,000 shares in Sirnaomics Ltd, a company listed on the Hong Kong Stock Exchange ("the Sirnaomics Shares").

6 In February 2024, DBS issued a margin call to Ms Li in respect of the Facilities, which Ms Li failed to comply with. On 27 February 2024, DBS recalled the Facilities and issued a letter demanding for full repayment of the amounts due and owing by Ms Li under the Facilities. As Ms Li failed to comply with the demand, DBS proceeded to realise its security in the Sirnaomics Shares, but the proceeds of sale of the Sirnaomics Shares were insufficient to discharge the debt under the Facilities in full. On 26 March 2024, DBS wrote to Ms Li on the outstandings due. As no repayment was received, on 3 April 2024, DBS served a statutory demand ("the SD"). The debt in the SD was CHF464,613.82, which is approximately US$514,141.65 (based on the prevailing exchange rate on 28 February 2025, the date I heard SUM 215).

7 On 3 June 2024, Ms Li filed HC/OSB 51/2024 ("OSB 51") to set aside the SD. In OSB 51, Ms Li disputed the debt on the ground (among others) that she was a mere trustee of the account with DBS to which the Facilities were extended and so she was not a proper party to the debt. To this end, Ms Li argued that Sirnaomics Shares were beneficially owned by her husband, Dr Dai Xiaochang ("Dr Dai"), and accordingly, the SD ought to have been issued against Dr Dai, and not her. OSB 51 was dismissed by an Assistant Registrar ("AR"), who also rejected Ms Li's claim that she was a mere trustee of the account with DBS. I note that the AR did not make any finding as to the beneficial ownership of the Sirnaomics Shares which, in any event, was not an issue that had to be decided because the question of whether the SD had been issued against the proper party turns on whether Ms Li was the beneficial owner of the account with DBS, and not whether she was the beneficial owner of the Sirnaomics Shares. The AR's decision was upheld by the High Court on appeal.

8 On 25 September 2024, DBS brought B 3853 against Ms Li. On 8 November 2024, Ms Li's solicitors wrote to DBS's solicitors stating, among other things, that Ms Li agreed to pay the debt in satisfaction of the SD, on the basis that the payment was without admission of any liability. At the first hearing of B 3853, with the agreement of the parties, the court adjourned the hearing of the application to 9 January 2025 for parties to engage in settlement discussions.

9 On 7 January 2025, Ms Li's solicitors wrote to DBS's solicitors stating that Ms Li (a) was prepared to make payment of US$100,000 (or its CHF equivalent) forthwith and (b) would make full payment of the remaining debt in the SD by 31 March 2025 ("the Proposal"). DBS's solicitors rejected the Proposal. At the hearing of B 3583 on 9 January 2025, Ms Li's solicitors sought a further adjournment for settlement negotiations and for Ms Li to take out an application to stay the proceedings in B 3583 on the basis of the Proposal. The court adjourned the hearing of B 3853 to 6 March 2025, and directed that the stay application be filed by 24 January 2025.

The stay application in SUM 215

10 The stay application (*ie*, SUM 215) was filed, as directed, on 24 January 2025. SUM 215 sought a stay of the proceedings in B 3583 until 31 March 2025. The sole ground on which the stay in SUM 215 was sought is the Proposal. As I have alluded to in the introduction to these grounds, the Proposal is effectively a request by Ms Li for more time (until 31 March 2025) to repay the debt in full.

11 Ms Li explained in her supporting affidavit for SUM 215 that the Proposal is made because Dr Dai (her husband), who is the beneficial owner of the Sirnaomics Shares, is taking active steps to liquidate his assets and provide

those proceeds of sale to her, which she can then use to satisfy the SD without affecting her personal asset positions. For this purpose, Dr Dai intends to fully liquidate shares that he holds in one TCM Biotech International Corp ("TCM Biotech Shares"), which is traded on the Taiwan OTC Exchange ("the TOE"). However, as the TOE imposes limits on the number of TCM Biotech Shares which Dr Dai is able to liquidate each time, Dr Dai is only able to complete the intended liquidation by 31 March 2025. As Ms Li said, it is "only a matter of time that [the debt in the SD] will be fully paid by [her]".

12 I noted that DBS disputes Ms Li's case that the Sirnaomics Shares are beneficially owned by Dr Dai. However, for present purposes, I did not think anything turned on that. What was relevant in the court's consideration of the appropriate orders to be made in SUM 215 (or for that matter, B 3853) was Ms Li's position that she would obtain funds by 31 March 2025 to repay the debt in full. The fact those funds are provided by Dr Dai – to which the issue beneficial ownership of the Sirnaomics Shares might relate, since it would explain why Dr Dai is willing to provide Ms Li with those funds – is entirely irrelevant.

13 In support of SUM 215, Ms Li's counsel argued that the court has "wide discretionary powers" under s 315(1) of the IRDA to stay bankruptcy proceedings when it is necessary to balance the interests of the parties. Two key arguments were made by counsel as to why "sufficient reason" for a stay had been shown in this case:

> (a) First, it is evident from the Proposal (and in particular, Ms Li's promise to make partial repayment of US$100,000 forthwith) that she sincerely wishes to make full repayment of the debt, and by SUM 215, she is merely seeking a reasonable amount of time to raise funds for that

purpose. After all, the debt in the SD is hardly an amount that people ordinarily keep liquid in their bank accounts. SUM 215 was therefore brought in good faith.

(b) Secondly, a stay does not cause any prejudice to DBS which cannot be compensated by costs, as DBS would still be able to obtain full settlement of the debt in due course. In fact, DBS already had recourse to collateral to satisfy part of Ms Li's outstandings, and the debt is merely the shortfall. Ms Li's counsel urged the court to consider the serious consequences that would follow if Ms Li were adjudged a bankrupt at the upcoming hearing of B 3853 on 6 March 2025, despite the likelihood that she would be in a position to make full repayment of the debt in the SD some three-and-a-half weeks later (*ie*, by 31 March 2025).

14 In written submissions, DBS's counsel argued that a debtor had to raise triable issues in connection with the debt to obtain a stay of bankruptcy proceedings under s 315(1) of the IRDA. At the hearing, counsel took a more nuanced position and argued that, while the court enjoyed a wide discretion under s 315(1) of the IRDA to order a stay, that discretion had to be exercised judiciously, and the case law shows that a debtor's request for more time to make full repayment of a debt does not present a valid ground for the exercise of that discretion. If a stay pursuant to s 315(1) of the IRDA were ordered in this case, a dangerous precedent would be set because Ms Li is effectively asking the court to rubber stamp and sanction the Proposal, which DBS has not been prepared to accept. DBS's counsel also made the following submissions:

(a) Any intention on Ms Li's part to make part payment forthwith and liquidate assets to raise funds is irrelevant to whether the court

should exercise its discretion in her favour – given that the SD stands, Ms Li was always bound to repay the debt, and in any event, the Proposal only speaks of Ms Li's *present* inability to repay her debts, which all the more justifies the making of a bankruptcy order.

(b) Given that it has been nearly a year since DBS first made the margin call on the Facilities, the Proposal is raised at a late juncture and lacks *bona fides* as it is a mere attempt by Ms Li to delay and protract the proceedings. In this regard, DBS had previously granted indulgences to Ms Li, but no repayment had been forthcoming.

(c) In any event, taking Ms Li's case at its highest, she failed to adduce evidence to substantiate the Proposal, for example, evidence that the TCM Biotech Shares indeed belong to Dr Dai, the likely quantum of the proceeds that would be obtained from the sale of the TCM Biotech Shares, or that Dr Dai would let her have those sale proceeds to repay the debt.

(d) As for the serious consequences of being adjudged a bankrupt that Ms Li's counsel placed emphasis on, this alone did not give rise to prejudice on Ms Li's part, and it is always open to Ms Li to take steps to annul the bankruptcy order later.

The issues

15 SUM 215 raised two issues:

(a) What constitutes "sufficient reason" under s 315(1) of the IRDA for which the court may make an order staying the proceedings in a creditor's bankruptcy application?

