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

[2024] SGHCR 6

Bankruptcy No 222 of 2023
(Summons No 3297 of 2023)

Between

Sundar Venkatachalam

… *Claimant*

And

Bharathi d/o Subbiah

… *Defendant*

And

Official Assignee

… *Non-party*

JUDGMENT

[Insolvency Law — Bankruptcy — Annulment of bankruptcy order]
[Insolvency Law — Bankruptcy — Setting aside of bankruptcy order]
[Insolvency Law — Bankruptcy — Powers of the court]
[Civil Procedure — Inherent powers]

TABLE OF CONTENTS

Sundar Venkatachalam
v
Bharathi d/o Subbiah
(Official Assignee, non-party)

[2024] SGHCR 6

General Division of the High Court — Bankruptcy No 222 of 2023 (Summons No 3297 of 2023)
AR Wong Hee Jinn
1 December 2023; 16 February 2024

9 April 2024 Judgment reserved.

AR Wong Hee Jinn:

Introduction

1 A creditor commences a bankruptcy application against a debtor. A bankruptcy order is subsequently made against the debtor. What recourse is available to a debtor who is dissatisfied with such an order? Can a debtor apply to the same court to set aside the bankruptcy order? Or should the debtor either apply to annul the bankruptcy order or file an appeal to set aside the bankruptcy order? Is there a free-standing power for a first instance court to set aside a bankruptcy order? These are the principal questions raised in the application before me.

2 By the present application, the defendant debtor applies to set aside the bankruptcy order made against her on 12 October 2023. In addition, the

defendant prays that costs of the application be provided for by Messrs Manicka & Co ("Manicka & Co") "due to its negligence as a former solicitor" for her.

3 Having considered the parties' submissions, I dismiss the defendant's application for the following reasons.

Factual background and procedural history

The parties

4 The claimant creditor, Mr Sundar Venkatachalam, is an Indian national.

5 The defendant debtor, Ms Bharathi d/o Subbiah, is a Singapore citizen. The defendant is the secretary of Sareka F&B Trading Pte Ltd ("Sareka F&B"), a company in the business of operating restaurants and catering. One Mr Karuppaiah s/o Shamugam Pillai @ Balasubbu s/o Shamugam Pillai ("Mr Karuppaiah") is the director of Sareka F&B.

6 It is apposite to set out briefly the background leading to the present application.

The judgment debt

7 On 9 July 2022, the claimant commenced an action against Sareka F&B, the defendant and Mr Karuppaiah *vide* MC/OC 1291/2022 ("OC 1291").

8 In OC 1291, the claimant alleged that the defendants therein had failed to honour their contractual obligations pursuant to an investment agreement and personal guarantee dated 25 July 2019 (the "Agreement"). Under the terms of the Agreement, the claimant agreed to invest $30,000 in Sareka F&B. In return, Sareka F&B was to pay the claimant $2,250 per month for 24 months for an

aggregate sum of $54,000 and the defendant and Mr Karuppaiah, being personal guarantors of the payments, would be personally liable for any default in Sareka F&B's payments. However, Sareka F&B made only two monthly payments totalling $4,500.

9 On 15 July 2022, the claimant's process server personally served a copy of OC 1291 and the accompanying Statement of Claim on the defendants to OC 1291. In particular, these documents were served personally on the defendant at her registered address (the "Residential Address").

10 On 2 August 2022, the defendants to OC 1291 having failed to file and serve a Notice of Intention to Contest or Not Contest the Originating Claim, the claimant applied for and was granted judgment in default against the defendants in the following terms *vide* MC/JUD 3596/2022 ("JUD 3596"):

> No Notice of Intention to Contest or Not Contest the Originating Claim having been filed by the defendants, it is this day adjudged that the defendants do pay the claimant the sum of S$49,500.00, interest at 5.33% per year from the date of originating claim to judgment and costs of S$1,300.

11 On 7 August 2022, a few days after JUD 3596 had been granted, Mr Mohan Singh s/o Gurdial Singh of Messrs S K Kumar Law Practice LLP ("S K Kumar LLP") filed a Notice of Appointment of Solicitor to act for the defendant in OC 1291. No application was taken to set aside JUD 3596.

The bankruptcy proceedings

12 On 9 October 2022, the claimant's process server attended at the defendant's Residential Address and attempted to serve a statutory demand based on the judgment debt arising out of JUD 3596 (the "Statutory Demand"). Upon arrival, the process server was informed by an individual who identified herself as the defendant's roommate that the defendant was not presently in and

instead directed the process server to a separate address where the defendant was purportedly working (the "Office Address"). The process server thereafter attended at the Office Address and personally served the Statutory Demand on the defendant.[1] There was no response forthcoming from the defendant after.

13 On 25 January 2023, the claimant proceeded to file HC/B 222/2023 (the "Bankruptcy Application"), seeking for the defendant to be made a bankrupt.

14 On 6 February 2023, the claimant's process server attended at the defendant's Office Address and personally served on the defendant a sealed copy of the Bankruptcy Application together with a copy of the affidavit supporting the Bankruptcy Application.[2] The Affidavit of Non-Satisfaction filed on 20 February 2023 stated that the debt due and owing by the defendant to the claimant as of the date of the Bankruptcy Application (*ie,* 25 January 2023) was $52,283.54, which remained wholly unsatisfied.[3] This sum was in turn premised on the judgment debt arising out of JUD 3596, as stated at [12] above.

15 At the first hearing of the Bankruptcy Application on 23 February 2023, the defendant was absent and unrepresented by counsel. Counsel for the claimant informed the court that the virtual hearing details for the hearing had been sent to the defendant by way of Certificate of Posting on 16 February 2023 to the defendant's Office Address. That being the first hearing, the learned Assistant Registrar ("AR") adjourned the Bankruptcy Application to 9 March 2023 and directed the claimant to personally serve the Form of Notice of

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1 Salimi bin Juwahib's affidavit dated 18 January 2023, paras 4 and 5.

2 Salimi bin Juwahib's affidavit dated 7 February 2023, para 3.

3 Affidavit of Non-Satisfaction dated 20 February 2023.

Adjournment on the defendant by personal service by no later than 2 March 2023.

16 On 7 March 2023, Mr Manickavasagam s/o R M Karuppiah Pillai ("Mr Manickavasagam") of Manicka & Co filed a Notice of Appointment of Solicitor to act for defendant in the Bankruptcy Application.

17 At the second hearing of the Bankruptcy Application on 9 March 2023, Mr Manickavasagam appeared on behalf of the defendant and sought an adjournment in light of him having "just been instructed" in order to consider the application at hand. The AR then adjourned the Bankruptcy Application to 23 March 2023.

18 On 22 March 2023, the eve of the third hearing of the Bankruptcy Application, the defendant took out an application *vide* HC/SUM 803/2022 ("SUM 803") seeking (a) an extension of time to set aside the Statutory Demand; and (b) for the Statutory Demand to be set aside accordingly. The affidavit filed by the defendant in support of SUM 803 stated that S K Kumar LLP did not inform her of the status of OC 1291 and that this only came to her attention when she received the Statutory Demand on 9 October 2022.[4] Further, the affidavit in support of SUM 703 stated that the claimant had "no legal basis as this was an investment agreement whereby due to the poor business climate due to the Covid 19 situation the business (Sareka F&B Trading Pte Ltd) failed".[5] Although not specifically mentioned, this was presumably a reference to the Agreement (see [8] above).

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4 Bharathi d/o Subbiah's affidavit in HC/SUM 803/2022 dated 22 March 2023, para 8.

