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

[2023] SGHC 287

Bankruptcy No 206 of 2023 (Summons No 2771 of 2023)

In the matter of the Insolvency, Restructuring and Dissolution Act
(Act 40 of 2018)

And

In the matter of Lim Keng Teck

Between

Lim Keng Teck

… *Claimant*

And

Official Assignee

… *Official Assignee*

JUDGMENT

[Insolvency Law — Bankruptcy — Bankrupt's duties and liabilities — Review by court of determination of monthly contribution and target contribution — Section 340(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]
[Insolvency Law — Bankruptcy — Bankrupt's duties and liabilities — Power of court to vary monthly contribution and target contribution — Sections 341(1) and 341(2)(*c*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Re Lim Keng Teck

[2023] SGHC 287

General Division of the High Court — Bankruptcy No 206 of 2023 (Summons No 2771 of 2023)
Goh Yihan J
11 October 2023

12 October 2023 Judgment reserved.

Goh Yihan J:

1 The claimant in this application, Mr Lim Keng Teck, was adjudged a bankrupt on 23 February 2023.[1] This is his application, made under s 340 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"),[2] for the court to review the Official Assignee's (the "OA") notice of determination issued on 18 August 2023 (the "Second Determination").[3] In the Second Determination, the OA determined that the claimant's monthly contribution ("MC") be $7,630 and the final target contribution ("TC") after 52 months be $396,760.[4]

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1 HC/ORC 796/2023 dated 23 February 2023 and extracted on 23 February 2023.

2 Claimant's Written Submissions dated 4 October 2023 ("CWS") at para 1.

3 4th Affidavit of Lim Keng Teck dated 8 September 2023 ("LTK-4") at pp 10–11.

4 LTK-4 at p 10.

2 The Second Determination follows the claimant's earlier application in HC/SUM 1686/2023 ("SUM 1686") for a similar review of the OA's notice of determination issued on 16 May 2023 (the "First Determination").[5] In the First Determination, the OA had determined that the claimant's MC be $8,610 and the TC after 52 months to be $447,720.[6] I allowed SUM 1686 and directed the OA to reassess the MC and TC.[7] After such reassessment, the OA reduced the MC by $980 in the Second Determination when compared to the First Determination.

3 Having considered the parties' submissions, I allow the claimant's application in part and make an adjustment to the MC and, correspondingly, the TC. I provide the reasons for my decision to explain that my doing so is not to be construed as a broad invitation for bankrupt persons who are dissatisfied with the OA's determination to apply for a review. Instead, as I will explain, the OA did not do anything particularly wrong in the present case. Instead, the OA's determination was primarily constrained by its interpretation of the IRDA, which resulted in a key deductible for rental expenses not to be reflective of the claimant's actual situation. I therefore find it just and equitable to adjust the MC and TC.

The claimant's arguments

4 The claimant's application is grounded in his argument that the OA had not considered, or reasonably considered, the four substantive reasons that I had

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5 1st Affidavit of Lim Keng Teck dated 6 June 2023 ("LTK-1") at p 16.

6 LTK-1 at p 16.

7 Certified Transcript dated 19 July 2023 at p 7 line 27 to p 8 line 2.

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given in directing the OA to reassess the First Determination.[8] These four reasons were that: (a) the OA should have taken into account the unstable and uncertain nature of the claimant's current source of income; (b) the OA should have taken into account the nature of the claimant's employment as an independent consultant; (c) the OA should have taken into account the claimant being in a tenancy agreement that cannot be terminated until 2 January 2025 without paying the full 24 months' rent; and (d) the OA should have taken into account the extent to which the claimant's spouse may contribute to the maintenance of his family.[9]

5 In his affidavit filed in support of the present application, the claimant concluded that the OA had not considered these reasons because of the following reasons.[10] First, when the OA sent the claimant the Second Determination, there were no reasons set out in the document. Second, the MC in the Second Determination remains too high for the claimant to meet. Third, while the claimant had provided the OA with further information after the conclusion of SUM 1686, the OA did not appear to have taken this information into account in arriving at the Second Determination. Fourth, the claimant is of the view that the OA should have engaged him further and tried to understand his personal circumstances better before issuing the Second Determination.