(b) Whether a debtor's request for more time to repay the debt (or debts) in respect of which the bankruptcy application is made constitutes "sufficient reason" under s 315(1) of the IRDA, and if so, whether a stay should be ordered in this case?

What constitutes "sufficient reason" under s 315(1) of the IRDA?

16 The first issue concerns the scope of the court's discretion under s 315(1) of the IRDA to order a stay of proceedings in a creditor's bankruptcy application. I approached this by reviewing the cases in which the courts have ordered or at least considered a stay of bankruptcy proceedings pursuant to s 315(1) of the IRDA, or its predecessor, s 64(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the BA"). As the insolvency legislation of Malaysia and Canada also contain provisions similar to s 315(1) of the IRDA, besides cases of the Singapore courts, I also considered cases from these jurisdictions. The similarity in statutory language may be explained by the fact that the provisions in the Bankruptcy Act 1995 (Act 15 of 1995), which is the precursor to the BA and form the foundation the parts of the IRDA dealing with personal insolvency, were introduced after a study of similar reforms in other jurisdictions including Canada and Malaysia (see *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 ("*Parliamentary Debates*") at col 400).

Stay of bankruptcy proceedings where a debtor challenges his indebtedness

17 The IRDA expressly provides that a stay of bankruptcy proceedings may be ordered in the following situations, all of which involve a challenge by the putative debtor of his indebtedness:

(a) Where the bankruptcy application is based on a monetary debt and a debtor's failure to comply with a statutory demand, and there is

pending an application by the debtor to set aside the statutory demand (see s 316(5)(*b*) of the IRDA) *or* the debtor appears at the hearing of the bankruptcy application and denies his indebtedness to the creditor (see s 316(6) of the IRDA).

(b) Where the bankruptcy application is based on an unsatisfied judgment debt, and there is pending an appeal from or an application to set aside, the judgment or order by virtue of which the judgment debt is payable (see s 315(5)(*a*) of the IRDA).

18 The oft-cited authority on when the court can grant a stay in the situation where the debtor denies his indebtedness to the creditor is *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 ("*Chimbusco (CA)*"). In that case, the appellants as well as several corporate entities provided guarantees for debts owed by a company (which the appellants controlled) to the respondent. As no repayment was made, the respondent commenced insolvency proceedings against the corporate entities as well as bankruptcy applications against the debtors. The appellants then commenced a suit in which they sought rescission of the guarantees on the ground that they had been procured by the respondent's misrepresentation. The appellants also sought a dismissal of the bankruptcy applications on that same ground. For completeness, I add that *Chimbusco (CA)* as well as the other Singapore cases that I will come to later had considered ss 64 and 65 of the BA, which is identical to ss 315 and 316 of the IRDA.

19 The Court of Appeal, agreeing with the decision of the High Court in *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801 ("*Chimbusco (HC)*"), held that a debtor need only raise triable issues in order to obtain a stay or dismissal of

bankruptcy proceedings. The applicable test is the same as that of whether summary judgment should be granted, and depending on the strength of the dispute raised by the debtor, the court can either grant an unconditional stay of the bankruptcy proceedings, or where the dispute or defence is shadowy, a stay of the bankruptcy proceedings on terms and conditions, which is the "functional equivalent" of conditional leave to defend in a civil suit where summary judgment is sought (see *Chimbusco (CA)* at [18]). The court may impose any terms and conditions that it sees fit, including but not limited to those set out in s 315(7) of the IRDA (see *Chimbusco (CA)* at [39]). In subsequent case law, it was explained that a debtor seeking a stay on this ground must go beyond a bare allegation and provide sufficient material to the court to justify a conclusion that the matter be left to trial rather than dealt with summarily under the bankruptcy procedure (see *Oversea-Chinese Banking Corp Ltd v Ravichandran s/o Suppiah* [2015] SGHC 1 at [16]). On the facts of *Chimbusco (CA)*, the Court of Appeal agreed with the High Court's decision that the appellants had raised triable issues incapable of resolution based on affidavit evidence alone but that security was to be ordered because their defence was shadowy (see *Chimbusco (CA)* at [35] and [41]; *Chimbusco (HC)* at [87]–[92]).

20 Where a stay of bankruptcy proceedings is sought on the basis of a pending appeal against the judgment or order by virtue of which a judgment debt is payable, the relevant standard which the debtor must meet to obtain a stay is not significantly different from that which is applicable where a stay of execution of the judgment debt is sought, *ie*, the debtor must demonstrate "special circumstances" to obtain a stay (see *Seto Wei Meng (suing as the administrator of the estate and on behalf of the dependants of Yeong Seok Mun, deceased) and another v Foo Chee Boon Edward* [2021] SGHCR 5 ("*Seto Wei Meng*") at [28]). This standard is obviously higher than that of raising triable

issues because the debtor faces a more onerous burden to succeed in overturning the judgment debt (see *Seto Wei Meng* at [35]).

21 In deciding whether to order a stay of proceedings in the bankruptcy application, the court balances the judgment creditor's interest in obtaining the bankruptcy order forthwith against the prejudice that would be occasioned to the judgment debtor if a stay were not granted, and a bankruptcy order is made (see *Seto Wei Meng* at [28]). This is similar to the balancing exercise which the court engages in when deciding whether "special circumstances" for a stay of execution are shown (see *Seto Wei Meng* at [28]). In the analysis, the merits of the appeal are not the only or predominant consideration in determining whether a stay should be granted, and the mere fact of a pending appeal is also insufficient to justify a stay being granted (see *Seto Wei Meng* at [24] and [30]). Based on case law, the court is unlikely to grant a stay of the bankruptcy proceedings where the judgment debtor has already failed in an earlier attempt to obtain a stay of execution of the judgment debt (as was the case in *Seto Wei Meng*). On the other hand, while the mere fact of a pending appeal is not persuasive, if the debtor pays into court a sum sufficient to satisfy the judgment debt in full, the court would be inclined to grant a stay to allow the debtor to exhaust all his rights to challenge the judgment debt (see, for example, Re *Khoo Kay* [1999] 6 MLJ 637 ("*Khoo Kay*")).

Stay of bankruptcy proceedings in other situations

22 However, a stay of bankruptcy proceedings is not limited to situations where a putative debtor challenges his indebtedness to the creditor. Based on case law, there are at least two other types of situations in which the court might be prepared to order a stay of bankruptcy proceedings:

(a) Where the debtor is party to or stands to benefit monetarily from a pending legal proceeding before the court in which a *bona fide* claim is pursued against the creditor for a sum of money in excess of the underlying debt.

(b) Where the creditor holds adequate security for the underlying debt so there is an avenue, alternative to bankruptcy of the debtor, for the creditor's debt to be repaid.

Pending legal proceeding in which a bona fide *claim is pursued against the creditor for a sum in excess of the debt*

23 In Re *Tang Yoke Kheng (*ex parte *Lek Benedict and another*) [2006] 1 SLR(R) 351 ("*Tang Yoke Kheng*"), the creditors took out a bankruptcy application to compel the debtor's payment of costs for a dismissed suit which the debtor had previously instituted against the creditors. The background to the dismissed suit was as follows: (a) the debtor supplied goods to the creditors' company known as "Amrae", but Amrae failed to make payment for the goods supplied, and instead made payments to the creditors themselves in the form of backdated directors' fees; (b) although the debtor succeeded in another suit against Amrae and obtained some recovery, the suit (*viz*, the dismissed suit) instituted by the debtor against the creditors for fraudulent trading was dismissed with costs. Amrae's liquidator, with financing from the debtor, subsequently commenced a further suit against the creditors for recovery of preferential payments. It was common ground that, because the debtor is Amrae's main creditor, she stands to gain and be paid a sum much larger than the unpaid costs in the dismissed suit, if the suit by Amrae's liquidator were successful. The High Court agreed with the AR's decision to stay the proceedings in the bankruptcy application pending the outcome of the suit by Amrae's liquidator against the creditors, on the condition that the debtor paid

into court as security a sum corresponding to the unpaid costs for the dismissed suit. In arriving at that conclusion, the court observed (at [20]):

> …, in the rather unusual circumstances of this case, Amrae's liquidator's action ought not to be ignored. [The debtor] rightly pointed out that the reality of the situation is that if the liquidator of Amrae succeeds in his action against [the creditors], [they] will have to pay to her a very much larger sum than the $200,000 that she owes them for the costs of her failed action against them. [The debtor] reiterated that she is, as Amrae's main creditor, financing the liquidator's claim against [the creditors] and that [the creditors] were using the present bankruptcy proceedings to bankrupt her so that Amrae's liquidator would be without funds to continue the action. …

24 The High Court made other observations regarding the apparent merits of the suit brought by Amrae's liquidator against the creditors (see *Tang Yoke Kheng* at [21]–[22]), and further noted that, given the debtor's payment into court, the creditors' position was "safeguarded". Accordingly, the court concluded that there were "exceptional circumstances" to warrant a stay of the bankruptcy proceedings (see *Tang Yoke Kheng* at [23]).