5 Bharathi d/o Subbiah's affidavit in HC/SUM 803/2022 dated 22 March 2023, para 11.

19 At the third hearing of the Bankruptcy Application heard together with SUM 803, on 23 March 2023, Mr Manickavasagam appeared on behalf of the defendant. Counsel for the claimant, Mr Ang Wee Tiong ("Mr Ang"), sought an adjournment in order to file a reply affidavit in SUM 803, which had been taken out the day before. The AR directed the claimant to file his reply affidavit. SUM 803 and the Bankruptcy Application were adjourned to be heard on 26 April 2023 and 27 April 2023, respectively.

20 On 26 April 2023, at the next hearing of SUM 803, and after questions were posed by the AR to Mr Manickavasagam, he indicated that he would be withdrawing SUM 803 (see [63] below). The AR granted permission for SUM 803 to be withdrawn and ordered costs of $3,000, inclusive of disbursements, to be paid by the defendant to the claimant.

21 At the fourth hearing of the Bankruptcy Application on 27 April 2023, Mr Manickavasagam updated the court that SUM 803 had been withdrawn. He stated that he had been "instructed to ask for DRS" as the defendant "qualifies for DRS".[6] The AR thus adjourned the Bankruptcy Application for the department of the Official Assignee to consider the defendant's suitability for the Debt Repayment Scheme ("DRS"). I shall as shorthand, refer to department of the Official Assignee, which is part of the broader Ministry of Law's Insolvency and Public Trustee's Office, as the Official Assignee.

22 By way of a letter dated 9 October 2023, the Official Assignee determined the defendant to be unsuitable for the DRS (the "Notice of Unsuitability"). The reason given for such determination was that the defendant had failed to file her Statement of Affairs, Income & Expenditure Statement, as

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6 Certified Transcript of the Hearing of HC/B 222/2023 dated 27 April 2023.

well as the Debt Repayment Proposal "despite reminders and is deemed to be not interested in DRS". The "Chronology of Correspondence" annexed to the letter sets out the events leading up to the Official Assignee's issuance of the Notice of Unsuitability as follows:

(a) On 28 April 2023, the Official Assignee sent a notice to the defendant at the Residential Address to file her Statement of Affairs.

(b) On 26 May 2023, the Official Assignee sent another reminder to the defendant to file her Statement of Affairs.

(c) On 22 September 2023, the Official Assignee sent a final reminder to the defendant to file her Statement of Affairs, along with a pre-unsuitability letter.

23 At the fifth hearing of the Bankruptcy Application on 12 October 2023, Mr Manickavasagam sought an adjournment of two weeks. It bears reproducing the request made by Mr Manickavasagam as set out in the Certified Transcript of the hearing, the significance of which I shall elaborate on below:[7]

> My client needs a short adjournment of 2 weeks. She says she is in communication with the [Official Assignee]. They have asked for some documents and she wants to give these documents to the [Official Assignee]. She has not appeared in Court today.

In response, Mr Ang indicated the claimant's instructions to proceed with the Bankruptcy Application as the defendant had been given ample time to provide the documents to the Official Assignee and had failed to do so. The AR rejected the defendant's request for an adjournment. Having been satisfied that the

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[7] Certified Transcript of the Hearing of HC/B 222/2023 dated 12 October 2023, p2, paras 7 to 10.

papers for the Bankruptcy Application were in order, the AR correspondingly adjudicated the defendant a bankrupt and appointed the Official Assignee as trustee of the bankruptcy estate.

The defendant takes out the present application

24 On 25 October 2023, the defendant took out the present application *vide* HC/SUM 3297/2023, seeking the following orders:

(a) that permission be granted to the defendant to set aside the bankruptcy order made against her on 12 October 2023; and

(b) that costs of the application be provided for by Manicka & Co to the defendant due to its negligence as a former solicitor for the defendant.

25 In light of the defendant's prayer for costs to be borne by Manicka & Co, coupled with the gravity of Mr Manickavasagam's alleged misconduct, I ordered that a copy of the application as well as the defendant's supporting affidavit and reply affidavit be provided to Manicka & Co ahead of the scheduled hearing. Furthermore, I directed Mr Manickavasagam to attend the hearing on 1 December 2023 and to be prepared to assist the court should it be necessary.[8]

26 At the first hearing of the application before me on 1 December 2023, Mr Manickavasagam sought permission to file an affidavit to address the allegations levied against him in the defendant's affidavit. I explained to the defendant, who was acting in person, that owing to the allegations made in her affidavits, she could have been understood to have impliedly waived her legal

[8] Correspondence from Court dated 23 November 2023 and 29 November 2023.

privilege with Manicka & Co, such that Mr Manickavasagam may conceivably disclose instructions, communications and other documents pertaining to the Bankruptcy Application. She acknowledged this and had no objections to Mr Manickavasagam filing a reply affidavit. I therefore granted permission for Mr Manickavasagam to file an affidavit, as well as for the claimant and the defendant to file further affidavits in reply, should they choose to do so. Mr Jeffrey Yip ("Mr Yip"), who appeared on behalf of the Official Assignee, confirmed that the Official Assignee would be taking no position on the present application, highlighting that it had filed an affidavit to assist the court by providing a chronology of the Official Assignee's correspondence with the defendant leading up to the issuance of the Notice of Unsuitability for the DRS (see [22] above).

27 The second hearing of the application proceeded on 16 February 2024 with the defendant, Mr Ang, Mr Manickavasagam and Mr Yip addressing the court. I reserved judgment.

The parties' arguments

28 I begin by summarising the parties' respective arguments.

29 The defendant's affidavit in support of the present application was somewhat meandering, but at the very least, the following core points may be gathered:

(a) Sometime in August 2022, the defendant had been referred to S K Kumar LLP to obtain representation for among other matters, OC 1291. At S K Kumar LLP's office, she then met one Mr Joseph Fernandez ("Mr Fernandez"), whom she assumed was either part of the

legal team at or at least employed by S K Kumar LLP.[9] She shared information with him on the legal matters she intended for Mr S K Kumar to handle on her behalf and exchanged numbers with Mr Fernandez as he had assured her that if Mr S K Kumar was unavailable, she could contact him directly with regard to her legal matters.[10]

(b) The defendant was unable to get hold of Mr S K Kumar and subsequently corresponded with Mr Fernandez to seek an update on her pending cases, to which Mr Fernandez informed her that (i) he was not in the employ of S K Kumar LLP; (ii) Mr S K Kumar had been disbarred and would not be able to act for her; and (iii) he would introduce her to Mr Manickavasagam to handle her various legal matters, which later included the Bankruptcy Application.[11] Thereafter, Mr Fernandez informed her through a telephone conversation that he would get Manicka & Co to take over her pending cases from S K Kumar LLP and that he would be forwarding her case files to Mr Manickavasagam.[12]

(c) Mr Fernandez acted like a representative from Manicka & Co and the defendant corresponded through him rather than directly to Mr Manickavasagam. Mr Fernandez attended to the defendant's queries, answered her calls, and received direct payments from her but did not

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9 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, paras 4 to 7.

10 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, paras 4 and 5.

11 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, para 8.

