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

[2023] SGHCR 2

Bankruptcy No 2422 of 2022

Between

DBS Bank Ltd

… *Claimant*

And

Ong Tze Yaw Bryan

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Petition]
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v
Ong Tze Yaw Bryan

[2023] SGHCR 2

General Division of the High Court — Bankruptcy No 2422 of 2022
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10 April 2023

AR Huang Jiahui:

1 In order to file a creditor's bankruptcy application, the creditor must show (amongst other things) that at the time of filing, the debtor owes it a debt in excess of the prescribed threshold (presently $15,000), and that the debtor is unable to pay the debt: s 311(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"). A number of avenues are available to the creditor to discharge its burden of proving the debtor's inability to pay the debt. One of these is to serve on the debtor a statutory demand in the prescribed format, demanding that the debtor pay, secure or compound the debt within 21 days. If 21 days have elapsed since the service of the statutory demand, and the debtor has not complied with the demand or applied to the court to set it aside, then a rebuttable presumption arises that the debtor is unable to pay that debt: s 312(*a*) IRDA.

2 In the present case, the claimant, DBS Bank Ltd ("the Claimant"), filed a bankruptcy application against the defendant, Mr Ong Tze Yaw Bryan ("the Defendant"), in reliance on a statutory demand, but it did so *before* 21 days had elapsed since the service of the statutory demand. The Claimant therefore could not rely on the statutory demand to show that the Defendant was unable to pay the debt. As the Claimant adduced no other evidence to show the Defendant's inability to pay the debt, I concluded that this was a fatal defect in the bankruptcy application, and I therefore dismissed the application. I now set out the detailed grounds of my decision.

Facts and procedural background

3 On 11 August 2022 at 7.10pm, the Claimant served a statutory demand ("the SD") on the Defendant personally for a debt of $1,405,238.88 ("the Debt"). The Debt was said to be owed under a personal guarantee made to the Claimant by the Defendant ("the Guarantee"). Following this, on 2 September 2022, the Claimant filed the present bankruptcy application, HC/B 2422/2022 ("the Application"), on the basis of the Defendant's inability to pay the Debt, which at this point also included additional interest that had accrued since the SD was issued.

4 On 5 September 2022, the Defendant filed HC/OSB 92/2022 ("OSB 92"), seeking to set aside the SD on the basis that he was induced to provide the Guarantee as a result of the Claimant's misrepresentations. OSB 92 was dismissed by an assistant registrar, who held that there was no real dispute over the Defendant's liability to the Claimant, and the Defendant's appeal against this decision in HC/RA 347/2022 ("RA 347") was likewise dismissed by a judge on 16 January 2023.

5 On 19 January 2023, the parties attended the first hearing of the Application. At the hearing, an assistant registrar ("the AR") pointed out to the Claimant's counsel, Mr Ng Yeow Khoon ("Mr Ng"), that as the SD had been served on the Defendant after 4pm on 11 August 2022, under r 37(1) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 (the "Personal Insolvency Rules") the SD was deemed to have been served on the next working day, 12 August 2022. As such, when the Application was filed on 2 September 2022, only 20 days had elapsed since the deemed service of the SD. Mr Ng accepted that the Application had therefore been filed too early to rely on the SD. However, he submitted that the Defendant had not suffered any prejudice as a result, and was in any event clearly unable to repay the Debt. On his part, the Defendant acknowledged that he was unable to repay the Debt in full, but sought a short adjournment to persuade the Claimant to settle for a lesser amount. The AR granted the Defendant the adjournment, which was stated to be a final adjournment.

6 The Application next came for hearing before me on 23 February 2023. At this hearing, Mr Ng said that the Claimant had not received any overtures from the Defendant, and sought to obtain the bankruptcy order. Mr Ng maintained his position that although the SD could not be relied upon in the Application, he could nevertheless proceed with the Application as the Defendant had suffered no prejudice, and was clearly unable to pay the Debt. In response, the Defendant accepted that he was presently unable to pay the Debt, but he argued that at the relevant time – when the Application was filed – he had in fact been able to pay the Debt. He said that it was because of the long period of time for which the proceedings between him and the Claimant had been pending that he no longer had sufficient assets to pay the Debt. The Defendant indicated that he wished to adduce evidence to prove his contention,

and Mr Ng stated that he had no objections against this provided the Claimant was given the chance to respond.

