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Restructuring & Insolvency

# Singapore Court Provides Guidance on the Conduct of a Debtor's Bankruptcy Application

## Introduction

Debtor's bankruptcy applications may be seen as being less common than creditors' bankruptcy applications. The law regarding the conduct of debtor's bankruptcy applications, including the relevant tests and the burden of proof, is thus less often explored. In *Re Then Feng* [2022] SGHCR 1, the Singapore High Court provided guidance in this regard.

The Court considered a number of questions regarding debtor's bankruptcy applications. Who is entitled to intervene? What must the debtor show to succeed in an application? On what grounds will the Court dismiss an application, and what are the relevant tests?

In this case, the Applicant sought a bankruptcy order against himself, but various creditors opposed the application. The Court found in favour of the creditors, holding that they had a right to be heard in the proceedings.

The Court further found that the Applicant had committed a material contravention by failing to file a complete Statement of Affairs ("**SOA**"), ordering the Applicant to re-file the SOA. The Applicant eventually failed to do so within the specified deadline, and the bankruptcy application was dismissed.

In this Update, we provide a summary of the key points of the Court's decision and what it means for future debtor's bankruptcy applications.

## Brief Facts

The Applicant debtor had applied to place himself in bankruptcy.

Certain creditors successfully obtained leave to intervene to oppose the bankruptcy application ("**BA**"). Among others, the creditors applied for:

- (a) the BA to be dismissed on account of the Applicant's failure to disclose certain assets and/or disposal of assets; and

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- (b) the BA to be dismissed or stayed on the basis that triable issues had been raised as to the Applicant's professed inability to pay his debts

### Holding of the High Court

The Court found in favour of the creditors and ordered the Applicant to re-file his SOA so as to disclose the necessary information. He failed to do so and the BA was accordingly dismissed.

#### Right of intervention

The Court granted the creditors leave to intervene in the BA. This was on the basis of rule 14 of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("**PIR**"), which allows the Court to direct that service of an application and supporting affidavit be effected on any person who may be affected by the order or other relief sought, and provides that any person who is thus served or notified is entitled to be heard.

On the facts, the Court found that the creditors fell within the category of persons who may be "affected" by a bankruptcy order against the Applicant. The Court also rejected the Applicant's argument that rule 14 of the PIR does not apply to *debtor's* bankruptcy applications.

The Court thus ordered the Applicant to serve the BA, the supporting affidavit, and the SOA on the creditors.

#### Burden and standard of proof

The Court held that, in a debtor's BA, it is the debtor who must satisfy the Court of his inability to pay his debts. The Court also expressed its view that the cash flow test could be used to determine whether a debtor is unable to pay his debts, even in the context of an individual's bankruptcy.

As for the standard of proof, the Court highlighted that a debtor's admission of insolvency and his declarations as to his financial affairs would not be taken as conclusive, particularly where those opposing the application have some reasonable basis to question whether the debtor is in fact unable to pay his debts. In such circumstances, the debtor may be required to adduce evidence to substantiate the accuracy and truthfulness of his SOA, and if he fails to do so, the Court may draw an adverse inference against him.

#### Dismissal of application

Under section 315(2) of the Insolvency, Restructuring and Dissolution Act ("**IRDA**"), the Court may dismiss the bankruptcy application where it appears to the Court that the applicant has contravened any

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of the provisions of the IRDA or the PIR. The Court here had to determine whether the Applicant's alleged non-disclosures warranted the dismissal of the BA.

The Court held that, when considering whether a contravention of the IRDA or PIR warrants dismissal of the bankruptcy application, it may consider the materiality of the contravention and whether the contravention is remediable.

- (a) On materiality, a contravention would be material where it directly affects the Court's ability to fairly and properly decide the bankruptcy application.
- (b) On remediability, where a material contravention is irreparable or the debtor refuses or fails to remedy it, the Court's ability to decide the bankruptcy application would be irreparably compromised, and this would justify the dismissal of the BA. Conversely, where the contravention can be remedied in a timely fashion, the Court should ordinarily be slow to dismiss the bankruptcy application.

On the facts, the Court found that the Applicant had failed to disclose certain sums as part of his assets and to satisfactorily account for the disposal of other sums. As such, he had failed to file a complete, comprehensive and accurate SOA in contravention of section 308(2)(a) of the IRDA.