25 The outcome in *Tang Yoke Kheng* may be contrasted with the following two cases. In the first, *Royal Bank of Canada v 1130703 Ontario Ltd* [2003] OJ No 3519 ("*Ontario Ltd*"), the creditor brought a bankruptcy application against two debtor companies, and the debtors sought a stay pursuant to s 43(11) of the Canada Bankruptcy and Insolvency Act (1985, c B-3) ("the Canada BIA"), the broad language of which is similar to s 315(1) of the IRDA. Section 43(11) of the Canada BIA states:

> The court may for other sufficient reason make an order staying the proceedings under an application, either altogether or for a limited time, on any terms and subject to any conditions that the court may think just.

26 It should be noted that s 43(11) of the Canada BIA is intended to address a stay of proceedings sought by the debtor "for other reasons", and specifically,

it excludes the situation where a debtor seeks a stay by denying the debt or the facts relied on by the creditor in support of the application, specific provision for which is made by s 43(10), as follows:

> If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor's period and for any period of time that may be required for trial of the issue relating to the disputed facts.

27 Returning to the facts of *Ontario Ltd*, the debtors sought a stay on the basis that they had brought an action against the creditor to pursue counterclaims for negligence and breach of fiduciary duties, and it was said that these counterclaims would or might reduce the amounts owed to below the statutory threshold for bringing bankruptcy applications (see *Ontario Ltd* at [1]). The court noted that outstanding civil proceedings between a creditor and debtor may justify a stay of the bankruptcy proceedings if the court concludes that there is a *bona fide* dispute between the parties (see *Ontario Ltd* at [17]). The court further noted that relevant considerations as to whether a stay is to be granted under s 43(11) are: (a) whether the debtor's action is brought *bona fide*, or whether it is merely an attempt by the debtor to hinder or delay the petitioning creditor in the enforcement of its rights, and in this analysis, if the debtor's chances of success in the action were evidently remote, it could have a bearing on the *bona fides* of the debtor; (b) the amounts owing to the creditor; (c) the reasonableness of the creditor's conduct; and (d) the likelihood of prejudice to the creditor, as well as other creditors, if the stay were granted (see *Ontario Ltd* at [18]–[19]). On the facts, the court was satisfied from the circumstances of the case and from the plain lack of merits in the debtors' action that it was nothing more than an attempt to place obstacles in the way of the creditor's legitimate attempts to recover its debts and did not reflect the existence of a *bona fide*

dispute between the parties in respect of the counterclaims that would provide sufficient reason for a stay (see *Ontario Ltd* at [20]–[21] and [24]). Accordingly, no stay was granted and the relevant orders in bankruptcy were made.

28 In the second case, Re *Beach* [2022] OJ No 5053 ("*Beach*"), the creditors commenced bankruptcy applications against two individuals on the basis of unsatisfied costs awards obtained by the creditors in previous mortgage enforcement actions as well as a debt in a promissory note. The debtors sought a stay pursuant to s 43(11) of the Canada BIA on the basis that there were pending "accounting proceedings" in which they intended to dispute the accounting of the debt and how the proceeds of sale of their properties had been applied, which they said were a "direct challenge" to the debt relied on in the bankruptcy application (see *Beach* at [60]). The court held that the general test to be applied by the court in exercising its discretion under s 43(11) is "whether there is a *bona fide* claim of the debtor against the applicant creditor which is of a substantial nature and which would disappear if a bankruptcy order was made, and that there is no prejudice to the other creditors by granting a stay" (see *Beach* at [70]). On the facts, the court held that the debtors had failed to pursue the accounting proceedings with diligence and their previous conduct in other court proceedings had demonstrated a disregard of the court's previous orders and directions, including by failing to produce their financial records and refusing to attend examinations in aid of execution proceedings brought by the creditor. In these circumstances, the court considered that the debtors' conduct as a whole did not warrant a stay of the bankruptcy proceedings, and the relevant orders in bankruptcy were made (see *Beach* at [73] and [76]).

29 From the above, it appears that the court's discretion to order a stay of proceedings in a bankruptcy application under s 315(1) of the IRDA can be enlivened, and "sufficient reason" can be shown, where the debtor is party to,

or stands to benefit monetarily from, a pending legal proceeding before the court in which a *bona fide* claim is pursued against the creditor for a sum of money that is liable to extinguish the debt which he owes to the creditor. Based on the cases, the following two considerations are particularly relevant.

(a) First, the claim pursued against the creditor in the pending legal proceeding must be *bona fide*, and not merely an attempt by the debtor to hinder or delay the creditor in the enforcement of its rights. To this end, it is relevant to consider if the debtor's claim has a reasonable prospect of success and whether the debtor had pursued those proceedings with diligence. Therefore, in *Tang Yoke Kheng*, the court noted the apparent merits of the claim brought by Amrae's liquidator against the creditors, as one of the considerations which led it to conclude that a stay ought to be ordered (see [24] above). On the other hand, in *Ontario Ltd* and *Beach*, the court considered that a stay was not warranted, having regard to the lack of merits in the debtor's claims and the manner in which they were pursued (see [27]–[28] above).

(b) Secondly, while it appears from *Tang Yoke Kheng* that the debtor need not necessarily be a party to the pending legal proceeding, the claim must be one in which the debtor stands to monetarily benefit and recover a sum very significantly close to or in excess of the debt owed to the creditor, so that if the claim is successful, the creditor's debt stands to be extinguished. In other words, it is not sufficient for the debtor to merely cite *any* pending claim against the creditor; the debtor must show that the claim, if allowed to proceed, can possibly extinguish the debt on which the bankruptcy application is brought. This stands to reason since it would render nugatory the bankruptcy regime as an avenue for allowing creditors to seek repayment of debts if a debtor were allowed

> to obtain a stay and interfere with the creditor's right to resort to the bankruptcy regime on the basis of distinct claims which do not have any bearing on the existence of the underlying debt (see also [39]–[40] below). An example of this arises in the context of a debtor who seeks to set aside a statutory demand on the basis of a valid counterclaim, set-off or cross demand. The court would only set aside the statutory demand if that valid counterclaim, set-off or cross demand "is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand" (see r 68(2)(*a*) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("the PI Rules")).

Creditor holds adequate security for the underlying debt

30 There are two decisions of the Malaysian courts in which a stay of proceedings in a bankruptcy application has been ordered on the ground that the creditor held security, against which the debt could be recovered. In these cases, the stay was ordered pursuant to s 97 of the Malaysia Insolvency Act 1967 ("the Malaysia IA") which, like s 315(1) of the IRDA, is worded in broad terms:

> The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and conditions as the court thinks just.

31 In *Re Torsin bin Jarvanthi, ex p Equity Finance Corp Bhd* [1989] 3 MLJ 428 ("*Torsin*"), the debtor was a guarantor under a loan agreement secured by a charge created over a plot of land owned by a company. As instalments under the loan agreement were not made by the principal borrower, the creditor commenced proceedings against the debtor (as guarantor) and obtained summary judgment. Separately, foreclosure proceedings were also taken out against the company in respect of the land, pursuant to which the creditor

obtained an order for sale. Relying on the summary judgment obtained, the creditor commenced bankruptcy proceedings against the debtor, who then brought an application for the bankruptcy proceedings to be stayed or set aside. In the application, the debtor sought to attack the summary judgment obtained against him and alleged that the bankruptcy application had been commenced in contravention of the relevant statutory requirements, all of which were dismissed by the court. In the alternative, the debtor sought a stay in reliance on s 97 of the Malaysia IA, arguing that the institution of bankruptcy proceedings was oppressive to him and the creditor should instead pursue the judicial sale of the land pursuant to the foreclosure proceedings to recover the debt. The court noted that the foreclosure proceedings were afoot and ordered a three-month stay of the bankruptcy proceedings pending the judicial sale of the land, with liberty to the lender to apply if the sale proves abortive (at 433).