12 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, para 10.

issue any receipts for such payment.[13] She was misled to believe that Mr Fernandez would assist and handle her legal matters based on trust and his assurances whenever she called him for an update on the proceedings.[14]

(d) The defendant had never met with Mr Manickavasagam in person, did not sign any warrant to act or letter of engagement with Manicka & Co and did not receive any legal advice or updates on the status of the Bankruptcy Application. Mr Manickavasagam therefore acted negligently.[15]

(e) The defendant did not receive any letters, emails or any form of correspondence, including telephone calls from the Official Assignee either at her Residential Address, her email address or to her mobile number at any time.[16]

30 In oral submissions before me, the defendant's main point of grievance appeared to be two-fold: (a) first, that she had given no instruction to Mr Manickavasagam to withdraw SUM 803; and (b) second, she did not receive any notices or correspondence from the Official Assignee in relation to the DRS assessment, and coupled with Mr Manickavasagam's lackadaisical conduct, she had been wrongly deemed unsuitable for the DRS. Indeed, in her written submissions, she states that she is seeking to set aside the bankruptcy order in

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13 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, paras 13 and 14.

14 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, para 23(v).

15 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, paras 24.

16 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, para 21.

order to allow her to be re-assessed for the DRS.[17] I should add that at the second hearing of the present application, the defendant raised for the first time that she had not been personally served with the cause papers for the Bankruptcy Application at the Office Address on 6 February 2023 (see [14] above). This was quite clearly a belated assertion; it was neither contained in any of her affidavits filed in support of the present application nor was it ever once intimated by Mr Manickavasagam at any of the hearings of the Bankruptcy Application. On the contrary, the defendant stated in her affidavit that upon being served the cause papers for the Bankruptcy Application, she had called Mr Fernandez.[18] I hence find the defendant's assertion to be without basis and place no weight on this in arriving at my decision.

31 The claimant's riposte to this is that the defendant's allegations are unable to hold up against close scrutiny and should be rejected. In particular, the claimant argues that the defendant failed to make any concrete payment proposals after the Statutory Demand was served on her and also failed to make use of the ample time and opportunity afforded to her during the assessment period for DRS.[19] Her being deemed unsuitable for DRS by the Official Assignee and being adjudged a bankrupt was ultimately a consequence of her own doing and there is no basis for the bankruptcy order to be set aside.

32 Mr Manickavasagam seeks to disabuse the notion that he acted negligently in his conduct of the Bankruptcy Application. He says that at all times, he had obtained instructions from the defendant through Mr Fernandez.[20]

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17 Defendant's Written Submissions dated 13 February 2024, para 30.

18 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 6 January 2024, para 18(g).

19 Sundar Venkatachalam's affidavit dated 17 November 2023, para 49.

20 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 4.

This is because Mr Fernandez had informed him that the defendant should not be disturbed.[21] Mr Manickavasagam studied the defendant's case and informed Mr Fernandez that she was eligible for the DRS and should be able to be placed on the DRS.[22] His only mandate, as communicated to him by Mr Fernandez, was to place the defendant on the DRS.[23] And he did so: once the defendant had been referred to the Official Assignee to determine her suitability for the DRS, he no longer had control over the matter as it would be the Official Assignee corresponding with the defendant and not him.[24] Further, despite his request to the defendant to attend the hearing of the Bankruptcy Application on 12 October 2023, she chose not to attend to persuade the court to grant an adjournment.[25]

33 The Official Assignee takes no position on the present application (see [26] above).

My decision

Is there is a free-standing power to set aside a bankruptcy order?

34 I address first a preliminary procedural point. As the present application was formally neither an appeal nor an annulment application, I raised to the parties at the first hearing of the application the issue of whether there is a *free-standing* power to set aside a bankruptcy order under the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") read with

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21 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 19.

22 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 8.

23 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 5.

24 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 31.

25 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, paras 52 to 55.

the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 (the "PIR"). I therefore directed parties to address me on this point.

35 Before going further, I make a point on terminology. When I use the term "free-standing power", I mean a power of a first instance court to set aside a bankruptcy order that is apart from either an appeal from a first instance decision granting a bankruptcy order *or* an application to annul the bankruptcy order brought under the IRDA and the PIR. Put another way, the question is whether it is procedurally appropriate for a debtor to take out an application before the court of first instance to set aside the bankruptcy order made against him or her instead of lodging an appeal against the bankruptcy order or filing an application to annul the bankruptcy order.

36 Having considered the parties' submissions, I am of the view that while a first instance court does have a free-standing power to set aside a bankruptcy order, this should be invoked only in exceptional circumstances required to prevent injustice. Let me elaborate.

37 The starting point must be the IRDA, which is omnibus legislation that is the source of the court's insolvency jurisdiction. The IRDA, which came into effect on 30 July 2020, consolidated personal and corporate insolvency laws into a single statute. Senior Minister of State for Law, Mr Edwin Tong Chun Fai explained the objective of the IRDA as follows (*Singapore Parliamentary Debates, Official Report* 1 October 2018) vol 94):

> … to promulgate a new single Act, which consolidates the corporate and personal insolvency and debt restructuring laws into one place. They are currently found in two separate statutes. This has numerous benefits, including setting out common principles and aligning procedures across the regimes under a single law, rationalising existing inconsistencies and minimising current uncertainty due to cross-referencing across the various pieces of legislation; and enhancing the clarity and

> accessibility of the laws for advisers and the parties involved. This will be welcomed as it removes the need to refer to multiple primary and subsidiary legislation.

38 Under s 3 of the IRDA, the General Division of the High Court is conferred jurisdiction in corporate insolvency, winding up, individual insolvency and bankruptcy matters. In turn, s 5(*a*) read with s 2 of the IRDA provides that the Registrar of the Supreme Court, which "includes a Deputy Registrar or an Assistant Registrar of the Supreme Court", has all the powers and jurisdiction of the General Division of the High Court. Hence, bankruptcy applications, which are governed by the provisions contained in Part 16 of the IRDA, are generally heard by ARs at first instance.

39 This leads to the next question. Once a bankruptcy order is made, does the court of first instance have a free-standing power to set aside said order?

40 Order 3 r 2(8) of the Rules of Court 2021 (the "Rules"), grants general to the court to revoke or set aside a judgment or order under certain circumstances. That provision reads as follows:

> **General powers of Court (O. 3, r. 2)**
>
> …
>
> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
>
> (*a*) without notice to, or in the absence of, the party affected;
>
> (*b*) without complying with these Rules or any order of Court;
>
> (*c*) contrary to any written law; or
>
> (*d*) by fraud or misrepresentation.

41 However, the Rules do not generally apply to proceedings under the IRDA, pursuant to the First Column of O 1 r 2(11) of the Rules. The Third Column of O 1 r 2(11) of the Rules specifies that only O 25 r 6 (which concerns

hearing fees payable for winding up applications), O 28 (which concerns the electronic filing service) and Parts 3 and 4 of the Fourth Schedule read with O 25 of the Rules (which concerns service provision and search fees) shall continue to apply to proceedings under the IRDA. In addition, O 1 r 2(12) of the Rules preserves the applicability of the appellate procedure and mechanisms of the Rules to proceedings under the IRDA (*ie,* O 18 and O 19 of the Rules, as may be applicable). Hence, the broad powers granted to the court under O 3 r 2(8) are not applicable to proceedings under the IRDA, although certain grounds under the common law that mirror these grounds may continue to be applicable, as explained below.

42 Accordingly, what is clear is that the following statutory avenues are available to an aggrieved debtor who has been adjudged a bankrupt:

(a) First, the debtor has a right of *appeal* against an AR's decision to a Judge in Chambers to set aside the bankruptcy order. The Notice of Appeal in Form 35 must be filed and served on all parties who have an interest in the appeal within 14 days after the date of the AR's decision (see O 18 r 24 of the Rules). Such appeal is to proceed before the Judge by way of a rehearing on the documents filed by parties before the AR (see O 18 r 25(4) of the Rules). Section 8(1) of the IRDA further provides that any order made by the court "in any matter under [the IRDA] is, at the instance of the person aggrieved, subject to appeal in the same way as an order of court in any other matter is for the time being appealable".

