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

[2023] SGHC 262

Bankruptcy No 2425 of 2021 (Registrar's Appeals Nos 343, 344, and 348 of 2022, No 131 of 2023, and Summons No 268 of 2023)

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

And

In the matter of Pradeepto Kumar Biswas

Between

(1) Sabyasachi Mukherjee
(2) Gouri Mukherjee

… *Plaintiffs*

And

Pradeepto Kumar Biswas

… *Defendant*

And

Official Assignee

… *Official Assignee*

Originating Application No 152 of 2022 (Summons No 2247 of 2023)

In the matter of Order 11 Rule 11(1)
of the Rules of Court 2021

Between

Pradeepto Kumar Biswas

… *Claimant*

And

(1) Barclays Bank PLC
(2) Bank of Singapore Limited
(3) Gouri Mukherjee
(4) Sabyasachi Mukherjee

… *Respondents*

JUDGMENT

[Civil Procedure — Appeals — Adducing fresh evidence on appeal]
[Insolvency Law — Bankruptcy — Bankrupt's duties and liabilities — Duty to obtain sanction of Official Assignee]
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General Division of the High Court — Bankruptcy No 2425 of 2021 (Registrar's Appeals Nos 343, 344 and 348 of 2022, No 131 of 2023, and Summons No 268 of 2023) and Originating Application No 152 of 2022 (Summons No 2247 of 2023)
Goh Yihan JC
28 August 2023

15 September 2023 Judgment reserved.

Goh Yihan JC:

1 There are six matters before me. These matters arise from the bankruptcy proceedings Mr Sabyasachi Mukherjee and Ms Gouri Mukherjee brought against Mr Pradeepto Kumar Biswas ("Mr Biswas") in HC/B 2425/2021 ("B 2425"). For ease of exposition, and because Mr Biswas is appealing against the bankruptcy order made against him, I shall term him as the "appellant", and term Mr Sabyasachi Mukherjee and Ms Gouri Mukherjee as the "respondents". I should note that this terminology is not strictly accurate in relation to some of the matters where Mr Biswas is applying for certain orders but not in the capacity of an appellant.

2 With the above in mind, I come now to the six matters before me.

(a) HC/SUM 2247/2023 ("SUM 2247") is the appellant's application for permission for HC/OA 152/2022 ("OA 152") to continue, and to stay the rest of the other five matters until OA 152 has been heard and determined. OA 152 is the appellant's application for pre-action discovery against the respondents and other parties, on the basis that the documents sought would purportedly show that the respondents had committed perjury at the trial of HC/S 1270/2014 ("S 1270"), which would then nullify the statutory demand issued on 13 July 2021 in B 2425 (the "SD"). This would then mean that that there is no basis for B 2425 to proceed.

(b) HC/RA 343/2022 ("RA 343") is the appellant's appeal against the learned Assistant Registrar Tan Ee Kuan's ("AR Tan") dismissal of HC/SUM 3718/2022 ("SUM 3718"), which was the appellant's application to stay the bankruptcy proceedings in B 2425 until such time that OA 152 has been determined. Framed in this manner, there is undoubtedly an overlap between RA 343 and SUM 2247.

(c) HC/RA 344/2022 ("RA 344") is the appellant's appeal against the learned AR Tan's grant of order in terms of B 2425 to bankrupt the appellant, arising from the appellant's failure to satisfy the SD. The SD was based on the judgment that Belinda Ang Saw Ean J (as she then was) had granted on 11 December 2018 totalling US$3.45m (the "Judgment") in S 1270. Ang J's decision can be found in *Sabyasachi Mukherjee and another v Pradeepto Kumar Biswas and another suit* [2018] SGHC 271.

(d) HC/RA 348/2022 ("RA 348") is the appellant's appeal against the learned AR Tan's dismissal of HC/SUM 4306/2022 ("SUM 4306"),

which was the appellant's application for an order to dismiss B 2425 on the basis that the Judgment is "false", and that the SD is defective.

(e) HC/RA 131/2023 ("RA 131") is the appellant's appeal against the learned Assistant Registrar Beverly Lim's dismissal of HC/SUM 4326/2022, which was the appellant's application for a stay of execution of AR Tan's orders in B 2425 until the appeals in RA 343, RA 344, and RA 348 have been determined by this court.

(f) HC/SUM 268/2023 ("SUM 268") is the appellant's application to adduce fresh evidence for the hearing of RA 343, RA 344, and RA 348.

3 After hearing the parties, I dismissed SUM 2247. I therefore proceeded to hear the other five matters. Having taken some time to consider these other matters, I dismiss SUM 268, RA 343, RA 344, and RA 348. I make no order as to RA 131 as it is moot, a point that Mr Lim Tean ("Mr Lim"), who appeared on behalf of the appellant, agreed with. RA 131 is moot because it has been fixed to be heard together with RA 343, RA 344, and RA 348, and my determination of the appeals will negate the need to consider whether to grant a stay of execution. I now explain my reasons for my decision in this judgment.