32 The approach in *Torsin* was endorsed by the Malaysia Court of Appeal in *Chen Ying @ Chin Ying v Export-Import Bank of Malaysia Bhd* [2016] 4 MLJ 324 ("*Chen Ying*"). Similar to the facts of *Torsin*, the debtor was a guarantor of a loan facility granted to a company to finance the development of an amusement park in China. The company defaulted on the loan facility and the creditor commenced proceedings against the company, the debtor as well as other guarantors and was granted judgment. Pursuant to the judgment, the creditor brought bankruptcy proceedings against the debtor. The debtor then brought an application to stay the bankruptcy proceedings, citing (a) an ongoing civil suit which the creditor had brought in China against the company and (b) the pending realisation of certain assets taken as security under the loan facility, which the court noted had a forced sale value that was more than adequate to satisfy the judgment debt. Having regard to these facts, and in particular, the

fact that the creditor held adequate security, the court ordered a stay of the bankruptcy proceedings (see *Chen Ying* at [37]–[39]).

33 Under both Singapore and Malaysia law, where the applicant in a creditor's bankruptcy application is a secured creditor and it intends to enforce the debt against the security, it must disclose to the court the existence of its security and give an estimate of the value of the security (see s 313(1) of the IRDA and s 5(2) of the Malaysia IA). The cases of *Torsin* and *Chen Ying* suggest that, where a creditor holds security against which its debt could be recovered, the court would be prepared to order a stay of proceedings in the bankruptcy application, to the extent that the security provides an avenue for the debt to be recovered. Therefore, the court's discretion under s 315(1) of the IRDA can be enlivened, and "sufficient reason" can be shown, where the creditor holds adequate security against which the debt can be recovered as an alternative to bankruptcy proceedings against the debtor. As the legal burden for obtaining a stay of proceedings in a creditor's bankruptcy application obviously falls on the debtor, it must be for the debtor to satisfy the court that the creditor holds such adequate security.

34 I note that in *Torsin* and *Chen Ying*, the court considered s 97 of the Malaysia IA as conferring on the court a "protective role" *vis-à-vis* the debtor in ordering a stay of bankruptcy proceedings. In *Torsin*, the court held the following in connection with s 97 (at 433):

> This provision, I considered, gave a protective role to the court to exercise its discretion to stay proceedings if it felt, *inter alia*, that undue hardship might be caused to a judgment debtor.

35 In *Chen Ying*, the court agreed with the views in *Torsin* and further held that s 97 of the Malaysia IA required the court to look "not so much … to the

interests of the creditor petitioner, but those of the debtor" (at [25]). The court further explained (at [32]):

> This is understandable given the far-reaching consequences of not just a receiving order but an adjudication order. These orders have immediate operative effect on not just the assets of the debtor now adjudged a 'bankrupt' but also the qualifications of the adjudged bankrupt to occupy positions of public office and the like. These statutory disqualifications cannot be downplayed.

36 The observations in *Torsin* and *Chen Ying* were made with reference to s 97 of the Malaysia IA and so are not relevant in the interpretation of s 315(1) of the IRDA. However, in my respectful view, I do not think they are intended to suggest that a court, in deciding whether or not to order a stay of bankruptcy proceedings, should have regard to the prejudice suffered by a debtor, whether arising from a bankruptcy application being brought and maintained or from the making of a bankruptcy order against him. The relevant consideration in *Torsin* and *Chen Ying*, and why the court had considered the bankruptcy application as occasioning hardship to the debtor and thereby ordered a stay, was the fact that the creditor held adequate security against which the debt could be recovered, as an alternative to the creditor's resort to the bankruptcy regime. It was in this specific context that the court perceived the creditor's bringing and maintenance of the bankruptcy application as occasioning hardship to the debtor. Therefore, in *Torsin*, the stay ordered was only a limited stay of three months pending the conclusion of the judicial sale in the foreclosure proceedings, and in the event, because the sale did not materialise, the bankruptcy proceedings were restored (see *Torsin* at 433–434). This following extract from *Chen Ying* (at [39]) also reinforces this view:

> … Where the debtor has shown to the court that the values of the securities are more than adequate to satisfy the judgment debt, it behoves on the respondent, as judgment creditor to show some evidence or explanation that the values relied on are

> either wrong, inadequate or for some other reason, not relevant. *To merely express that it is entitled to commence bankruptcy proceedings without more, in our judgment, will be to render the object and intent of s 97, which is to protect the debtor, illusory and of no real substantive effect or meaning.* Bankruptcy proceedings, being personal in nature must be courses of action of the last and final resort; not the first. *It therefore stands to reason that the realisation of the valuable securities would be the immediate and more effective mode of execution towards satisfaction of a judgment debt*, even if the contract has given the respondent the option of whether or not to proceed.
>
> [emphasis added]

37 In any case, I do not think it is within the scope of s 315(1) of the IRDA for the court's discretion to be exercised for the indulgence of a debtor or on account of the prejudice which a debtor can suffer from a bankruptcy application being brought and maintained or from a bankruptcy order being made against him. I will return to this point later (at [44]).

Distilling the principles

38 Given the deliberately broad wording of "sufficient reason" in s 315(1) of the IRDA (see, for example, *Chimbusco (HC)* ([19] above) at [57]; *HSBC Bank (Singapore) Ltd v Shi Yuzhi* [2017] 5 SLR 859 ("*Shi Yuzhi*") at [47]), the cases which I have cited above are not exhaustive of the circumstances in which the court's discretion to order a stay of proceedings in a bankruptcy application under s 315(1) of the IRDA can be enlivened; these cases are only *illustrative*, much like ss 315(5)–(6) of the IRDA (see [17] above). To unpack the scope of the court's discretion and what constitutes "sufficient reason" under s 315(1) of the IRDA, it is necessary to approach this from first principles.

39 The law of bankruptcy seeks to "strike a balance between the interest of the debtor, creditor and society" (see *Parliamentary Debates* ([16] above) at col 399). Exactly how this balance is struck is context specific. Where a debtor

is unable to pay his debts in full as they fall due, such that the grounds for presenting a creditor's bankruptcy application against him in s 311(1) of the IRDA are present, the objective of the bankruptcy regime is to secure the repayment of debts, in order to protect the pecuniary interests of creditors and minimise any delay which they may face before their rights are recognised and enforced (see generally, *Chimbusco (CA)* ([18] above) at [20]; Re *Aathar Ah Kong Andrew* [2019] 3 SLR 1242 ("*Aathar Ah Kong*") at [41]). Where a debtor is found to be insolvent and made bankrupt, the bankruptcy regime then prioritises the interests of a debtor in obtaining a fresh start, such as through the provision of realistic avenues to obtain discharge from bankruptcy (see, for example, Re *Lim Oon Kuin and other matters* [2024] SGHC 328 at [14]; *Mirmohammadali Hadian v Ambika d/o Ramachandran (Official Assignee, non-party)* [2023] 5 SLR 1153 at [38]; *Parliamentary Debates* at col 400).

40 Given how the balance of interests is struck, at the stage where a bankruptcy application is being pursued against a debtor to procure his repayment of debts, the law of bankruptcy confers two significant advantages on an applicant-creditor. First, a creditor enjoys a summary procedure for recovering its debt without having to undergo the full process of adjudication for the debt to be proven (see *Chimbusco (HC)* at [35] and [37]–[38]). The court does not, as part of hearing *the bankruptcy application*, inquire into the merits of the claimed debt. Secondly, once a bankruptcy application is brought, prophylactic mechanisms come into play to protect a creditor against depletion of the debtor's assets, namely: (a) the court's powers under ss 324–325 of the IRDA to appoint an interim receiver, or to order a stay of any action, enforcement order or other legal process instituted against the debtor; and (b) s 328 of the IRDA, which voids any disposition of bankrupt's property made

after the filing of the bankruptcy application, unless ratified by the court (see *Java Asset Holding Ltd v Sin David* [2025] SGHC 39 at [25]).