(b) Second, the debtor may apply to *annul* the bankruptcy order. Such application must be made within 12 months after the making of the bankruptcy order, unless permission is granted by the court otherwise

> (see ss 392(1) and 393(2) of the IRDA). The affidavit filed in support of the application must state (i) whether the bankrupt has filed his or her statement of affairs; (ii) the number of creditors and whether they have proved their debts; (iii) whether the bankrupt has disclosed all the bankrupt's estates to the trustee of the bankrupt's estate and whether the assets have been realized; (iv) whether any dividend has been declared and if so, the amount of the dividend; and (v) the grounds of the application (see Rule 137(2) of the PIR Rules). Further, unless the applicant is the trustee of the bankrupt's estate, the applicant must serve a sealed copy of the application and the supporting affidavit personally on the trustee of the bankrupt's estate (see Rule 137(4) of the PIR Rules).

This is further buttressed by s 7 of the IRDA, which specifies that the court "may review, rescind or vary any order made by the court when exercising its jurisdiction under [the IRDA]".

43 Notwithstanding the above, the claimant submits that a first instance court nevertheless possesses a free-standing power to set aside a bankruptcy order based on its inherent powers, although he submits that such power ought not to be invoked on the present facts.[26] In support of his argument, the claimant refers to the decisions of *Harmonious Coretrades Pte Ltd v United Integrated Services Pte Ltd* [2020] 1 SLR 206 ("*Harmonious Coretrades*") and *Rex Lam Paki v PNG Sustainable Development Program Ltd* [2023] 2 SLR 170 ("*Rex Lam Paki*"). I shall discuss each in turn.

44 *Harmonious Coretrades* was a case that concerned the circumstances in which a court will exercise its power to set aside a garnishee order that has been

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[26] Claimant's Written Submissions dated 8 February 2024, paras 38 and 91.

made final. The Court of Appeal accepted that a court has the inherent power to set aside a garnishee order that has been made final in order to prevent injustice but held that the facts of the case did not warrant the exercise of such a power. In arriving at this conclusion, the court observed that at common law, there are three well-established grounds that may warrant a court to set aside a judgment or order of court: (a) first, where the person obtaining the order has not complied with the requirements the Rules; (b) where an order or judgment has been obtained by fraud; or (c) where an order or judgment has been obtained in default of the appearance of one of the parties to the suit (*Harmonious Coretrades* at [34]–[35], citing *Ong Cher Keong v Goh Chin Soon Ricky* [2001] 1 SLR(R) 213 at [44]–[46]). I note in passing that these appear to mirror the general powers of the court conferred under O 3 r 2(8) of the Rules (see [40] above), but these are clearly not grounds that apply in the present case. Importantly, and apart from these three enumerated grounds, the court "retains the residual discretion to set aside a judgment or court order so as to prevent injustice" pursuant to its inherent jurisdiction. The court stressed however, that "this is not a licence to litigants to make frivolous applications to set aside judgments or court orders" and that the "court's inherent power … should never become a back-door appeal or an opportunistic attempt to relitigate the merits of the case" (*Harmonious Coretrades* at [40]).

45 In *Rex Lam Paki,* the Appellate Division of the High Court had occasion to consider whether the court has the power to set aside a judgment on admissions, notwithstanding that the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) makes no express provision for it. In holding in the affirmative, the court cited *Harmonious Coretrades* with approval, rejecting the binary assertion that the court either has an express power under a specific rule or it has no power to set aside a judgment or order at all (*Rex Lam Paki* at [15]). The court did not accept the respondent's argument that where there is a right of

appeal, it must follow that there is no inherent power to set aside a judgment or order. To hold so would unjustifiably limit the court's inherent powers. However, "whether there was a right of appeal, and (if so) why an appeal was not pursued, are relevant considerations in determining whether setting-aside is necessary to prevent injustice" (*Rex Lam Paki* at [19]). In dismissing the appeal, the court observed that the appellant could have filed an appeal against the judgment after the deadline for doing so had expired but did not do so nor did he file an application to extend time to appeal and that his arguments on the substantive merits were tantamount to a back-door appeal, an attempt to relitigate the merits of the case when there was no appeal (*Rex Lam Paki* at [30]).

46 I am bound by *Harmonious Coretrades* and *Rex Lam Paki*. I therefore agree with the claimant's submission that a court of first instance continues to possess a free-standing power to set aside a bankruptcy order pursuant to its inherent jurisdiction. What may be surmised from the cases above regarding such a power is as follows: (a) first, the touchstone is one of preventing injustice; (b) second, and having regard to statutory scheme of the IRDA and the subsidiary legislation enacted by way of the PIR that provides express avenues to challenge a bankruptcy order (see [42] above), it is incumbent on an applicant to furnish cogent reasons as to why these avenues were not pursued. A failure to do so will militate against the invocation of such power.

47 While it is not possible to exhaustively list all the situations in which such power may be invoked, it will be apparent that this power has to be exercised judicially. To hold otherwise would be to set nought the importance of the finality of litigation and pave the way for applicants to have a second bite of the cherry. Although the circumstances will be rare where this power will be exercised in bankruptcy proceedings, the power does exist. Practically, what

this means is that as a matter of procedural propriety, should a debtor seek to challenge a bankruptcy order made against him or her, the appropriate recourse would *generally* be either to file an appeal against the decision or to file an application to annul the bankruptcy order, with the appropriate prayer for an extension of time if so required. It really is only in an *exceptional* circumstance that recourse to the inherent powers of a first instance court should be had.

48 In my view, the present case does not fall within the contours of this free-standing power. The defendant has offered no reason why she did not pursue an appeal to a Judge of the High Court against the AR's decision. The present application was filed on 25 October 2023. The bankruptcy order having been made on 12 October 2023, it would have been entirely possible for the defendant to have lodged an appeal against the AR's decision by the statutory deadline. However, she opted instead to file an application to set aside the bankruptcy order before the first instance court. This militates strongly against the invocation of such power here. She should have availed herself of the statutory avenues to challenge the bankruptcy order.

49 With that said, I am cognisant that the defendant is acting in person, without the benefit of legal representation. She might not fully appreciate the procedural nuances involved in a challenge to a bankruptcy order. I am therefore minded to give the defendant the benefit of the doubt and shall treat the present application as an application to annul the bankruptcy order, notwithstanding the prayer being phrased as an application to "set aside" the bankruptcy order (see [24] above). I do so in light of the Official Assignee's confirmation at the hearing before me that the defendant has yet to file her statement of affairs.

50 In this regard, I note that while an application for annulment and an appeal against a bankruptcy order are conceptually distinct, the practical effect

of either being allowed is generally similar – in that the bankruptcy is treated as not having occurred – save for exceptions to its retrospective effect that may apply depending on the construction of statutory or contract provisions (*TYC Investment Pte Ltd v Chan Siew Lee Jannie and another* [2018] 4 SLR 293 ("*TYC Investment*") at [32]). While it is true that in "certain circumstances, the general principle of relation-back on reversal of an order cannot be fully applied" (*TYC Investment* at [35]), no evidence has been placed before me to suggest that this will be the case here. Hence, I consider that no prejudice that will be occasioned to any of the debtor's other creditors or the claimant by treating this application as one for annulment as the claimant's submissions have dealt with this possibility in some detail.