While the Court found that this was a material contravention of the IRDA, it was of the view that the deficiencies could be remedied. The Court thus ordered the Applicant to re-file the SOA completed to the Court's satisfaction by the stipulated deadline, failing which the BA would be dismissed.

The Applicant eventually failed to re-file the SOA by the deadline, leading to the dismissal of the BA.

### Opposing an application

The Court went on to consider the applicable principles when a creditor seeks to stay or dismiss proceedings in a debtor's BA.

The Court held that the same threshold applies whether it is a *debtor* seeking the dismissal of bankruptcy proceedings brought by a *creditor* or a *creditor* seeking the dismissal of bankruptcy proceedings brought by the *debtor* – the "triable issues" threshold. This means that the Court may stay or dismiss a debtor's BA if a creditor raises a triable issue (e.g., whether the debtor has other realisable assets that could be used to pay his debts, or the existence or quantum of the debt).

In this instance, the Court found that the creditors had satisfied the threshold, showing triable issues as to the Applicant's ability to pay his debts which were pending determination in certain separate

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proceedings. This would have warranted a stay of the BA pending the conclusion of the separate proceedings.

### Concluding Words

The Court's decision provides valuable guidance on the conduct of a debtor's BA, including what the applicant must prove for the application to succeed, and what must be shown for the application to be dismissed or stayed. The Court's approach to the various tests demonstrates a sense of consistency, generally adopting the equivalent principles applicable in a creditor's BA.

For further queries, please feel free to contact our team below.

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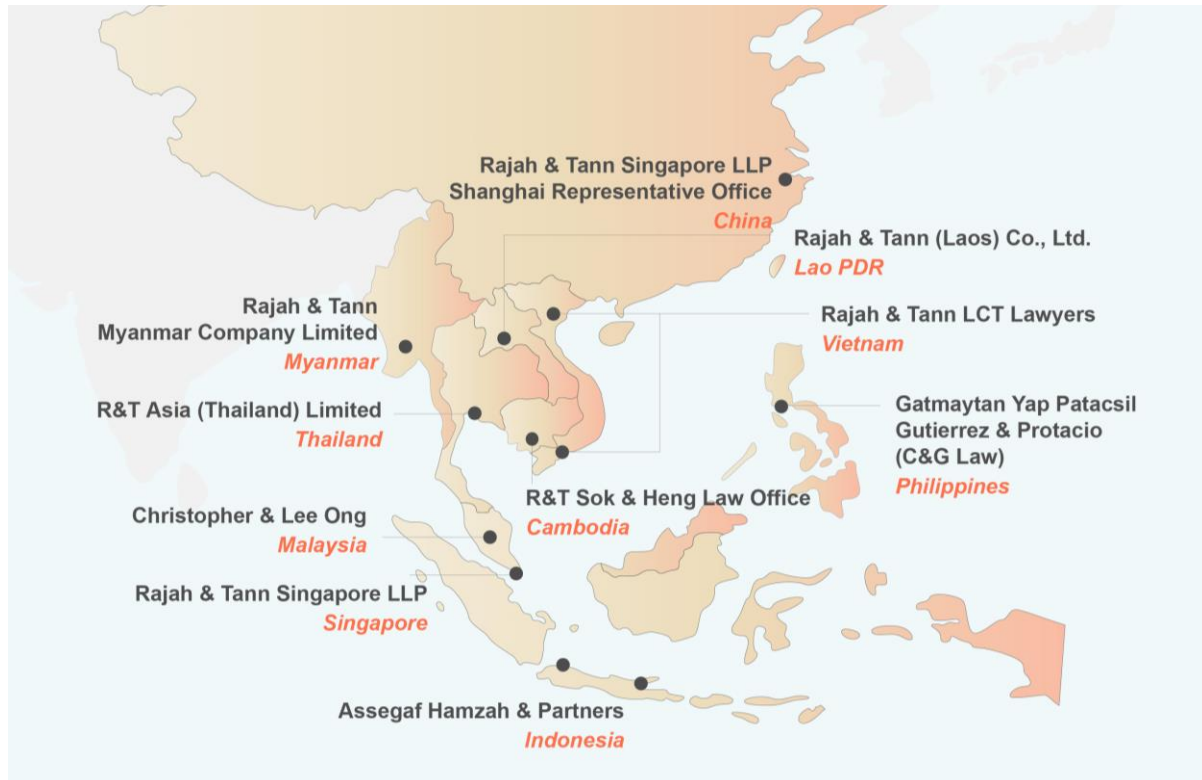
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