Background facts

4 I turn first to the background facts that are common to all six matters before me. These matters originate from S 1270, which the respondents started against the appellant to recover funds that they had invested based on the appellant's allegedly dishonest advice and recommendation. This included the sum of US$3.45m that the respondents had allocated for various investments (the "Investments").

5 After the trial of S 1270, Ang J decided that the respondents had relied on the appellant to manage the Investments and interface with the various investee companies. Therefore, the appellant was the respondents' only means of access to the Investments. Ang J also found that the appellant had used the respondents' funds for his own undisclosed purposes. The learned judge therefore held, among other findings, that the appellant had breached his fiduciary duties to the respondents. She allowed the respondents' claims on the following items:

(a) SEW Investment: US$250,000;

(b) Trade Sea Investment: US$200,000;

(c) Neodymium Investment: US$250,000;

(d) Peak Investment: US$500,000; and

(e) Pacatolus Investment: US$2.25m.

6 The appellant was thus ordered to pay the respondents' investment capital of US$3.45m, as well as interest for the period between 23 January 2014 and 11 December 2018. It should be noted that OA 152 concerns only the documents pertaining to a single item in the Judgment, that is, the Pacatolus Investment. The Pacatolus Investment comprised the Pacatolus Growth Fund Class 6 (the "Pacatolus Fund"). In relation to the Pacatolus Fund, Ang J held that: (a) the appellant acted in breach of his fiduciary duty to the respondents, which obliged the appellant to act on the respondents' behalf to interface with the investee company, monitor the investments, and on maturity (or whenever the respondents desired), redeem the investments; and (b) the appellant was liable to the respondents in deceit as he failed to let the respondents know how

the moneys would be used, and that the Pacatolus Fund was neither a bank product nor capital protected.

7 The appellant filed an appeal against the Judgment to the Court of Appeal. In *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another* [2019] SGCA 79, the Court of Appeal struck out the appeal due to the appellant's breach of an unless order.

8 Subsequently, the appellant did not take any steps to challenge the Judgment. However, the appellant did not satisfy the Judgment even as the respondents' solicitors sent several reminders for payment. The respondents finally issued the SD in respect of the Judgment debt on 19 July 2021. Following this, the appellant then commenced a series of proceedings and filed a number of appeals.

9 Most pertinently for present purposes, on 2 August 2021, the appellant applied in HC/OSB 74/2021 ("OSB 74") to set aside the SD. In OSB 74, the appellant argued that the SD should be set aside because: (a) the debt is disputed on grounds that appeared to be substantive; and (b) the respondents had committed perjury at the trial of S 1270 by misleading Ang J into believing that the Investments were shams. The learned Assistant Registrar Jean Chan ("AR Chan") dismissed OSB 74 on 16 September 2021. On appeal, the High Court in HC/RA 260/2021 ("RA 260") agreed with AR Chan that there were no grounds for the SD to be set aside. The court did not make any finding as to whether the respondents had possession or control of the Investments or whether the Investments had value. The court also granted the respondents liberty to file bankruptcy proceedings against the appellant after 7 October 2021, being 21 days after the decision in OSB 74.

10 As such, on 8 October 2021, the respondents filed B 2425 against the appellant. At around the same time, the appellant filed other applications:

(a) On 6 October 2021, the appellant applied for a re-trial of S 1270 in CA/OS 24/2021 ("OS 24"). The Court of Appeal dismissed the application on the basis that the court lacked jurisdiction, the application lacked merit in any event, and the application an abuse of process (see the Court of Appeal decision of *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another and another matter* [2022] 2 SLR 340 at [93]).

(b) On 12 October 2021, the appellant applied for leave to appeal against the decision in RA 260 in HC/SUM 4721/2021 ("SUM 4721"). The learned Assistant Registrar Navin Anand held that assuming leave was even required under the Fifth Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA"), the application should have been filed by originating summons to the Appellate Division of the High Court pursuant to the Sixth Schedule of the SCJA. Therefore, he granted the appellant leave to withdraw SUM 4721.

(c) Following SUM 4721, on 8 November 2021, the appellant filed AD/OS 53/2021 ("OS 53") for: (i) leave to appeal against the decision in RA 260; (ii) an extension of time to seek leave to appeal; and (iii) an extension of time to file an appeal against the decision in RA 260. The Appellate Division of the High Court dismissed the application because, among other reasons, leave was not required to appeal against the decision in RA 260 in s 29A(1) of the SCJA, and the appellant's application was filed after much delay with no good explanation. Further, on an assessment of the merits of the appeal, it was unlikely to succeed given the outcome of OS 24.