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8 CWS at para 12.

9 CWS at para 12.

10 LTK-4 at paras 14, 17, 20, and 23.

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My decision: the application is allowed in part

The general framework

6 In the High Court decision of *Mirmohammadali Hadian v Ambika d/o Ramachandran (Official Assignee, non-party)* [2023] SGHC 116 ("*Mirmohammadali*") (at [28]), I explained that the consideration of an application under s 340(1) of the IRDA to review the OA's determination of the MC and TC should proceed in the following two stages:

(a) First, has the OA shown that he has complied with the mandatory requirement of considering the factors in s 339(2)?

(b) Second, if the OA has shown that he had considered the factors in s 339(2), then does the determination reached pursuant to s 339(1)(*a*) withstand review under the perversity standard? By this standard, the question to be asked is whether the OA's decision is so absurd that no OA properly advised or properly instructing himself could have so acted. If the answer to this question is yes, then the OA's determination should be varied.

The OA is not obliged to provide reasons in the Notice of Determination nor engage with a bankrupt

7 Before I come to the reasons for allowing the application, I make an important preliminary point. This is that the OA is not obliged to provide reasons for his determination in the Notice of Determination issued pursuant to r 38(1) of the Insolvency, Restructuring and Dissolution (Bankruptcy) Regulations 2020 (the "BR"). In this regard, r 38 of the BR provides as follows:

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> **Notice, etc., of determination of monthly contribution and target contribution**
>
> **38.**—(1) The notice of the determination of a bankrupt's monthly contribution and target contribution which is required to be served under section 339(1)(*b*) of the Act must be in Form BR-7.
>
> (2) The explanation of a trustee in bankruptcy's basis for making a determination which is required to be served under section 339(3) of the Act must be in Form BR-8.

8 Importantly, while r 38(2) refers to a trustee in bankruptcy's "basis for making a determination", no reference is made to the OA's basis for the same. This flows from s 339 of the IRDA, the title of which concerns the "[d]etermination of monthly contribution and target contribution". More specifically, s 339(3) expressly provides that "[w]here the determination [of the MC and TC] … is made by a *trustee in bankruptcy*, the trustee must also serve notice of the determination, *together with an explanation on the basis* for making the determination … on the [OA]" [emphasis added]. This in turn flows from s 42(1) of the IRDA, which provides for the OA "to take cognizance of the conduct of a trustee in bankruptcy in the administration of the estate of a bankrupt". Thus, it must follow that the OA needs to be furnished with the basis of the trustee in bankruptcy's determination so as to "take cognizance" of this particular aspect of the trustee's administration of the bankrupt's estate.

9 Because the OA is not subject to any such general supervision in its administration of the bankrupt's estate, it follows that the OA does not come under a similar duty to provide the basis for its determination of the MC and TC under s 339(1) of the IRDA. Therefore, the OA does not need to provide reasons in the Notice of Determination issued to the bankrupt. Further, if the bankrupt (or any creditor of the bankrupt) applies to the court under s 340(1) of the IRDA to review the determination made under s 339 (including one made by the OA), r 121(1) of the Insolvency, Restructuring and Dissolution (Personal Insolvency)

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Rules 2020 only obliges a "trustee of a bankrupt's estate … [to] file in court an explanation of the basis for making the determination". Therefore, even when a bankrupt (or creditor) initiates a review under s 340(1), the OA is not technically obliged to provide reasons for his determination in the Notice of Determination, even if this is a good practice so that the court can properly evaluate the merits of the application before it. This must also mean that the OA has no corresponding obligation to engage with a bankrupt, much less consult with him or her, in the course of making its determination of the MC and TC.