7 Initially, I was inclined to allow the parties to file further affidavits to adduce their intended evidence. However, upon further reflection, and after providing the parties a further opportunity to address me in writing on this issue, I arrived at the conclusion that the Application was incurably defective and could not be allowed to proceed in any event. I therefore dismissed the Application instead.

My decision to dismiss the Application

8 Three issues arose for determination in the Application, which I will address in turn:

(a) Whether the Claimant could rely on the SD in the Application;

(b) Whether there were any other means by which the Claimant could show that the Defendant was unable to pay the Debt; and

(c) Whether it was possible for any resulting defect in the Application to be cured.

The Claimant could not rely on the SD

9 As explained at [1] above, a creditor's bankruptcy application must be made on the basis of a debt of at least $15,000, and the creditor must show that the debtor is unable to pay the debt. A common way of proving this is to rely on the presumption that arises under s 312(*a*) IRDA as the result of the non-satisfaction of a statutory demand ("the s 312(*a*) presumption"). The relevant parts of ss 311 and 312 provide as follows:

> **Grounds of bankruptcy application**
>
> **311.**—(1) Subject to section 314, no bankruptcy application may be made to the Court in respect of any debt or debts unless at the time the application is made —
>
> (*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $15,000;
>
> (*b*) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;
>
> (*c*) the debtor is unable to pay the debt or each of the debts;
>
> …
>
> **Presumption of inability to pay debts**
>
> **312.** For the purposes of a creditor's bankruptcy application, a debtor is, until the debtor proves to the contrary, presumed to be unable to pay any debt within the meaning of section 311(1)(*c*) if the debt is immediately payable and any one of the following applies:
>
> (*a*) the applicant creditor to whom the debt is owed has served on the debtor in the prescribed manner, a statutory demand, and —
>
> (i) at least 21 days have elapsed since the statutory demand was served; and
>
> (ii) the debtor has neither complied with it nor applied to the Court to set it aside;
>
> …

10 The Application was clearly premised on the s 312(*a*) presumption. In the affidavit filed by the Claimant in support of the Application ("the supporting affidavit"), the limbs of s 311(1) IRDA (set out above) were reproduced together with an assertion that they had been satisfied. The supporting affidavit further asserted that the Defendant "appears unable to pay" the Debt. It then went on to recount the service of the SD on the Defendant, before stating that "21 days referred to in [s 312(*a*)(i) IRDA] have lapsed [*sic*]" and that the Defendant had neither complied with the SD nor applied to set it aside.

11 As Mr Ng accepted (see [5]–[6] above), this last statement was inaccurate: the period of 21 days under s 312(*a*)(i) IRDA had not elapsed when the Application was filed. This was because of r 37(1) of the Personal Insolvency Rules, which provides that:

> Service effected *before 4 p.m. on a working day* is, for the purpose of computing time, deemed to have been effected on that day, and, *in any other case, on the working day next following*. [emphasis added]

12 In the affidavit of service of the SD filed by the Claimant, it was stated that the SD was served on the Defendant on 11 August 2022 (a Thursday) at 7.10 pm. As such, under r 37(1), the SD was deemed to have been served on 12 August 2022. 2 September 2022, the day on which the Application was filed, was therefore the 21st day after the deemed service of the SD – and it would only be on the following day, the 22nd day after service, that the requisite period of 21 days would have "elapsed". Consequently, when the Application was filed, the s 312(*a*) IRDA presumption had not arisen.

13 This posed a problem for the Application, because under s 311(1)(*c*) IRDA, "no bankruptcy application may be made … in respect of any debt … unless *at the time the application is made* … the debtor is unable to pay the debt …" [emphasis added]. On a plain reading of s 311(1) IRDA, the requirement that the debtor be unable to pay the debt is to be assessed with reference to the time at which the application is made. This was confirmed by the High Court in *HSBC Bank (Singapore) Ltd v Shi Yuzhi* [2017] 5 SLR 859 ("*Shi Yuzhi*") at [31], commenting on s 61(1) of the former Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the former Bankruptcy Act"), which is materially identical to s 311(1) IRDA. Since the s 312(*a*) presumption had not arisen when the Application was filed, the Claimant could not rely on it to show that s 311(1)(*c*) was satisfied.