The applicable legal principles in an annulment application

51 With that in mind, I turn to consider the legal principles in an application to annul a bankruptcy order.

52 As observed at [42(b)] above, the operative provision is s 392(1) of the IRDA, which confers on the court the power to annul a bankruptcy order. It provides as follows:

> **Court's power to annul bankruptcy order**
>
> **392.** –(1) The Court may annul a bankruptcy order if it appears to the Court that –
>
> (*a*) on any ground existing at the time the order was made, the order ought not to have been made;
>
> (*b*) to the extent required by the regulations, both the debts and the expenses of the bankruptcy have all, since the making of the order, either been paid or secured for to the satisfaction of the Court;
>
> (*c*) proceedings are pending in Malaysia for the distribution of the bankrupt's estate and effects amongst the creditors under

> the bankruptcy law of Malaysia and that the distribution ought to take place there;
>
> (*d*) a majority of the creditors in number and value are resident in Malaysia, and that from the situation of the property of the bankrupt or for other causes the bankrupt's estate and effects ought to be distributed among the creditors under the bankruptcy law of Malaysia.

53 Section 392(1) is in turn adopted from s 123(1) of the revoked Bankruptcy Act (Cap 20, 2009 Rev Ed). While an application to annul is often associated with "the debtor's act of fully paying or securing all the debts and liabilities to which he was subject at the commencement of the bankruptcy" (*The Law of Insolvency* (Ian F Fletcher gen ed) (Sweet & Maxwell, 5th Ed, 2017) ("*The Law of Insolvency*") at para 11-032), the power to annul is not limited to this. This is made clear by the circumstances under which the court is empowered to annual a bankruptcy order as contained s 392(1) of the IRDA, with the full payment of debts being only one of these grounds as specified in s 392(1)(*b*). Indeed, it has been observed, albeit in the context of s 282(1) of the UK Insolvency Act 1986 (c 45), which is in *pari materia* to the wording of 392(1) of the Act, that the broad scope of the annulment provision "is provided for the rectification of any injustice, and also to provide for those cases where the debtor seeks in the fullest way possible to expunge all the traces and connotations of bankruptcy from his established reputation" (*The Law of Insolvency* at para 11-032).

54 The relevant ground to consider, for present purposes, is s 392(1)(*a*) of the IRDA. This involves a two-step assessment (*Tang Yong Kiat Rickie v Singesinga Sdn Bhd (transferee to part of the assets of United Merchant Finance Bhd) and others* [2014] SGHCR 6 ("*Tang Yong Kiat Rickie*") at [13]):

(a) First, the bankruptcy order ought not to have been made on a ground existing at the time it was made. I shall refer to this as the "Mandatory Element".

(b) Second, the court nevertheless has the overriding discretion to decide whether to annul the bankruptcy order even if the first requirement is made out. I shall refer to this as the "Discretionary Element".

The onus lies on the bankrupt to satisfy the court that he or she ought not to have been made a bankrupt (Kala Anandarajah *et al, Law and Practice of Bankruptcy in Singapore and Malaysia* (Butterworths Asia, 1999) ("*Bankruptcy in Singapore and Malaysia*") at p 399, citing *Re Amos William Dawe* [1980] 1 MLJ 200).

55 As to the Mandatory Element, some situations that the courts have found to have satisfied the requirement that the bankruptcy order ought not to have been made include the following (a) an abuse of process; (b) the bankruptcy order was made on the basis of evidence which turned out to be untrue; (c) the bankruptcy order was made under a defective petition; (d) the debtor was deceased at the time the bankruptcy proceedings were commenced; (e) the debtor was a minor and the debt was not legally enforceable against him or her; and (f) the debtor was not domiciled in the jurisdiction at the time the bankruptcy order was made (*Tang Yong Kiat Rickie* at [13]).

56 As to the Discretionary Element, the court retains the ultimate discretion to decide whether a bankruptcy order should be annulled (see also *Bankruptcy in Singapore and Malaysia* at p 399, citing *Re Peter Wong, Ex parte the Debtor* [1959] MLJ 27 and *Re Dunn* [1949] 2 All ER 388). This discretion, while wide,

has to be exercised judicially. This is because third parties are entitled to rely on the bankruptcy order. Accordingly, "while defects in the bankruptcy proceedings would constitute a basis for the court to consider annulling the bankruptcy order, an annulment will not be ordered as a matter of course" and the "court must also consider how annulment might impact third-party interests" (*HSBC Bank (Singapore) Ltd v Ong Chee Han Jeremy* [2022] SGHCR 10 at [38]). In the final analysis, the general thread running through cases that would marshal in favour of exercising the court's discretion to annul the bankruptcy order is that "the making of or persisting with a bankruptcy order in those circumstances would be in some way inequitable or ineffective" (*Tang Yong Kiat Rickie* at [14]).

57 The issue is therefore whether there is any ground existing at the time the bankruptcy order was made to suggest that the order ought not to have been made in the first place. I answer this Mandatory Element in the negative for the reasons below and I hold that the bankruptcy order was properly made by the AR.

The bankruptcy order was properly made

58 At the outset, I would note that in so far as the prescriptive requirements under ss 311(1) and 316(1) of the IRDA that must be met before a bankruptcy order may be made on a creditor's bankruptcy application are concerned, it is clear that these requirements were met. The debt, as based on the Statutory Demand, remained wholly unsatisfied. Further, the bankruptcy order was not made in the absence of the defendant; Mr Manickavasagam was present at the hearing on 12 October 2023 when the defendant was adjudged a bankrupt (see [23] above). The debt owing pursuant to JUD 3596 exceeded $15,000 and was for a liquidated sum payable to the claimant immediately.

59 The defendant confirmed at the hearing before me that she had no means to pay off the debt owing under JUD 3596 in full. This is consistent with her indication that in essence, she is seeking for the bankruptcy order to be set-aside so that she may be re-assessed by the Official Assignee for the DRS (see [30] above).

60 I turn then to the two key contentions raised by the defendant, as highlighted at [30] above, as the basis for the present application. Neither in my view, pass muster.

The defendant's application to set aside the Statutory Demand in SUM 803 was bound to fail

61 The first plank of the defendant's complaint is that she did not give any instructions to Mr Manickavasagam to file *and* withdraw SUM 803.

(a) As far as the former argument is concerned, it is not necessary for me to make any findings on this point as the filing of SUM 803 – and whether it was done so with the requisite authority – has no bearing whatsoever on the question of whether the bankruptcy order ought to have been made. I merely note the defendant's position that it was Mr Fernandez who had asked her to sign an affidavit in support of SUM 803 before a Commissioner of Oaths but that Mr Fernandez did not specifically go through the contents of the affidavit or to confirm the accuracy of the contents therein and the Commissioner of Oaths did not ask her if she understood the document she was signing.[27] Mr

[27] Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 22 November 2023, paras 6(b) to 6(c); Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 16 January 2024, para 6.

Manickavasaagm's position is that it was Mr Fernandez who informed him that the defendant wished to set aside the Statutory Demand.[28]

(b) More salient is the latter argument, because implicit in it is the suggestion that had SUM 803 not been withdrawn, there would have been a possibility that the Statutory Demand underpinning the Bankruptcy Application would have been set aside.[29] The defendant might therefore have entirely avoided the prospect of being adjudged a bankrupt. I put to one side the contradiction inherent in this argument, in so far as the defendant's complaint appears to take umbrage with the withdrawal of an application that she claims she had never authorised in the first place.