10 Therefore, in so far as the claimant bases this application on the OA's lack of explanation or engagement, that must be rejected. In my view, the OA should not be saddled with the onerous burden of providing reasons in every determination and engaging with each and every bankrupt. This is because, unlike a trustee in bankruptcy who comes under the OA's supervision in the administration of the bankrupt's estate, the OA is presumed to have the professional competence to discharge its duties. Moreover, if the bankrupt is dissatisfied with the OA's determination, there remains the recourse to the courts pursuant to s 340(1) of the IRDA, albeit with no technical requirement that the OA explains the basis for determination.

The OA has considered the relevant factors under s 339(2) of the IRDA

11 Having discussed this preliminary point, I return to the two-stage framework in *Mirmohammadali*.

12 In relation to the first stage, I further explained in *Mirmohammadali* (at [27]) that the OA has to demonstrate that he has taken into account the factors in s 339(2) of the IRDA. However, how the OA can do this will differ from case to case. In particular, I suggested that the OA need not show that he has

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considered the factors in any great detail. It suffices for the OA to briefly show that he has considered the factors.

13 With this standard in mind, I reject the claimant's very technical reading of what is required of the OA to show that he has considered the prescribed factors in s 339(2) of the IRDA. For example, the claimant contends that the OA erred in saying that a "real risk of losing one's job" cannot be factored into the determination of the net income because "section 339(2)(*c*) of the [IRDA] provides for a total of *no less than 6 factors* that the OA has to consider" [emphasis in original omitted; emphasis added],[11] and that the OA has not considered five of those factors, because, presumably, the OA did not expressly refer to these factors in the Explanation for the Basis of Determination filed on 18 September 2023 (the "Explanation"). In my view, it is not necessary for the OA to expressly refer to each and every factor listed in s 339(2) of the IRDA. This would clearly be too onerous and also, in some cases, unnecessary, in so far as some of the factors would be irrelevant. Rather, a court need only be satisfied that the OA had considered the factors on a broad reading of the Explanation concerned. There is no need, as the claimant has attempted to suggest here, to undertake a detailed examination and assessment of the OA 's reasoning process. This is not the function or purpose of the review by a court under s 340(1) of the IRDA.

14 As such, I am satisfied from a broad reading of the Explanation that the OA has considered the factors listed in s 339(2) of the IRDA. This much is

[11] CWS at para 17.

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clear from, among other things, the OA's use of headings corresponding to the factors listed in s 339(2).[12]

The OA's consideration withstands review under the perversity standard

15 In relation to the second stage of the framework in *Mirmohammadali*, the claimant's complaint is that the OA has not properly considered the relevant factors.

The claimant's current and expected monthly income

16 The first of these relates to his current and expected monthly income. In this regard, despite him earning $14,880 monthly at present,[13] the claimant says that the OA has not properly considered: (a) the unstable and uncertain nature of his current source of income, which is linked to; (b) the nature of his employment as an independent consultant. In particular, the claimant alleges that because I had apparently "held that the [c]laimant's income is unstable" [emphasis in original omitted] in SUM 1686, it is therefore "incumbent on the OA to determine his MC and TC on the basis that it is unstable, and not that it is a '*non-issue*'" [emphasis in original].[14]

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12 Explanation for the Basis of Determination of Monthly Contribution and Target Contribution under Rule 121(1) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 dated 18 September 2023 ("Explanation") at pp 2–5.

13 Explanation at p 2.

14 CWS at para 15.

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17 To begin with, I did not find that the claimant's income is unstable in SUM 1686. Instead, the only thing I had said in relation to the unstable nature of the claimant's income was this:[15]

> First, I agree that the OA should take into account the unstable and uncertain nature of the applicant's current source of income. In my view, it is clear that the applicant is not an employee in the conventional sense and does not have the security of any notice period. I accept the OA's view that the terms of the consultancy agreement are important, and the applicant has not exhibited this in his affidavit. Be that as it may, it can reasonably be inferred from Mr Jason Cheng's ("Jason") email dated 15 April 2023 that there may not be such a formal agreement. This is because Jason was in effect setting out the "arrangement" between the parties in the email after a discussion "on the phone". This shows that the parties do not have a formal agreement between them and Jason, who is presumably the applicant's boss at DTC World Corporation Pte Ltd, has a rather free hand in varying the terms of the applicant's consultancy.