14 It is worth noting that s 311(1) IRDA is stated to be subject to s 314, which permits a bankruptcy application that relies on a statutory demand to be made before the period of 21 days under s 312(*a*)(i) has elapsed if there is a "serious possibility" of a significant diminution in value of the debtor's property during that period, *and* where the bankruptcy application contains a statement to this effect. Where s 314 IRDA is invoked, the bankruptcy order can nevertheless only be made after the period of 21 days has elapsed: s 316(2). The effect of s 314, read together with ss 311(1) and 316(2), must be to permit reliance on the s 312(*a*) presumption in such cases to show that the debtor is unable to pay the debt, notwithstanding that the presumption only arose after the application was filed. However, s 314 IRDA was not applicable in the present case as the Application contained no statement invoking it, and Mr Ng confirmed that he did not seek to rely upon it.

15 On the face of the legislative scheme, the failure to satisfy s 311(1) IRDA is fatal to the bankruptcy application. Besides the fact that s 311(1) is expressed in mandatory language, r 99(*a*) of the Personal Insolvency Rules also provides that "the Court *must* dismiss a creditor's bankruptcy application where … the applicant creditor is not entitled to make the bankruptcy application by virtue of [ss 310, 311 or 312 IRDA]" [emphasis added]: see *Ng Shu Yi v Tan Yew Wei* [2021] SGHCR 6 ("*Ng Shu Yi*") at [28], citing *Shi Yuzhi* at [35]. This is not a defect that can be cured – a point that I return to at [20]–[28] below.

The Claimant could not otherwise show that the Defendant was unable to pay the Debt

16 Here, however, Mr Ng raised an alternative argument. He submitted that the Claimant did not need to rely on the s 312(*a*) presumption to show that the Defendant was unable to pay the Debt under s 311(1)(*c*) IRDA. Instead, he

pointed out that the Claimant had made a general assertion in the supporting affidavit that the Defendant was unable to pay the Debt (see [10] above), and argued that it was for the Defendant to rebut this assertion if he disagreed.

17 In my view, the Claimant could not rely on this line of argument. First, r 75(*a*) of the Personal Insolvency Rules expressly requires the supporting affidavit in a creditor's bankruptcy application to "explain … how the conditions and grounds specified in [ss 310 and 311 IRDA] … have been satisfied". I have summarised the salient parts of the supporting affidavit in the Application at [10] above. It is plain that the only basis given to substantiate the averment that the Defendant was unable to pay the Debt was the SD and the associated s 312(*a*) presumption. On the alternative case which the Claimant now sought to advance, the averment would become a bare assertion. This was not permitted by r 75(*a*).

18 Secondly, to permit the Claimant to rely on this alternative case would turn the bankruptcy regime on its head. This was a point made by the High Court in *Re Boey Hong Khim and another, ex parte Medical Equipment Credit Pte Ltd* [1998] 1 SLR(R) 956 ("*Re Boey Hong Khim*"), which was upheld on appeal by the Court of Appeal in *Medical Equipment Credit Pte Ltd v Sim Kiok Lan Alice and another appeal* [1998] 3 SLR(R) 599. In *Re Boey Hong Khim*, the creditor brought a bankruptcy petition under the former Bankruptcy Act, seeking to rely on the debtor's non-compliance with a voluntary arrangement, as well as admissions the debtor had made during the voluntary arrangement proceedings, to demonstrate his inability to pay his debt to the creditor (see *Re Boey Hong Khim* at [15]). Warren L H Khoo J found the bankruptcy petition to be defective and held that it had to be dismissed. Amongst other things, it did not state the amount of the debt (at [9]). Materially for present purposes, however, Khoo J found that the creditor had also failed to show that the debtor was unable to pay

the debt. He held (at [15]) that "[w]hat is clear beyond doubt is that the petitioning creditor cannot short-circuit the requirement of proof of inability to pay debts by a bare allegation." Khoo J further commented (at [19]) that "[a]n admission of a debt, or the mere failure or even refusal to pay it, cannot be equated with or displace proof of inability to pay the debt." Khoo J's decision is equally applicable to the materially identical provisions under the IRDA.