41 Given these significant advantages which the law of bankruptcy confers on a creditor pursuing a bankruptcy application, it could not have been intended that a creditor's entitlement to avail itself of the bankruptcy regime is an unqualified one. That is why, if a creditor wishes to resort to the bankruptcy regime for recovering a debt, the debt in question must be *undisputed* (see *Chimbusco (CA)* at [32]) and further, there are various requirements in the IRDA as well as the PI Rules which the creditor must satisfy or comply with in order to be conferred with "standing" to bring the bankruptcy application (see *Chimbusco (HC)* at [36]). Put another way, a creditor's entitlement to avail itself of the bankruptcy regime as a means of recovering its debt should be contingent on the bankruptcy application being brought and maintained with the *legal foundation* required under the law of bankruptcy, which comprises (a) the *existence* of a debt payable to the creditor immediately (*ie*, one that is undisputed), the quantum of which exceeds the statutory threshold, as well as (b) the creditor's satisfaction of the jurisdictional and procedural requirements for bringing and maintaining the bankruptcy application (see, for example, ss 310 and 312 of the IRDA, as well as Part 7, Divisions 2 and 3 of the PI Rules, which deal with the form of the application, the identification of the debtor and the debt, service as well as proof of service of the statutory demand and the bankruptcy application). Where a question is raised as to any of these matters, this demonstrates a defect in the legal foundation of the bankruptcy application and in certain cases, it can render the bankruptcy application liable for dismissal. To illustrate:

(a) Rules 99(*a*) and (*b*)(i) of the PI Rules state that, where a bankruptcy application is brought by a creditor "who is not entitled to

make the bankruptcy application by virtue of [s] 310, 311 or 312 of [the IRDA]", or where it is based on a statutory demand that has not been properly served in accordance with the requirements in the PI Rules, the court "must" dismiss the bankruptcy application.

(b) More generally, the court has a discretion to dismiss a creditor's bankruptcy application where the applicant-creditor has contravened any provisions of the IRDA or the PI Rules in relation to proceedings in the application (see s 315(2) of the IRDA). Whether the court exercises its discretion under s 315(2) in favour of dismissal depends on whether the contravention is material and irremediable (see Re *Then Feng* [2022] SGHCR 1 at [45]). On a related note, the court also has a discretion to dismiss a bankruptcy application where it is not satisfied with "the proof of the applicant creditor's debt or debts" (required under r 71 of the PI Rules), or where it is not satisfied with "the proof of service of the [bankruptcy] application on the debtor" (required under r 85 of the PI Rules) (see ss 316(3)(*a*) and (*b*) of the IRDA).

(c) Where a bankruptcy application is brought in respect of a debt which to the creditor's knowledge is genuinely disputed, it is liable to be dismissed as an abuse of process. This is because, as explained in *Chimbusco (CA)* (at [32]):

> … the insolvency mechanism, whether in the corporate or the personal context, is *not meant to be used as a parallel procedure to procure the payment of disputed debts*. The bankruptcy court which finds that the claimed debt is genuinely disputed to the knowledge of the creditor may characterise the bankruptcy application as an abuse of process and dismiss it with costs.
>
> [emphasis added]

42 Generally speaking, where a stay of proceedings is ordered, the proceedings are held in abeyance and effectively, the claimant's entitlement to seek recourse for its rights via those proceedings is suspended for the duration of the stay. The court's power to order a stay of proceedings can either be derived from statute (see, for example, s 18(2) read with para 9 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("the SCJA"); s 6(2) of the International Arbitration Act 1994 (2020 Rev Ed)) or its inherent jurisdiction (see, for example, *Chan Chin Cheung v Chan Fatt Cheung* [2010] 1 SLR 1192 at [47]). The source from which the court's power to order a stay is derived will speak of the reasons on which any such stay is ordered. For example, where a stay is ordered pursuant to the court's powers in para 9 of the First Schedule to the SCJA, one of the circumstances stated in para 9 would be present in the case (namely, where the proceedings ought not to be continued because the matter in question is *res judicata*, there is a multiplicity of proceedings, or Singapore is not the appropriate forum). On the other hand, where a stay is ordered pursuant to the court's inherent jurisdiction, this is where it is necessary to "ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them" (see generally, Re *Naplon Zero Geraldo Mario* [2013] 3 SLR 258 at [27]).

43 The court's power to order a stay of proceedings in a bankruptcy application is derived from s 315(1) of the IRDA, the language of which does not provide any indication as to the scope of the court's discretion. To unpack the scope of this power, I think it is helpful to appreciate the significance of a stay of bankruptcy proceedings, against the objectives served by the law of bankruptcy, and the balance of interests struck in the context where a bankruptcy application is brought and maintained against a debtor who is unable

to repay his debts as they fall due (see [39]–[40] above). Where a stay of proceedings in a bankruptcy application is ordered, the court effectively suspends the creditor's entitlement to avail itself of the bankruptcy regime in respect of its alleged unpaid debts. Obviously, it is justified for the creditor's entitlement to be suspended if there exist circumstances in the case which can eventually result in the bankruptcy application being dismissed. However, it stands to reason that the creditor's entitlement should also be suspended where there is something in the case which puts into question the legal foundation of the bankruptcy application. This is because, while the law of bankruptcy prioritises the interests of an applicant-creditor in securing the repayment of its debts, that is not unqualified, and it is only to the extent that the creditor's resort to the bankruptcy regime is premised on the requisite legal foundation (see [41] above).

44 On the other hand, where there is nothing in the case which raises questions as to the legal foundation of the bankruptcy application or which can result in its dismissal, it would be quite inconsistent with the protection which the law of bankruptcy affords to creditors who pursue properly founded bankruptcy applications if a creditor's entitlement to resort to the bankruptcy regime can nevertheless be suspended by a stay. Therefore, I do *not* think that considerations *extraneous* to the legal foundation of the bankruptcy application can constitute "sufficient reason" and enliven the court's discretion under s 315(1) of the IRDA. More specifically, I do not think the court's power to stay bankruptcy proceedings under s 315(1) should be exercised for the indulgence of the debtor or on account of any prejudice which the debtor claims he would suffer from a bankruptcy application being brought and maintained or from a bankruptcy order being made against him, since these considerations are necessarily unrelated to the legal foundation of the bankruptcy application.

Moreover, the interests of a debtor which the law of bankruptcy deems relevant are those pertaining to his interests in obtaining a discharge and a fresh start (see [39] above), and not his self-serving interests in not having a bankruptcy application brought and maintained, or having a bankruptcy order made against him, where the relevant legal grounds are present. The debtor's interests in resisting a properly founded bankruptcy application are necessarily exclusive to the interests of an applicant creditor in seeking the repayment of its debts and as explained (at [39]), where the grounds for bringing a bankruptcy application under s 311(1) of the IRDA are present, it is only the latter which is relevant under the law of bankruptcy.

45 On this note, it is significant that in all of the cases cited earlier where the court was prepared to consider a stay of bankruptcy proceedings, there existed circumstances in the case which put into question the legal foundation of the bankruptcy application. For example, where a debtor raises a triable issue in connection with the debt (see [19] above), where there the debtor is party to or stands to benefit monetarily from a pending legal proceeding in which a *bona fide* claim is pursued against the creditor for a sum money in excess of the debt (see [28] above), or where the creditor holds adequate security against which the debt can be recovered (see [33] above), these all put into question the *existence* of the debt which, without saying, is the foundation of the entire bankruptcy application.