It is clear from the above that all I had said was that the OA "should take into account the unstable and uncertain nature of the [claimant's] current source of income". However, I did not make a finding that the claimant's income *is* unstable, nor did I intend to bind the OA in any manner. In any event, as the OA has explained, he "took into account the direction of the [c]ourt that the [claimant's] income was unstable and uncertain".[16] Hence, I disagree with the claimant that the OA had not considered this factor in the Second Determination.

18 Bearing in mind the perversity standard of review, I do not find that no other OA would have done what the OA has done in relation to this factor.

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15 Certified Transcript dated 19 July 2023 at p 6 line 25 to p 7 line 9.

16 Official Assignee's Written Submissions dated 4 October 2023 ("OAWS") at para 9(a).

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Indeed, the OA has provided cogent reasons for not regarding this factor as relevant in the Second Determination:[17]

> … Furthermore, the bankrupt has not submitted sufficient supporting documents to evidence the fact that his current consultancy contract was unstable and uncertain, or that the nature of the job was such that there was a real risk of him losing it. It cannot be said with certainty that he cannot continue with his current contract beyond the end of this year and for the immediate future thereafter. It is an indisputable fact that the bankrupt has income derived from the consultancy contract which pays him a total gross income of $14,880 a month. A real risk of losing one's job cannot be factored into the determination of the net income for the purpose of computing the MC. …

19 As can be seen from this extract, the OA had considered the unstable and uncertain nature of the claimant's employment but was not satisfied that there was any imminent threat that the claimant would lose his job or income. I see nothing wrong in this assessment, which the OA is entirely entitled to come to. Moreover, I agree with the OA that if the claimant were to lose his current job, it is open to him to apply under s 342(1) of the IRDA for the OA to adjust his MC due to "personal circumstances of a non-transient nature that have substantially reduced his income" (see, in particular, the ground mention in s 342(2)(*c*) of the IRDA).[18] The OA cannot be expected to make a determination based on the *possibility* that the claimant may lose his job in the future. This is despite s 339(2)(*c*) of the IRDA referring to "the monthly income that the bankrupt may reasonably be expected to earn over the duration of the bankruptcy", because this must refer to definite material before the OA for him to take this into account. If the OA is expected to take possibilities of future events into account, then that would render the recourse provided in s 342(1)

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[17] Explanation at p 3.

[18] Explanation at p 3.

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otiose, which is precisely to allow the OA to adjust the MC and TC to account for changes in the bankrupt's financial conditions.

20 As for the claimant's complaint that the OA has not considered the fact that he is an independent consultant and would have to incur expenses as part of his business,[19] I find that the OA has taken this factor into consideration. Indeed, the OA has explained that "[f]urther extraordinary deductibles for the [c]laimant were also allowed, to take into account the fact that he is self-employed and would incur expenses as part of his business, and would not be paid if he does not work on any day and needs financial protection on days when he is ill or hospitalised".[20] The OA therefore allowed the following four additional extraordinary monthly deductibles totalling $854.90:

(a) $616.90, being the monthly premium for the claimant's insurance policy;

(b) $140, being the overseas insurance expense for Malaysia and Vietnam, to protect the claimant's income for days when he is unable to work;

(c) $80, being the transport expenses for transfers from airport to hotel and from hotel to airport on each of his two overseas assignments in Malaysia and Vietnam every month; and

(d) $18, being the cost of the mobile data roaming package covering both Malaysia and Vietnam.[21]

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19 CWS at paras 20 and 25.