19 I would add that to permit the Claimant to rely on a bare assertion of the Defendant's inability to pay the Debt in the present case would also turn the legislative scheme for the statutory demand under s 312(*a*) IRDA on its head. As explained at [1] above, the objective of this scheme is to allow a creditor to file a bankruptcy application without adducing any other evidence to show that the debtor is unable to pay the debt. Under s 312(*a*), 21 days must elapse without the debtor complying with the statutory demand or applying to set it aside before the presumption of inability to pay the debt arises. This is an essential safeguard: even in the exceptional case of an expedited bankruptcy application under s 314 IRDA, the bankruptcy order cannot be made until the period of 21 days has elapsed (see [14] above). There are also numerous other safeguards as to the format, contents, and service of the statutory demand found in the Personal Insolvency Rules (see rr 64–66). Yet in the present case, the Claimant argues that it can rely on a bare assertion of inability to pay a debt to mount a bankruptcy application, throwing the evidential burden upon the Defendant to rebut this assertion without having adduced any evidence to support it. This is little different in reality from the effect of the s 312(*a*) presumption, which casts the legal burden upon the debtor to rebut the presumption. The Claimant could not be permitted to bypass the legislative scheme for the statutory demand in this manner.

The defect in the Application could not be cured

20 Next, the Claimant sought to rely on s 430(1) IRDA and r 186 of the Personal Insolvency Rules to cure what it suggested was a formal defect or irregularity in the Application.

21 Section 430(1) IRDA, which is materially identical to s 158(1) of the former Bankruptcy Act, provides that:

> No proceedings in bankruptcy are invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceedings is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

22 Meanwhile, r 186 of the Personal Insolvency Rules, which is materially identical to r 278 of the former Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("the former Bankruptcy Rules"), provides that:

> Non-compliance with any of these Rules or with any rule of practice does not render any proceeding void unless the Court so directs, but such proceeding may be set aside wholly or in part, amended or otherwise dealt with in such manner and upon such terms as the Court thinks fit.

23 It is well-established that these provisions might be relied upon to cure non-compliance with the requirements relating to the form and contents of a statutory demand under r 94 of the former Bankruptcy Rules, despite r 98(2)(*d*), which stated that "The court shall set aside the statutory demand if … rule 94 has not been complied with". The High Court has consistently ruled that such non-compliance could amount to an irregularity capable of being cured by s 158(1) of the former Bankruptcy Act or r 278 of the former Bankruptcy Rules as long as no substantial injustice had been caused to the debtor: see *Ramesh Mohandas Nagrani v United Overseas Bank Ltd* [2016] 1 SLR 174 at [11],

iTronic Holdings Pte Ltd v Tan Swee Leon [2018] 4 SLR 359 at [77], *Wheeler, Mark v Standard Chartered Bank (Singapore) Ltd* [2018] SGHC 205 ("*Wheeler*") at [17], and *Lalwani Ashok Bherumal v Lalwani Shalini Gobind and another* [2019] 4 SLR 1304 at [22]. Commenting on the same provisions in *Re Rasmachayana Sulistyo* [2005] 1 SLR(R) 483 at [24], V K Rajah J (as he then was) explained that the "*prima facie* inference" raised by words such as "shall" or "must" in legislation "may be dislodged after taking into consideration the scope and objectives of the legislation and the consequences arising from alternative constructions".

24 However, in my view, the same approach cannot be applied to the grounds under s 311(1) IRDA, such as the s 311(1)(*c*) ground regarding the debtor's inability to pay the debt.

25 First, I am of the view that compliance with s 311(1) IRDA goes to the jurisdiction of the court to entertain a bankruptcy application. The jurisdiction of the court is, as the Court of Appeal explained in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [31], "its authority, however derived, to hear and determine a dispute". The jurisdiction of the General Division of the High Court to hear a bankruptcy application derives from Part 16 of the IRDA (see, in this regard, s 3 IRDA and s 17(1)(*c*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed)). There appear to be three sets of provisions in Part 16 that set out the parameters of the court's jurisdiction to entertain a bankruptcy application: ss 307–308 IRDA, which pertain to the identity of the applicant; s 310 IRDA, which pertains to the characteristics of the debtor; and s 311 IRDA, which pertains to the debt that is the basis for the bankruptcy application. To this end, each of these provisions is expressed in terms of when a bankruptcy application may, or may not, be made to the court. This may be contrasted with other provisions in Part 16, which spell out the conditions for the court to make

an *order* on a bankruptcy application or which specify the *powers* of the court (see, *eg*, ss 315–322).

26 If the grounds in s 311(1) IRDA are jurisdictional in nature, then a failure to comply with any of its limbs cannot be said to merely be a formal defect or an irregularity, regardless of the apparent triviality of the failure. For instance, one would not expect it to be possible to cure any failure to meet the prescribed debt threshold of $15,000 under s 311(1)(*a*) IRDA by reliance on s 430(1) IRDA: if a creditor's bankruptcy application were made on a day when the debtor owed the creditor $14,999, the creditor cannot expect to cure this defect in its application (see *Ng Shu Yi* at [47]) with reference to the fact that the debt would have exceeded $15,000 the very next day as a result of interest accruing. Likewise, in the present case the Claimant cannot seek to regularise the Application with reference to the fact that it was made one day shy of the s 312(*a*) presumption, or that it *could* have easily proven the Defendant's inability to pay the Debt (but did not).