46 Provisions in the IRDA, which like the cases are *illustrative* of when the court can order a stay of bankruptcy proceedings pursuant to s 315(1), speak to the same tone. Sections 316(5)–316(6) provide for the court's power to stay bankruptcy proceedings where the debtor intends to challenge his indebtedness, whether by way of a pending application to set aside a statutory demand, or an appeal from or an application to set aside the judgment or order by which a

judgment debt is payable, or where the debtor appears at the hearing of a bankruptcy application and denies his indebtedness (see [17] above). These provisions similarly illustrate that the court's power to order a stay under s 315(1) could be exercised where there is a possibility that the existence of the debt, being the foundation of the bankruptcy application, could be put into question by any such appeal or application brought or dispute raised by the debtor. Section 315(2) of the IRDA, which I have referred to earlier (at [41(b)]), is also instructive. It reads:

> *Without affecting [s 315(1)]*, where it appears to the Court that the person making a bankruptcy application has contravened any provisions of this Act or any rules in relation to proceedings on a bankruptcy application, the Court may, in its discretion, dismiss the application, *instead of staying any proceedings on the application under that subsection.*
>
> [emphasis added]

47 The emphasised words make clear that the court's power under s 315(2) of the IRDA to *dismiss* bankruptcy proceedings in the event of an applicant-creditor's contravention of any provisions of the IRDA or the PI Rules is as an *alternative* to those proceedings being stayed under s 315(1)It is therefore implicit in s 315(2) that the court can order a stay of bankruptcy proceedings under s 315(1) in the event of an applicant-creditor's contravention of any provisions of the IRDA or the PI Rules. Compliance with the provisions of the IRDA and the PI Rules, which set out various jurisdictional and procedural requirements for bringing and maintaining the bankruptcy application, is what confers the creditor with "standing" to institute and maintain the bankruptcy application. Where these requirements have been contravened, that necessarily puts into question the legal foundation of the bankruptcy application (see [41] above). Any such contravention can also eventually result in the dismissal of the bankruptcy application if it is shown to be material and irremediable (see [41(b)] above). In these circumstances, it is justified for the creditor's

entitlement to resort to the bankruptcy regime to be suspended through a stay of the bankruptcy proceedings.

48 Finally, there is the issue of the standard to which a debtor seeking a stay under s 315(1) of the IRDA must show that the legal foundation of the bankruptcy application is put into question or that grounds which can result in the dismissal of the bankruptcy application exist. Obviously, the debtor need not make *good* his contention. Setting such a high threshold would mean that the court's power to stay bankruptcy proceedings can only be exercised where grounds for dismissing the bankruptcy application are demonstrated to the satisfaction of the court, thereby rendering the court's power to stay bankruptcy proceedings nugatory. On the other hand, a bare and unsubstantiated allegation cannot suffice, because that would mean that a creditor's entitlement to avail itself of the benefit of bankruptcy regime can all be too readily displaced, which sits oddly with the protections which bankruptcy law is intended to confer on applicant creditors in the first place (see [39]–[40] above). In my view, the balance between these competing considerations can be achieved by requiring the debtor to demonstrate on an *objective* standard that the creditor's entitlement to avail itself of the benefit of the bankruptcy regime has been put into question and therefore ought to be suspended. Therefore, to demonstrate "sufficient reason" under s 315(1) of the IRDA, the debtor must show that the circumstances which he identifies as grounds for the stay have a *reasonable prospect* of either (a) putting into question the legal foundation of the bankruptcy application or (b) resulting in the dismissal of the bankruptcy application. In my view, this approach is also consistent with the standard articulated by our courts for a debtor who seeks a stay by denying the debt, namely, that he must show the existence of *triable issues* arising from the disputes raised over the debt and he need not make good the denial on the merits,

but at the same time, it will not be sufficient for him to provide a bare and unsubstantiated denial of the debt (see [19] above).

49 To summarise, for "sufficient reason" under s 315(1) of the IRDA to be shown and for the court's discretion to order a stay of bankruptcy proceedings to be enlivened, the circumstances which the debtor identifies as grounds for the stay must have a reasonable prospect of either (a) putting into question the legal foundation of the bankruptcy application or (b) resulting in the dismissal of the bankruptcy application. According to the language of s 315(1), where such "sufficient reason" exists, the court "may" make an order staying the proceedings on a bankruptcy application on such terms as it thinks just. Therefore, even where "sufficient reason" is shown, it does not automatically result in a stay. The debtor must go on to persuade the court that its discretion should be exercised *in favour* of a stay. In exercising that discretion, a principal consideration is whether there are sufficient safeguards for the creditor's pecuniary interests if a stay were to be ordered, and where necessary, conditions will be imposed as part of the stay. On this note, I do not think it is mere coincidence that in all of the cases cited above where a stay of bankruptcy proceedings had been ordered, they involved either a situation where security had been furnished for the debt by way of payment into court (as in *Khoo Kay* ([21] above) and *Tang Yoke Kheng* ([23] above)) or one where security had been taken separately by the creditor (as in *Chen Ying* ([32] above)). Similarly, in cases where the debtor's defence to the debt raises a triable issue and the court orders a stay, the court may impose the appropriate conditions and require the debtor to provide security, to the extent this is necessary to preserve the creditor's interests, depending on the strength of the debtor's defence and whether the conduct of the debtor is such as to raise concerns that the creditor's pecuniary interests are at risk (see *Chimbusco (CA)* ([18] above) at [21]–[22]

and [40]). That being said, I do not mean to suggest that the court will only grant a stay where the creditor enjoys security for its debt. The appropriate terms and conditions necessary to safeguard the creditor's interests is a matter of the court's discretion, to be exercised with reference to the circumstances of each case, and the court does not confine itself to ordering that security be provided (see *Chimbusco (CA)* at [39]).

50 I conclude this section by explaining how the principles regarding s 315(1) of the IRDA which I have set out above square with the reasoning adopted in two other cases in which the issue of a stay of bankruptcy proceedings was considered by the court. I omitted these cases from the discussion earlier as the issue of a stay did not squarely arise on the facts.

51 In the first case, *Aathar Ah Kong Andrew* ([39] above), a bankruptcy application was commenced against the debtor in February 2016. In July 2017, the debtor applied for, and was granted, an interim order pursuant to s 45(1) of the BA to put forward a proposal to his creditors for a composition of his debts. The effect of the interim order was that "no bankruptcy application may be … proceeded with" against him but it would cease to have effect 42 days from the date it was made unless otherwise directed by the court (see ss 45(3)(*a*) and 45(4) of the BA) or further extended where (a) the debtor's nominee applies for an extension to have more time to prepare a report on the debtor's proposal under s 49(4), (b) a creditors' meeting is called for to consider the debtor's proposal under s 49(5) or (c) a further creditors' meeting is called for to consider a revised proposal from the debtor or reconsider the debtor's proposal after the court revokes the creditors' approval obtained at the first meeting under s 54(5). The debtor later managed to obtain approval of his proposal at a creditors' meeting, but the approval was successfully set aside by the court in an application brought by objecting creditors under s 54(2)(*a*). The debtor then

brought an appeal against the setting aside, and separately, filed an application to extend the interim order, pending the determination of the appeals. The debtor's application to extend the interim order was dismissed by an AR, whose decision was upheld on appeal. The High Court held that the court's power under s 45(4) to direct that an interim order continue in effect beyond the default of 42 days arises only when the court grants the interim order at first instance, and that further extensions of the interim order are specifically governed by ss 49(4), 49(5) and 54(5) of the BA, and as such, the court had no general power to extend an interim order at any stage, and specifically on the facts of the case, it had no power to extend the interim order until the appeals were determined (at [48]–[50]). The court observed that, if the creditor were to restore the bankruptcy application for hearing before the determination of the appeals, it did not follow that a bankruptcy order necessarily had to be made, and it was open to the debtor to bring to the court's attention the existence of the pending appeals and seek a stay of the bankruptcy proceedings until the determination of the appeals, pursuant to s 64(1) of the BA. The court further observed (at [52]):

> In considering whether to grant such a stay, the court will consider the reasons furnished by the applicant as to why a stay should be granted and exercise its discretion accordingly. Even if the court grants a stay, this may be subject to any conditions that the court deems just to impose.