20 OAWS at para 9(g).

21 OAWS at para 9(g).

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21 Further, applying the perversity standard of review, I am satisfied that the OA has allowed sufficient deductibles to be made after taking into account the reasonable expenses that the claimant will have to expend in the conduct of his business.[22] First, as to $80 being the transport expenses for Malaysia and Vietnam, I do not think that the OA erred by considering that the claimant's general transport expenses, apart from the airport transfers, should be included in the personal deductible of $1,100 that has already factored in the claimant's transport expenses generally. Second, as to the $18 cost of the mobile data roaming package, I can see nothing wrong with the OA preferring the most economical package that serves the claimant's purposes broadly. Third, as to the "other Vietnam and Malaysia incidentals amounting to $330" that the claimant has included as expenses,[23] I find that the OA is entirely justified in not allowing a deductible in respect of these expenses because it is not certain, even by the claimant's own case, that these expenses will need to be spent all the time.

The extent to which his spouse may contribute to the maintenance of the family

22 As for the claimant's complaint about the OA not having considered the extent to which his spouse may contribute to the maintenance of his family,[24] I likewise do not find that no other OA would have done what the OA has done in relation to this factor. This is because the OA has clearly explained that, bearing in mind that the claimant's spouse earns a monthly income of $2,800, he does not need to support her basic needs.[25] While I can understand the

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22 Explanation at p 4.

23 CWS at para 25.

24 CWS at para 48.

25 Explanation at p 3.

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claimant's argument that his spouse cannot be expected to utilise her entire salary towards family expenses without any consideration for her own future needs, I do not think that the OA's determination fails the perversity standard in that another reasonable OA would not have done the same. I therefore agree with the OA that no deductible should be made for his spouse.

The claimant being in a tenancy agreement

23 I turn finally to the claimant's complaint about the OA not having considered him having entered into a tenancy agreement that expires only on 2 January 2025.[26] While the tenancy is for a condominium at a monthly rent of $4,800,[27] and I agree that a bankrupt should moderate his lifestyle, the fact remains that the claimant cannot terminate the tenancy without incurring an even larger financial penalty amounting to 24 months' of rent.

24 In this regard, the OA recognises that the claimant is tied to the tenancy agreement. However, because the OA is not able to cater for a "step-up MC plan",[28] the OA felt compelled to allow only a monthly deductible of $544.60 based on the tenure of the payment plan being 52 months:[29]

> [$2,400 (the bankrupt's half share of the monthly rent of $4,800.00) less $630.30 (the housing deductible comprised in the personal deductible)] x 16 months (September 2023 to December 2024) = $28,315.20.
>
> As the repayment plan is for a period of 52 months, the sum of $28,315.20 has been apportioned equally over the [*sic*] that period and rounded up to $544.60.

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26 LTK-1 at p 61.

27 LTK-1 at p 61.

28 Explanation at p 5.

29 Explanation at p 5.

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25 I understand the OA's explanation, which is that he has no statutory power to provide for the MC to be stepped up after the expiry of the tenancy agreement. To that extent, I do not think it would be fair to characterise the OA's decision as "perverse", since he is keeping within his statutory powers.

26 Despite this, the *reality* of this determination is that the claimant would be severely compromised in the period until the tenancy agreement expires on 2 January 2025. First, the claimant would *actually* need to pay all or a substantial portion of the actual monthly rent of $4,800, which would be far beyond the $544.60 deductible that he has been allowed. As such, the OA's assessment that the claimant's disposable income is $4,698.85 based on a deductible of $544.60 for the rent over the next 52 months does not reflect reality because it ignores that the claimant has committed to paying a monthly rent of $4,800 *now*. Second, it is also not realistic to divide the monthly rent of $4,800 equally between the claimant and his spouse when his spouse's income barely covers half of the monthly rent. Instead, the reality of the situation is that the claimant is bound to pay a substantial majority or even all of the monthly rent of $4,800. This is especially so if the spouse is expected to contribute most, if not all, of her monthly income of $2,800 towards family expenses.