62 Mr Manickavasagam avers that it was Mr Fernandez who had informed him, on the morning of or a day before the scheduled hearing of SUM 803 on 26 April 2023, that the defendant wished to withdraw SUM 803 as she did not wish to incur unnecessary costs.[30] This is why he withdrew SUM 803.

63 With due respect, I bear considerable misgivings as to the veracity of Mr Manickavasagam's explanation. There is no contemporaneous documentary evidence to support Mr Manickavasagam's assertion that Mr Fernandez in fact gave him such an instruction. But more telling is the manner in which Mr Manickavasagam conducted himself at the hearing of SUM 803 on 26 April 2023. The Certified Transcript of that hearing is illuminating and I reproduce it

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28 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 9.

29 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 22 November 2023, paras 6(d).

30 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 5.

here (with Mr Manickavasagam abbreviated to "DC"):[31]

> Ct: Written submissions read. I understand that the main contention is the default judgment should be set aside.
>
> DC: Yes Your Honour.
>
> Ct: Then you should set aside the default judgment in the substantive matter.
>
> DC: Yes we are not seeking to set aside the default judgment, this is but a reason.
>
> Ct: Have you read the [Practice Directions] and authorities on this?
>
> DC: No.
>
> Ct: Perhaps you should read para 39 of your learned friend's submissions.
>
> DC: See it.
>
> Ct: Do you wish to proceed? If you wish to proceed, I will hear you but I thought I would highlight the authorities to you.
>
> DC: Let me read para 41 as well. For academic knowledge, what would the reason to set aside the [Statutory Demand] be then?
>
> Ct: I am not here to advise you. You are the counsel.
>
> …
>
> DC: I am withdrawing the application.
>
> …

It is difficult to understand that if Mr Manickavasagam was so instructed to withdraw the application, he did not begin the hearing by informing the court that he was instructed to do so. Surely this would have been the intuitive thing to do. In fact, he went so far as to agree with the AR that the defendant's main contention was for JUD 3596 to be set aside. It was only upon being questioned by the AR, being directed to the relevant authorities and being asked whether

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[31] Certified Transcript of the Hearing of HC/SUM 803/2023 dated 26 April 2023.

he intended to proceed with the application that Mr Manickavasagam suddenly stated that he would be withdrawing the application.

64 That being said, whether the defendant had in fact given instructions for Mr Manickavasagam to withdraw SUM 803 appears to me to be irrelevant for the purposes of the present application. In my view, irrespective of whether SUM 803 was wrongly withdrawn (or more accurately, withdrawn without due authority), SUM 803 was bound to fail in any event. It would have had no material impact on the Bankruptcy Application. I elaborate on both prayers sought in SUM 803.

65 First, in so far as the prayer for an extension of time to set aside the Statutory Demand is concerned, I am skeptical whether this would have been granted.

66 The Court of Appeal's decision in *Koh Kim Teck v Shook Lin & Bok LLP* [2021] 1 SLR 596 ("*Koh Kim Teck*") is instructive. The factors that a court ought to take into consideration when deciding whether to grant an extension of time to file an application to set aside a Statutory Demand are: (a) the period of the delay; (b) the reasons for the delay; (c) the grounds for setting aside the Statutory Demand; and (d) the prejudice that might result from an extension of time (*Koh Kim Teck* at [51], citing *Rafat Ali Rizvi v Ing Bank NV Hong Kong Branch* [2011] SGHC 114 at [32]). Further, while the threshold to grant an extension of time for a debtor to apply to set aside a statutory demand may not be a particularly high one, "the test is, at the same time, not an empty one" and necessarily fact-specific (*Koh Kim Teck* at [52]).

67 The operative provision is Rule 67(2)(*b*) of the PIR, which provides that an application to set aside a Statutory Demand is to be made within 14 days of

service. As the Statutory Demand was served personally on the defendant on 9 October 2022 (see [12] above), the deadline for her to file an application would have been 23 October 2022. SUM 803 was taken out only on 22 March 2023, close to some *five months* after the statutory deadline. This was a substantial delay. In *Koh Kim Teck*, the court opined that "while the application was brought less than two weeks out of time, this [did] not mean that an extension of time should necessarily be granted" (at [52]). Here, no explanation was given by the defendant (or Mr Manickavasagam, who was on record as counsel for the defendant at the time) why close to five months had elapsed before any action was taken. The defendant was clearly put on notice after being personally served the Statutory Demand on 9 October 2022, which stated in clear terms that an application to set aside ought to be taken out within 14 days. The import of the Statutory Demand was clearly not lost on her. By the defendant's own admission, she had quickly called Mr Fernandez to inform him of the Statutory Demand.[32] As for the grounds to set aside the Statutory Demand, the only ground stated in the affidavit in support of SUM 803 was that the claimant had "no legal basis" as the Agreement was entered into during the COVID-19 pandemic (see [18] above). It is unclear what this was meant to imply, but as I explain below at [69], this is not a valid ground to set aside the Statutory Demand.

68 Second, in so far as the substantive prayer for the Statutory Demand to be set aside is concerned, I am likewise of the view that this was entirely without merit. I say so for broadly the same reasons that were highlighted by the AR at the hearing of SUM 803 (see [63] above).

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[32] Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 16 January 2024, para 18(f).

69 It bears repeating that the Statutory Demand is based on the debt owing from JUD 3596 and not the Agreement *per se*. After all, no application was taken out to set aside JUD 3596 (see [11] above).[33] This is an important point to appreciate. In this vein, paragraph 160(2) of the Supreme Court Practice Directions 2021 provides that "[w]ithout limiting Rule 98 of the Bankruptcy Rules or Rule 68 of the [PIR], on an application to set aside a statutory demand based on a judgment or an order, *the Court will not go behind the judgment or order and inquire into the validity of the debt*" [emphasis added]. Rule 68 of the PIR (and Rule 98 of the Bankruptcy Rules) in turn lists the grounds under which the court is mandated to set aside a Statutory Demand.

70 Paragraph 160(2) is worded similar to the previous iteration of paragraph 144(2) of the Supreme Court Practice Directions (1 January 2013 release). The latter provision was considered by the High Court in *Tan Hup Yuan Patrick v The Griffin Coal Mining Co Pty Ltd* [2014] 4 SLR 221 ("*Tan Hup Yuan Patrick*"). In that case, the parties had entered into a consent judgment that was made pursuant to a settlement agreement for the discontinuance of legal proceedings based on an alleged breach of a deed of guarantee by the plaintiff. The defendants issued a statutory demand when the plaintiff failed to pay the sums due under the judgment. The plaintiff applied to set aside the statutory demand, arguing among other things, that the defendants had assigned to another party its interests under the guarantee and the defendants were therefore not entitled to enter judgment against the plaintiff. The AR dismissed the plaintiff's application. The High Court dismissed the plaintiff's appeal, holding that the plaintiff was impermissibly asking for the court to go behind the consent judgment and inquire into the validity of the debt, namely, whether the debt was

[33] Bharathi d/o Subbiah's affidavit in HC/SUM 803/2023 dated 22 March 2023, para 7.

indeed owed to the defendants. Woo Bih Li J (as he then was) observed thus (*Tan Hup Yuan Patrick* at [15]):

> In my view, there was no dissonance between the Rules and the PD. The effect of para 144(2) of the PD was to supplement r 98 because r 98(2) is not confined to the situation where the statutory demand is based on a judgment, *ie,* the statutory demand may not be based on a judgment. However, where it is based on a judgment, para 144(2) of the PD states that the court will not inquire into the validity of the debt. In other words, any dispute on the debt will not appear to be substantial under r 98(2)(b). While practice directions do not have the force of law … they are directions from the court nonetheless a court will not normally depart from its directions unless there is a good reason for doing so. …

Tan Hup Yuan Patrick was subsequently affirmed by the Edmund Leow JC in *Lim Poh Yeoh (alias Lim Aster) v TS Ong Construction Pte Ltd* [2016] 5 SLR 272 at [69].