52 If the debtor's appeal was successful, then either the approval of his proposal would stand, or a further creditors' meeting would be called for, either for the reconsideration of his original proposal or for the consideration of a revised proposal (see s 54(2) of the BA). In the former situation, because the interim order would already have ceased to be of effect, the bankruptcy application would be "deemed to have been dismissed" unless the court orders otherwise (see s 53(3)). In the latter situation, if a further extension of the interim

order is also directed under s 54(5), the bankruptcy application may not be proceeded with by virtue of an extended interim order (see s 49(3)). As such, the debtor's pending appeal could result in either (effectively) a further stay of the application by virtue of an extended interim order, or in the dismissal of the application. The latter prospect enlivened the court's discretion to grant a stay of the bankruptcy proceedings pursuant to s 64(1) of the BA until the determination of the appeals. Of course, how that discretion is to be exercised is quite a different matter, and even if a stay were ordered, appropriate conditions would still have to be imposed to safeguard the creditor's pecuniary interests (see *Aathar Ah Kong* at [52]). On the facts, a stay was not necessary because there was no indication that the creditor would insist on restoring the bankruptcy application for hearing pending the resolution of the appeals.

53 In the second case, *Shi Yuzhi* ([38] above), the creditor brought a bankruptcy application against a debtor in respect of an unpaid debt of $22,719.70. The debtor, while notified of the bankruptcy application, was absent at all hearings and after several adjournments, an AR eventually made a bankruptcy order against the debtor. By that time, partial repayment had been made, and the outstanding amount was brought down to $3,519.99. The debtor then brought an appeal against the bankruptcy order. The issue in the appeal was whether the AR had the power to grant the bankruptcy order, and whether the AR had the discretion to decline to grant the bankruptcy order, in view of the circumstances of the case and the amount that remained outstanding at the time the bankruptcy order was made.

54 The court held that the AR's making of the bankruptcy order was consistent with s 65(1) of the BA (now s 316(1) of the IRDA) and further, the circumstances specified in r 127 of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) (now r 99 of the PI Rules) which, if present, oblige the court to dismiss

the bankruptcy application, were not present (see *Shi Yuzhi* at [33]–[37]). The court went on to hold that, "if the remaining debt outstanding is a relatively small sum … as at the date on which a bankruptcy order is to be made", the court may "in its discretion, dismiss or stay a bankruptcy application" pursuant to s 65(2)(*e*) or s 64(1) of the BA, respectively (see *Shi Yuzhi* at [39]–[41]). However, the court noted that the facts of that case did not warrant the court exercising its discretion in the debtor's favour, in part because of the debtor's conduct, which showed that he was fully aware of the severity of the bankruptcy proceedings against him and yet he still acted as he wished and made payment on his own terms, and also failed to attend before the court to address the AR as to why a bankruptcy order should not be made, or at the very least, notify the creditor's solicitors or the court beforehand that he would be absent for the hearing at which the bankruptcy order was made (see *Shi Yuzhi* at [42]–[43]).

55 Where the debt which remains outstanding is a relatively small sum, the court, having regard to the debtor's total assets and liabilities, may take the view that the debtor is able to repay the outstanding amount as well as all of his other debts, if applicable (see, for example, Re *Boey Hong Khim and another*, ex parte *Medical Equipment Credit Pte Ltd* [1998] 1 SLR(R) 956 ("*Boey Hong Khim*") at [11]). If the court is satisfied of the debtor's ability to repay his debts as such, that in and of itself is a ground on which the application may be dismissed (see s 316(3)(*c*) of the IRDA). This creates a reasonable prospect of the bankruptcy application being dismissed, and "sufficient reason" under s 315(1) of the IRDA would be shown, though the question of whether a stay is to be granted is a matter for the court's discretion, having regard to the circumstances of the case and subject to any other conditions that the court may deem fit to impose.

Whether the circumstances of this case enliven the court's discretion under s 315(1) of the IRDA?

56 Returning to the present case, the sole ground on which the stay in SUM 215 was sought is the Proposal. To recap, by the Proposal, Ms Li promised to make partial repayment of US$100,000 (which is approximately one-fifth of the debt), and asked for more time until 31 March 2025 to settle the remaining two-thirds of the debt. Ms Li explained that time is needed for her husband, Dr Dai, to arrange for the sale of the TCM Biotech Shares, the proceeds of which would be provided to her to repay the debt (see [10]–[11] above).

57 A debt on which a bankruptcy application is brought is one that is payable immediately (see s 311(1)(*b*) of the IRDA). Therefore, where a debtor requests for more time to repay a debt, he implicitly acknowledges that he is unable to repay the debt (see, for example, *Sabayashi Mukherjee and another v Pradeepto Kumar Biswas and another matter* [2024] 4 SLR 1466 at [36]). To justify his request for more time, the debtor might cite reasons as to why he would come to have the means to repay the debt *in the future*, which Ms Li also did in this case, by citing the funds that she would receive from Dr Dai. However persuasive these reasons might be, I do not think they can give rise to any finding of the debtor's *ability* to repay the debt, whether in relation to the debt on which the bankruptcy application is brought, or more generally in relation to all his debts for the purposes of s 316(3*)(c*) of the IRDA. This is because the debtor's ability to repay his debt (or debts) is determined as at the point in time where any request for more time is made, taking into account matters such as the quantum of the debt currently owed (see the discussion on *Shi Yuzhi* at [55] above) and the debtor's assets and liabilities (see *Boey Hong Khim* at [11]), which also includes his contingent and prospective liabilities (see s 316(4) of the IRDA). As explained by the High Court in Re *Jeyaretnam Joshua Benjamin*,

ex parte *Ravindran s/o Ramasamy and another petition* [2000] 2 SLR(R) 58 (at [33]), "[w]illingness (and even ability) to pay progressively in the future does not equate with ability to pay a debt forthwith".

58 As I have explained earlier, for "sufficient reason" under s 315(1) of the IRDA to be shown, the circumstances in the case which the debtor identifies as grounds for the stay must have a reasonable prospect of either (a) putting into question the legal foundation of the bankruptcy application or (b) resulting in the dismissal of the bankruptcy application (see [49] above). Since a debtor's request for more time to repay a debt is an implicit acknowledgment of his inability to repay the debt, this reinforces the view that the bankruptcy application is brought and maintained with proper foundation as the debt remains unpaid and the grounds for making a bankruptcy order exist (see s 316(1*)(a*) of the IRDA). That remains so even if the request for more time to repay the debt is coupled with a promise of part payment – any such promise similarly speaks of the debtor's inability to repay the debt. A debtor's request for more time to repay a debt, however, well-intentioned or genuine, cannot give rise to "sufficient reason" under s 315(1) of the IRDA and enliven the court's discretion thereunder.

59 Therefore, it is not within the scope of s 315(1) of the IRDA for a stay of proceedings in B 3583 to be granted on the basis of the Proposal. I therefore dismissed SUM 215.

60 However, that is not the end. As my questions to Ms Li's counsel at the hearing would suggest, where a debtor seeks more time to repay the debt, what the debtor should do is to seek an adjournment of the hearing of the bankruptcy application itself. Rules 95(1) and 95(2) of the PI Rules provide for the court's

power to grant adjournments at the hearing of a bankruptcy application. They read as follow:

> **95**.—(1) At the hearing of a bankruptcy application, where —
>
> (*a*) a creditor's bankruptcy application has been duly served; and
>
> (*b*) a period of one month has expired after the day appointed for the first hearing of a creditor's bankruptcy application,
>
> then, unless the Court adjourns the hearing, the Court is to either make a bankruptcy order on the application or dismiss the application.
>
> (2) No adjournment of the hearing is to be made after the period mentioned in paragraph (1) has expired except on any of the following grounds:
>
> (*a*) the debtor appears to show cause against the bankruptcy application or dispute any matter relevant to the bankruptcy proceedings;
>
> (*b*) where the debtor appears and satisfies the Court that the debtor is able to repay the debtor's debt in full or in part within a reasonable period;
>
> (*c*) the Court is satisfied that there are sufficient reasons for granting the adjournment.