27 Secondly, in *Wheeler* at [19]–[21], Woo Bih Li J (as he then was) had criticised the use of mandatory language in r 98(2)(*d*) of the former Bankruptcy Rules. Woo J commented that it appeared incongruous to have included r 98(2)(*d*), which concerned matters of form, as one of the five limbs of r 98(2) under which it was mandatory for the court to set aside a statutory demand, when the other four limbs dealt with matters of substance. He concluded that an amendment to the former Bankruptcy Rules might be in order, so as to clarify the relationship between r 98(2)(*d*) and r 278. This is notable because Woo J's comments appear to have been addressed in the Personal Insolvency Rules: r 68(2)(*d*) now provides that "The Court must set aside a statutory demand if … rule 64 has not been complied with *and* the failure to comply *has caused or will cause substantial injustice* to the debtor which cannot be remedied by any order

of the Court" [emphasis added]. The mandatory language of s 311(1) IRDA and r 99(*a*) of the Personal Insolvency Rules, however, has not been similarly qualified. This fortifies the conclusion that they are not to be read subject to s 430(1) IRDA or r 186 of the Personal Insolvency Rules.

28 Thirdly, the existence of the expedited bankruptcy application under s 314 IRDA (see [14] above) is a further reason why irregularities specifically pertaining to the creditor's reliance upon the 312(*a*) presumption cannot be cured: s 314 exists precisely to cater for a situation where it is necessary to file a bankruptcy application in reliance on a statutory demand before the period of 21 days under s 312(*a*)(i) has elapsed. Since the IRDA only contemplates the early filing of such a bankruptcy application under the limited circumstances provided in s 314, this further reinforces the conclusion that the court cannot entertain a premature bankruptcy application where s 314 is not engaged.

Conclusion on the Application

29 Finally, I address the fact that the Defendant had applied unsuccessfully to set aside the SD in OSB 92. Mr Ng raised this to my attention, but did not make any submissions on the legal effect of those proceedings on the issue at hand. In my view, he was right not to do so: OSB 92 had no bearing on the defects in the Application. OSB 92 was an originating summons commenced under r 67(1) of the Personal Insolvency Rules to challenge the validity of the SD, and not the validity of any ensuing bankruptcy application. The issue of whether sufficient time had elapsed for the s 312(*a*) presumption to arise when the Application was filed is a question beyond the validity of the SD, and is properly the subject of consideration in the Application, and not OSB 92. There was therefore no question of issue estoppel, nor any issue of the extended

doctrine of *res judicata* or abuse of process, arising from OSB 92 in respect of the grounds on which I have dismissed the Application.

30 In the present proceedings, Mr Ng took pains to emphasise that the defects in the Application would cause the Defendant no prejudice, as the Defendant had admitted that he was (presently) unable to pay the Debt. But as I pointed out to the parties, the issue was not one of prejudice: the Claimant was simply not entitled to file the present Application as framed, regardless of whether the Defendant has suffered substantial injustice as a result. In addition, this position did not conversely cause the Claimant any substantial injustice: my decision to dismiss the Application has no bearing on the validity of the underlying Debt (or indeed, the SD). The dismissal of the Application therefore would not affect the Claimant's ability to initiate the bankruptcy proceedings again after complying with all the procedural requirements. In this sense, the outcome of this Application may turn out to be a hollow victory for the Defendant. However, for the reasons I have given, the failure of the Application to satisfy s 311(1)(*c*) IRDA is an incurable defect. The Application therefore had to be dismissed.

My decision on costs

31 Following the dismissal of the Application, the parties were informed that they could seek consequential directions from the court within seven days. The Defendant sought costs against the Claimant. He said that he had incurred "financial loss" amounting to $7,500 in OSB 92, $5,000 in RA 347, and legal fees totalling $26,417.72 from September 2022 to January 2023. However, the sums of $7,500 and $5,000 represented the costs orders made against him by the courts hearing those respective cases. My dismissal of the Application in no way affected those decisions, and it was not open to the Defendant to revisit

those costs orders in the Application. From the invoices provided by the Defendant for his legal fees, it was also clear that all of those legal fees were incurred in respect of OSB 92 and RA 347, and not the Application. The Defendant could not seek recovery of those costs in the Application.