71 The rationale for this is readily understood. A court exercising its bankruptcy jurisdiction, as distinct from its general civil jurisdiction, accords a degree of sanctity to a court judgment or order. A court judgment or order provides *prima facie* evidence that the debt owing under it is a valid one and by extension, that a statutory demand premised on such a court judgment or order ought not to be challenged on the basis of a disputed debt. This is consistent with the notion that "[i]t is not the function of the bankruptcy court, at the hearing of an application to set aside a statutory demand, to conduct a full hearing of the dispute and adjudicate on the merits of the creditor's claim" (*Wong Kwei Chong v ABN-AMRO Bank NV* [2002] 2 SLR(R) 31 at [3]). In *Chimbusco International Petroluem (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801, Vinodh Coomaraswamy JC (as he then was) explained this in the following terms (at [38]):

> Where a creditor commences insolvency proceedings after having had its rights adjudicated in a civil suit, its standing to

> bring insolvency proceedings is irrefutably established: the debtor is estopped from disputing the debt on which the creditor relies on for his standing. But where a putative creditor commences insolvency proceedings without having had its rights adjudicated in a civil suit, the putative debtor remains able to dispute the threshold issue of whether there is in fact a debt. And in insolvency proceedings, there is for all practical purposes only an abridged procedure – on affidavits alone – to determine this threshold issue.

72 As such, it was not open to the defendant to attempt to set aside the Statutory Demand by seeking to challenge the validity of the debt incurred as a result of JUD 3596 before a court exercising its bankruptcy jurisdiction. SUM 803 was however an attempt to do exactly that: to impugn the validity of the Agreement and in turn the basis of JUD 3596. The application was a fruitless one. A review of the relevant provision and authorities above make this plain as a pikestaff. The appropriate recourse would have been for the defendant to apply to set aside JUD 3596 instead.

The defendant was properly notified of the correspondence from the Official Assignee

73 The second plank of the defendant's allegation is that she did not at any time receive any letters, emails, or any form of correspondence, including telephone calls, from the Official Assignee regarding the DRS assessment either at her Residential Address, her email address or her mobile number. Presumably, this meant that she had no opportunity to respond to the Official Assignee's request for documents in its determination of her suitability for the DRS.

74 With respect, in my judgment, the defendant's assertion lacks credibility and I reject it. I have three reasons.

75 First, it is undisputed that the Residential Address is the defendant's registered address and that she continues to reside there till date. The Official Assignee has filed an affidavit affirming that all notices and correspondence were sent to the Residential Address seeking the defendant's submission for the relevant documents to determine her suitability for the DRS (see [22] above). The Official Assignee had never contacted the defendant through her email address or her mobile number. The defendant has proffered no cogent basis for her assertion that she had not received the correspondence from the Official Assignee.

76 Second, I agree with the claimant's submission that this is an allegation that has been raised for the first time and is unsupported by any contemporaneous evidence. While the defendant does not suggest that the Official Assignee is being untruthful, she states that she is "not sure if the said letters/notices were sent through posting that anyone in the household could have accessed to the mailbox and took it but I certainly did not receive through my email".[34] Even if this were the case, it does not detract from the fact that the Official Assignee had validly sent the notices and correspondence to the defendant's Residential Address. The Official Assignee had never sent any notices or correspondence to the defendant's email address. The Official Assignee can only be expected to do so much so as to bring such correspondence to the defendant's reasonable notice. In any event, this is a speculative reason given by the defendant as to why she did not receive the Official Assignee's notices and correspondence. But I find it hard to believe that from the time the bankruptcy order had been made on 12 October 2023 until her affidavit for the present application was filed on 27 November 2023, she had not checked

[34] Bharathi d/o Subbiah's affidavit filed in HC/SUM 3297/2023 dated 22 November 2023, para 8(a).

whether her household members had in fact taken these letters or notices away. This is all the more curious given the importance of these documents. In my view, this is simply redolent of an afterthought.

77 Third, and relatedly, I agree with the claimant's reliance on the representation made by Mr Manickavasagam to the court at the fifth hearing of the Bankruptcy Application on 12 October 2023 that the defendant was in communication with the Official Assignee and that she would respond to the Official Assignee's request for documents (see [23] above). This belies the defendant's assertion that she never received any correspondence from the Official Assignee. In my view, this is supported by a series of WhatsApp messages in a group chat that involved Mr Fernandez, Mr Manickavasagam, the defendant and her husband, one Mr Sudhan. The following were exhibited by Mr Manickavasagam in his affidavit:[35]

> Mr Fernandez:
>
> > Dear Manicka – all client is asking for a short adjournment to finalise their DRS. They will get it done during that time. Suthan will arrange and do the necessary payment after.
>
> Mr Sudhan:
>
> > Agreed. Get the adjournment pending des application .. after that we will meet up. Please respond all in group.
>
> …
>
> Mr Manickavasagam:
>
> > If OA agreed to give DRS then the Judge will order DRS Automatically. No need to ask for adjournment.
>
> Mr Fernandez:

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[35] Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, p16 to 20.

> ***The DRS is pending approval subject to some documents.*** They are getting it done.

Mr Manickavasagam:

> Can u send me the proof from OA or the communications between u n OA. I JUST SAY GENERALLY THE OPP LAWYER WILL ASK ME. IT IS BETTER FOR [the defendant] TO ATTEND. IF U CANT GIVE ME PROOF MATTER IS PENDING … I just ask for adjournment. U won't get. I need evidence. Without it pltf lawyer will sure object. … U liaised with OA. U must update me. Until I called u did not respond. … I repeat Court will not give an adjournment if I just ask. U said DRS is pending for u to submit docs. I will tell this. Once again I repeat cnances [*sic*] are better if u attend. I leave it to u …

…

Defendant:

> It's ok.. let's not push it back n forth. ***Mr Manicka just get an adjournment as documents are pending***.. if they want to enter judgement then no choice I will set it aside with reasons that you have not done your side of matters and also warrant to act.. ?? I repeat myself just get an adjournment and we will discuss further .. that's it.. update once done tmr.
>
> ---
>
> I hope n pray we don't cross swords.. just get an adjournment n we will sort it out..

[emphasis added]

I pause here to point out that on the face of these messages, it is unclear when and from whom these messages were sent, as they were all forwarded into a separate chat with a common timestamp of 3.17pm. The identities of the senders of the messages were annotated by Mr Manickavasagam in the exhibits to his affidavit. When I questioned Mr Manickavasagam at the hearing as to why screenshots were not lifted directly from the WhatsApp chat group, he provided no satisfactory response, save to say that he had provided all the documentary evidence within his possession and that he had nothing to hide. Nevertheless, from the context above, it is apparent that the series of messages concerned the

possibility of Mr Manickavasagam seeking an adjournment of the hearing scheduled the following day on 12 October 2023. He did make this request, which was denied by the court (see [23] above). Crucially, Mr Fernandez had stated that the "DRS is pending approval subject to some documents". There is no suggestion from either the defendant or her husband that this was inaccurate. So too, is the message that "documents are pending". The defendant did not challenge that these messages were in fact sent by either her or her husband or suggested that these messages were false. In my view, it is telling that the defendant conspicuously failed to exhibit these messages in any of her three affidavits filed in the present application. Overall, I accept that this is evidence that the defendant did in fact receive the notices and correspondence from the Official Assignee regarding her assessment for the DRS, but failed to respond by the stipulated deadline. What Mr Manickavasagam conveyed to the court at the hearing on 12 October 2023 was consistent with this series of messages.