27 However, as I have said above, because the OA legitimately regards that he does not have the power to cater for a "step-up MC plan", I do not regard his decision to be "perverse". But the potential injustice and inequity of this determination cannot be ignored.

It is just and equitable to adjust the deductible for rental expenses

28 Although the OA does not have the power to cater for a "step-up MC plan", I find that the court can do this. This is because, pursuant to

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s 341(2)(*c*) read with s 341(1) of the IRDA, the court may "make such order as it thinks fit to vary the bankrupt's monthly contribution and target contribution" if "it is otherwise just and equitable" to do so. In my view, it is just and equitable to vary the MC and TC to take into account the fact that the claimant has entered into a tenancy agreement until 2 January 2025. It is also possible for the court to order a "step-up MC plan" because of the breadth of s 341(1).

29 As such, pursuant to s 341(1) of the IRDA, I increase the extraordinary deductible for rental expenses from $544.60 to $4,169.70 until 2 January 2025, which is when the claimant's existing tenancy agreement will lapse. In my view, taken in the round, if the claimant's spouse is expected to devote most, if not all, of her monthly income towards family expenses, then it is only fair to regard the claimant as being responsible for all of the monthly rent of $4,800. The eventual figure of $4,169.70 takes into account the OA's allowance of $630.30 under the claimant's personal deductibles to account for "housing".

30 Accordingly, I reduce the claimant's MC from the date of this decision to 2 January 2025 by $3,625.10, which reflects the additional amount to the existing deductible of $544.60 for rental expenses, less the $630.30 that the OA has already allowed for housing. The claimant's MC will therefore be $4,004.90 until 2 January 2025, at which time it will be reassessed to take into account the claimant's new rental arrangements. Given the future change in the MC, the TC would accordingly be fluid for the time being, before becoming more certain after 2 January 2025. I, however, do not see this as an impediment to revising the MC.

31 There are three further directions that I would include with this revised MC of $4,004.90. First, should the claimant apply to the OA for a reduction of the MC and TC under s 342(1) of the IRDA before 2 January 2025,

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his contribution to the rent should be reassessed, with a corresponding adjustment to the MC until 2 January 2025. Second, the claimant is to inform the OA of his new rental arrangements after 2 January 2025 by 16 December 2024, so as to provide the OA with sufficient time to determine his MC after 2 January 2025 with that factor in mind. Should the claimant require more time, he can write in to seek the same from the OA. Needless to say, the claimant should adjust his lifestyle in his next tenancy. I emphasise once again that I am only making the present order because the claimant is tied to the existing tenancy agreement and cannot terminate it without incurring substantial costs. Third, while the claimant is entitled to challenge the OA's determination of the MC and TC after 2 January 2025, I would highlight that he would not have succeeded in the present application had the OA not been constrained by his interpretation of the relevant legislative provisions. Indeed, it would not be fruitful for the claimant to focus on the *minutiae* of details because the review process under s 340(1) of the IRDA is not meant to be an appeal mechanism for a dissatisfied bankrupt to challenge each and every aspect of the OA's determination.

Conclusion

32 For all the reasons above, I allow the claimant's application in part and revise his MC to be $4,004.90 until 2 January 2025, at which time it will be reassessed. However, I emphasise that this is not because I have found the OA 's Second Determination to be in any way falling short of the "perversity standard" of review. Instead, I find that the OA was constrained by the legislative provisions in arriving at the Second Determination. In fairness to the claimant, I have varied his MC until 2 January 2025 to reflect the reality that he has entered into a tenancy agreement that expires on that date.

33 Given that this order is not the norm, but which I am satisfied is permissible under s 341(1) of the IRDA and, more importantly, necessary to effect justice and equity in the present case, the parties are at liberty to write in for clarifications if needed.

Goh Yihan
Judge of the High Court

Sim Puay Jain Edwin and Faith Tan Fen Yi
(Lexton Law Corporation) for the claimant;
Lim Yew Jin and Christopher Eng Chee Yang
(Insolvency & Public Trustee's Office) for the official assignee.

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