32 That said, the Defendant was entitled to costs for the Application, since it was ultimately decided in his favour, albeit not on any basis that he had raised. Under r 147 of the Personal Insolvency Rules, the costs provisions in the Rules of Court apply to bankruptcy proceedings, subject to Part 11 of the Personal Insolvency Rules. Consequently, O 21 r 7 of the Rules of Court 2021, which provides that a successful party who is not represented by solicitors could be awarded costs "that would compensate him or her reasonably for the time and work required for the proceedings and for all expenses incurred reasonably", applies to bankruptcy proceedings.

33 The Defendant sought costs of $600 for attending each of the hearings on 19 January and 23 February 2023, on the basis that he had spent 3 hours, including transport and waiting time, on each hearing. While the Defendant was also invited to provide documentary evidence of any expenses he had incurred in connection with the hearings, he did not provide any such documentation, and confirmed that he had incurred no legal fees in respect of the present Application. On the Claimant's part, Mr Ng submitted that the Defendant should be awarded costs only for the 19 January 2023 hearing, and that this should amount to $50. He argued that the Defendant should not be entitled to costs for the 23 February 2023 hearing, as the Defendant had not contested his inability to repay the debt and had only sought an adjournment of the 19 January 2023 hearing to submit a repayment proposal.

34 In my view, the Defendant was entitled to costs for attending both hearings of the Application, since I ultimately found that the Application was a defective and impermissible one. Aside from this, the Defendant did not seek any costs for work done in preparation for or arising from the Application, and I would not in any event have been inclined to award such costs. It was not apparent that any preparatory work had to be done by the Defendant, since the primary basis he had raised for resisting the Application was dealt with in OSB 92. While the first hearing of the Application on 19 January 2023 was adjourned for the Defendant to make a repayment proposal to the Claimant, no such offer was made (see [6] above). In any case, since the Defendant's indebtedness to the Claimant was not in doubt following the decision in OSB 92, any efforts he might have made to settle the Debt with the Claimant could not be attributed primarily to the Application: these were steps he would have had to take so long as the Debt remained, and should not be included within the costs of the Application.

35 I therefore turn to the question of quantifying the Defendant's costs for attending the two hearings of the Application. I considered the sum proposed by the Claimant to be closer to the mark. Based on the minute sheet for the 19 January 2023 hearing, it would have lasted no longer than half an hour. The hearing on 23 February 2023 before me lasted slightly longer than half an hour. The total time spent at the hearings was therefore about an hour. Applying the approach to quantum suggested by the Claimant (of $50 for attending the 19 January 2023 hearing), the Defendant would then be entitled to costs of about $100. In my view this is a reasonable figure for the Defendant's costs.

36 It is worth noting that in the recent case of *Mah Kiat Seng v Attorney-General and others* [2023] SGHC 52 ("*Mah Kiat Seng*"), Philip Jeyaretnam J set out an approach for assessing costs to be awarded to a self-represented

litigant. Jeyaretnam J explained that the court should determine the time expended by the self-represented litigant, and then fix an amount (such as an hourly rate) to compensate him for that time (at [10]). To determine this "compensatory hourly rate", the measure was not the opportunity cost to the litigant, but instead a rate proportional to the nature of the case, taking into account the scale costs prescribed in the applicable guidelines and the amount of time that would be expended in a typical case of that kind (at [15]–[16]). While this robust approach may not be essential in a simple case like the present one, I was satisfied that applying the methodology set out in *Mah Kiat Seng* at [10] and [15]–[16] would have yielded a similar quantum of costs for the Defendant in the present case (bearing in mind that in place of scale costs, r 149 read with the Second Schedule to the Personal Insolvency Rules prescribes fixed costs of $1,200 plus disbursements to be allowed to the claimant in a successful creditor's bankruptcy application). This further confirmed that the quantum of $100 for the Defendant's costs was a reasonable one.

37 For the foregoing reasons, I dismissed the Application and ordered costs of $100 (all in) to be paid by the Claimant to the Defendant.

Huang Jiahui
Assistant Registrar

Ng Yeow Khoon, Swah Yeqin Shirin and Tham Xue Yi Fiona
(Shook Lin & Bok LLP) for the claimant;
The defendant in person.