78 One further point should be noted. I sought Mr Manickavasagam's clarification on whether he had informed either Mr Fernandez or the defendant of the directions given by the court for the Bankruptcy Application to be adjourned pending the Official Assignee's determination of the defendant's suitability for the DRS at the hearing on 27 April 2023 (see [21] above). He stated that he had informed Mr Fernandez of the same. While this is not an averment contained his affidavit, it does, at least on the materials before me, appear consistent with Mr Fernandez's message to Mr Manickavasagam to inform him to seek a "short adjournment to finalise their DRS" (see [77] above). By the time of the WhatsApp exchanges on 11 October 2023, the Notice of Unsuitability had already been issued by the Official Assignee (see [22] above), yet Mr Manickavasagam made no mention of this. This meant that the defendant was labouring under the misimpression that she remained suitable for the DRS. Mr Manickavasagam candidly states that he had was unaware of the Notice of

Unsuitability despite the message sent in the e-Litigation system on 9 October 2023 due to an oversight on his part.[36] This is admittedly, an unfortunate state of affairs. However, it remains the fact that the Official Assignee had sent correspondence to the defendant's Residential Address. These documents were addressed to the defendant. Ultimately, it remained incumbent on her to provide the documents sought by the Official Assignee timeously. She did not do so.

79 I turn finally to the case law. *K Shanker Kumar v Nedumaran Muthukrishnan (Official Assignee, non-party)* [2023] SGHC 214 ("*K Shanker Kumar*") is a helpful illustration as to when a court may consider setting aside a bankruptcy order even after a Notice of Unsuitability has been issued by the Official Assignee. In that case, the creditor had received an email from the Official Assignee stating that he was suitable for the DRS and that he would have to make payment of monthly instalments. However, before he could make the payment, he received three other emails from the Official Assignee stating that his case was under preliminary evaluation and the case administrator would be contacting him *via* post to notify him of the assessment outcome. The creditor accordingly withheld payment. Subsequently, at the hearing of the bankruptcy application, the creditor was absent and the AR proceeded to make a bankruptcy order against him. The creditor filed an appeal against the AR's decision.

80 Goh Yihan JC (as he then was) allowed the creditor's appeal, set aside the bankruptcy order and directed that the Official Assignee re-assess the creditor's suitability for the DRS. In arriving at this conclusion, Goh JC considered that (a) it was through no apparent fault of the creditor that he had been deemed unsuitable for DRS as the three emails sent by the Official Assignee were sent in error due to a fault in its "Electronic Case Management

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[36] Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, para 49.

System"; (b) it was through no apparent fault of the creditor that he did not receive the Notice of Unsuitability from the Official Assignee as it had been sent to an address that the creditor no longer resided it; and (c) the creditor's absence at the hearing of the application due to his alleged non-receipt of the email correspondence sent by the debtor's solicitors informing him of the hearing was not determinative; and (d) the creditor had actually been found suitable for the DRS but had later been deemed unsuitable due to miscommunication with the Official Assignee (*K Shanker Kumar* at [17]–[21]).

81 Leaving aside the point that *K Shanker Kumar* concerned an appeal against a bankruptcy order as opposed to an annulment application, the facts of the present case are quite different. For starters, there is no evidence to suggest that the defendant had initially been found suitable for the DRS by the Official Assignee at all. There too, is no suggestion that the defendant no longer resides at the Residential Address. Moreover, the defendant's counsel on record, Mr Manickavasagam was present at the hearing of the Bankruptcy Application on 12 October 2023. The bankruptcy order was thus not made *in absentia.* In short, there is simply no inadvertence of the kind present in *K Shanker Kumar* here.

82 I therefore hold that the defendant has failed to demonstrate that the bankruptcy order made against her ought not to have been made, be it as a matter of fact or law. There is no further need for me to consider the question of whether the court's discretion should be invoked to annul the bankruptcy order. Likewise, there is no basis to invoke the court's inherent powers to set aside the bankruptcy order; no injustice will be occasioned to the defendant for the bankruptcy order to stand. The simple point is this. The defendant was unable to pay her debts as they fell due. She had ample opportunity to reach out to the claimant to make a payment proposal or propose a settlement but did not do so. She was validly served notices and correspondence by the Official Assignee and

failed to respond despite repeated reminders. She was consequently deemed unsuitable for the DRS. In the circumstances, the bankruptcy order was validly made. This is sufficient for me to dismiss the present application.

Conclusion

83 Before I conclude, I wish to point out that in the course of these proceedings, the defendant called into question the following three aspects of Mr Manickavasagam's conduct:

(a) First, that she did not sign any warrant to act or letter of engagement with Manicka & Co.

(b) Second, that throughout the conduct of the Bankruptcy Application and SUM 708, Mr Manickavasagam did not keep any attendance notes of the defendant's instructions.

(c) Third, that Mr Manickavasagam obtained instructions from the defendant through Mr Fernandez, as an intermediary, and that he failed to contact her directly, save for the one occasion on 10 October 2023 on which Mr Manickavasagam reached out to the defendant *via* phone call to inform her of the upcoming hearing of the Bankruptcy Application on 12 October 2023 and to implore her to attend that hearing (see [32] above).[37] In effect, Mr Fernandez acted as a conduit. Mr Manickavasagam himself described the "*modus operandi*" in the following terms: Mr Fernandez was to inform him of "what [the defendant] wants" and he would correspondingly provide updates to Mr Fernandez.[38]

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37 Bharathi d/o Subbiah's affidavit in HC/SUM 3297/2023 dated 24 October 2023, p 18.

38 Certified Transcript of the Hearing of HC/SUM 3297/2023 on 16 February 2024.

Mr Manickavasagam did not dispute these allegations against him.[39] Nevertheless, for the reasons set out above, these allegations do not impact the substantive merits of the present application.

84 For completeness, I should add that the defendant has since lodged a police report against Mr Fernanadez and Mr Manickavasagam.[40] She has also filed a complaint to the Law Society of Singapore regarding Mr Manickavasagam's conduct. As investigations are still ongoing and shall necessarily run its course, I shall say nothing further on this and will leave these aspects of Mr Manickavasagam's conduct to be dealt with in the appropriate forum.

85 Accordingly, I dismiss the defendant's application. I will hear parties on the issue of costs at a later date to be fixed by the Registry.

86 In closing, I wish to record my appreciation to counsel for the claimant, Mr Ang Wee Tiong, for his able assistance to the court. His submissions were thorough yet measured, especially bearing in mind that the defendant was acting in person.

Wong Hee Jinn
Assistant Registrar

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39 Manickavasagam s/o R M Karuppiah Pillai's affidavit dated 2 January 2024, paras 4 and 33.

40 Bharathi d/o Subbiah's affidavit filed in HC/SUM 3297/2023 dated 24 October 2023, para 22.

Ang Wee Tiong and Katie Lee Shih Ying (Lumiere Law LLP) for the claimant;
The defendant in person;
Jeffrey Yip (Insolvency & Public Trustee's Office) for the Official Assignee as the first non-party;
Manickavasagam s/o R M Karuppiah Pillai (Manicka & Co) for the second non-party.