61 At this juncture, I think it is useful to distinguish between a *stay* and an *adjournment* of bankruptcy proceedings. As r 95(1) of the PI Rules suggests, the court's power to *adjourn* the hearing of a bankruptcy application is an alternative to it either (a) making a bankruptcy order or (b) dismissing the bankruptcy application. An order *adjourning* the bankruptcy proceedings therefore only *defers* the court's decision on the appropriate orders to be made in a bankruptcy application *to a later date*. It does not, like a stay, put the bankruptcy proceedings in abeyance or suspend the creditor's entitlement to avail itself of the bankruptcy regime against the debtor. Where an adjournment is granted, all which it suggests is that the court is not yet prepared to dispose of the bankruptcy application *conclusively* (whether by making a bankruptcy

order or dismissing the application), because it is satisfied that there exist some forthcoming developments in the case which, if allowed to play out during the course of the adjournment, might assist the court in forming a better view as to the appropriate orders to be made in the bankruptcy application.

62 Under rr 95(1)–(2) of the PI Rules, the court is not to grant an adjournment of the bankruptcy application after the expiry of the one-month period after the day appointed for the first hearing of the application, except on any of the grounds stated in r 95(2). It is apparent from the wording of r 95(2) that the grounds on which an adjournment may be obtained are exhaustive to those set out in r 95(2), though the words "sufficient reasons" in r 95(2)(*c*) are broad enough to capture a wide myriad of reasons on which a debtor may persuade the court to grant an adjournment in exercise of its discretion.

63 Where a debtor seeks more time to repay the debt, the relevant ground on which an adjournment may be sought is r 95(2)(*b*) of the PI Rules. To obtain an adjournment pursuant to r 95(2)(*b*), the burden is on the debtor to persuade the court that he would be able to repay the debt in full or in part within a certain period of time, and further, that that period of time is reasonable in duration. The court, in deciding whether to exercise its discretion and grant the adjournment sought, must scrutinise if the debtor's position has foundation (see, for example, In re *Heyl*; ex p *D P Morgan Limited* [1918] 1 KB 452 at 457–458). Therefore, for the debtor to obtain an adjournment pursuant to r 95(2)(*b*), the debtor cannot barely assert that he would be able to repay the debt in full or in part within the stated period of time; he must also offer some *explanation* as to how he can come to do so.

64 The extent of the explanation required of the debtor will be dependent on the circumstances of each case, such as the quantum of the debt and the

means by which the debtor says he would come to be able to repay the debt. For example, if the debtor claims that he is able to repay the debt by selling property which he owns, the explanation provided should cover the timeframe for the sale and the valuation of that property. Where the debt is of a significant amount and far in excess of the likely funds which, on the debtor's explanations, he is able to raise (such as from a sale of property or from other sources of future income), then more of an explanation is required from the debtor to persuade the court to grant an adjournment. Also, a relevant consideration for the court is whether the debtor's explanation as to his future ability to repay the debt is being raised for the first time – where that is the case, it will obviously be accorded more weight and go further in persuading the court to grant the adjournment. If the explanation had been raised previously, the debtor must do more to explain why that same explanation warrants a further adjournment, for example, by citing a change in circumstances.

65 To be clear, where the grounds for an adjournment pursuant to r 95(2)(*b*) of the PI Rules are made out, it is *not* a case where the court is satisfied of the debtor's ability to repay the debt, whether in relation to the debt on which the bankruptcy application is brought, or more generally in relation to all his debts for the purposes of s 316(3*)(c*) of the IRDA. As explained earlier (at [57]), the debtor's ability to repay is determined as at the point in time where the request for an adjournment is sought, and the fact that such an adjournment is sought speaks precisely of the debtor's inability to repay. Where the court grants an adjournment pursuant to r 95(2)(*b*), the court is satisfied, from the explanation provided by the debtor as to why he would subsequently be able to repay the debt, that the debtor should be given more time to repay the debt, so that the court would be in a better position to decide on the appropriate orders to be made in the bankruptcy application after that period of time expires.

66 Returning to this case, as I explained to Ms Li's counsel in delivering my decision to dismiss SUM 215, instead of a stay, what Ms Li should do is to seek an adjournment of B 3583 until after 31 March 2025, pursuant to r 95(2)(*b*) of the PI Rules. In this regard, Ms Li has articulated rather specific means as to how she would be able to repay the remainder of the debt after the part payment of US$100,000 is made – namely, that her husband Dr Dai intends to sell the TCM Biotech Shares, and then provide those sale proceeds to her, so she may then use them to pay off the debt. The main difficulty which I had with this explanation is that the assets which are to be liquidated for raising funds are owned by Dr Dai (and not Ms Li) and so some form of *evidence*, rather than a bare explanation by Ms Li, is needed to confirm that the sale is indeed taking place and that the relevant proceeds, which belong to Dr Dai, would be available for Ms Li's use. Further, Ms Li also provided no indication as to the timeframe for the sale and the likely value of the proceeds to be obtained from the sale, such that they would cover the remainder of the debt.

67 In the circumstances, I granted Ms Li liberty to file an affidavit addressing the following matters, so that the court could properly scrutinise the foundations of Ms Li's explanations and whether the grounds for an adjournment of B 3583 are made out:

(a) evidence as to the timeframe for the liquidation of the TCM Biotech Shares, including the steps that have already been taken, and the further steps which were to be taken to complete the liquidation;

(b) evidence as to the value of the TCM Biotech Shares, the number of such shares which were to be liquidated, and the likely quantum of the proceeds of sale to be obtained from the liquidation, and where relevant, proof of the number of shares owned by Dr Dai;

(c) evidence that that Dr Dai was indeed undertaking these steps to liquidate the TCM Biotech Shares, and that he would provide the proceeds of sale for Ms Li to repay the debt, by 31 March 2025.

68 To be clear, by the approach taken in this case (at [67]), I do not intend to suggest that a debtor who seeks an adjournment under r 95(2)(*b*) of the PI Rules must necessarily put in his explanations by way of an affidavit supported with evidence. The form in which a debtor's explanations in support of an adjournment under r 95(2)(*b*) should take and whether an affidavit is required is dependent on the facts of each case. Obviously, in most cases, it would be unrealistic to require a debtor (who is already financially constrained) to incur the further expense of preparing and filing an affidavit, and it would suffice for the debtor's explanations to be put forward orally during his attendance at hearings of the bankruptcy application. Here, I considered an affidavit necessary given the significant quantum of the debt, and also because the assets which Ms Li says would be liquidated to provide her with the funds for repayment belonged not to her but Dr Dai, and therefore presumably, Ms Li would have no control over the liquidation of those assets, and her knowledge of that process was consequently limited and also second-hand in nature.

Conclusion

69 For the reasons above, I dismissed SUM 215.

70 As a postscript, at the hearing of B 3583 on 6 March 2025, which was also fixed before me, Ms Li sought an adjournment until after 31 March 2025 pursuant to r 95(2)(*b*) of the PI Rules, and in support, she filed an affidavit by Dr Dai deposing to the matters I have set out above (at [67]). Essentially, Dr Dai: (a) provided evidence of his ownership of the TCM Biotech Shares; (b)

stated that the sale of the TCM Biotech Shares was taking place in two tranches, the first of which had been completed, and that the collective proceeds of sale were in excess of Ms Li's debt; and (c) confirmed that the proceeds of sale would be made available for Ms Li's use to repay the debt by 31 March 2025, as time was needed to complete the paperwork for the funds to be transferred to Ms Li. In view of this, I considered the explanations which Ms Li relied on in support of her request for an adjournment until after 31 March 2025 pursuant to r 95(2)(*b*) as having the requisite foundation. DBS's counsel also, reasonably, did not oppose to the adjournment.

71 I therefore adjourned B 3583 until a date after 31 March 2025, on the condition that Ms Li made immediate part payment of US$100,000 by 10 March 2025, with the remainder of the debt to be paid by 31 March 2025. In the event, Ms Li made full repayment of the debt before 31 March 2025, and I subsequently granted DBS permission to withdraw B 3583 with no order as to costs.

72 In closing, I record my appreciation to both counsel for the measured and sensible manner in which their submissions for SUM 215 and B 3583 were made.

Perry Peh
Assistant Registrar

Cherie Tan, Foung Han Peow and John Loh (Rajah & Tann Singapore LLP) for the claimant;
Tan Li-Chern Terence (Damodara Ong LLC) for the defendant.