(d) On 10 November 2021, the appellant filed HC/S 921/2021, claiming unjust enrichment arising from the respondents' attempts to enforce the Judgment. The learned Assistant Registrar Gan Kam Yuin ("AR Gan") struck out the application on 6 May 2022.

11 Following the dismissal of these applications, B 2425 was fixed for hearing on 18 November 2021. However, the appellant then filed further applications to stay the hearing of B 2425. It is not necessary for me to recount all of these applications, save to say that they were largely found to be vexatious to the respondents and therefore amounted to an abuse of process. To briefly summarise, the relevant applications are as follows:

(a) On 17 May 2022, the appellant applied in HC/SUM 1848/2022 for a stay of proceedings in B 2425. AR Gan granted the stay on the condition that the appellant provides security for costs in respect of the Judgment debt. However, the appellant did not eventually provide security.

(b) On 18 May 2022, the appellant applied for permission to appeal the decision in OS 53 in CA/OA 2/2022 ("OA 2"). After the parties tendered their submissions on 5 July 2022, the appellant then filed CA/SUM 15/2022 ("SUM 15") to recuse Andrew Phang Boon Leong JCA from hearing OA 2. The Court of Appeal dismissed both applications in its decision of *Pradeepto Kumar Biswas v Gouri Mukherjee and another* [2022] 2 SLR 1347 (at [64]), because "[n]either, in [their] opinion, bore any semblance of merit". With respect to OA 2, the court awarded costs on the higher end of the relevant range found in Appendix G of the Supreme Court Practice Directions 2021 because of the lack of merit in the application (at [65(a)]). With respect to SUM 15,

> "it did not even come close to succeeding", and "[d]espite the gravity of SUM 15's subject matter, the allegations and arguments made by [the appellant] were completely unsubstantiated" (at [65(b)]). The court therefore awarded costs to the respondents on an indemnity basis .

12 On 25 May 2022, the appellant filed OA 152. As I mentioned above, OA 152 is the appellant's application for pre-action discovery of certain categories of documents (the "Pacatolus Documents") relating to the Pacatolus Fund. This application was taken out against Barclays Bank PLC and Bank of Singapore Limited, which are the first and second respondents in OA 152. The appellant added the respondents as parties to OA 152 subsequently.

13 The parties then appeared before AR Gan on 7 October 2022 to proceed with the hearing of the question as to whether B 2425 should be stayed. However, 45 minutes before that hearing, the appellant filed SUM 3718 to seek a fresh stay of B 2425 pending the determination of OA 152. SUM 3718 was eventually fixed for hearing before AR Tan on 24 November 2022. On 24 November 2022, the appellant requested for an adjournment so that he could review the respondents' submissions which he had been served with within the deadlines stipulated by the court. AR Tan nonetheless adjourned SUM 3718 to 1 December 2022. Then, on 30 November 2022, the appellant filed SUM 4306 to dismiss B 2425 on grounds that, among other things, it is based on a "false case" (in S 1270).

14 Finally, on 1 December 2022, the parties appeared before AR Tan for the hearing of SUM 3718, SUM 4306, and B 2425. AR Tan dismissed SUM 3718 and SUM 4306, and adjudged the appellant a bankrupt in B 2425. AR Tan's decisions form the subject matters of some of the matters before me.

SUM 2247

15 At the hearing before me on 28 August 2023, it was necessary that I first consider SUM 2247, which was the appellant's application for all the other five matters before me to be stayed pending the resolution of OA 152. After hearing the parties' submissions on SUM 2247, I dismissed it and proceeded to hear the other four matters (excluding RA 131).

16 The primary issue in SUM 2247 was whether the appellant required the Private Trustee in Bankruptcy's (the "PTIB") previous sanction to continue with the proceedings in OA 152. It was not disputed that the appellant has not obtained the PTIB's previous sanction. Neither did the appellant show that he has been exempted from obtaining the PTIB's previous sanction. Indeed, in a letter dated 6 July 2023, the PTIB took the position that its previous sanction was necessary for the appellant to continue with the proceedings in OA 152.[1]

17 I dismissed SUM 2247 because the appellant had not obtained the PTIB's previous sanction, which is necessary for him to continue with the proceedings in OA 152. Since he had not obtained the PTIB's previous sanction, the appellant cannot continue with OA 152, such that any summons under that action, such as SUM 2247, must also be dismissed. In any event, in so far as SUM 2247 primarily prays for permission for OA 152 to continue, it too can be dismissed on the basis that the appellant has not obtained the PTIB's previous sanction for OA 152 to continue. In this regard, the applicable statutory provisions that relate to sanction for a bankrupt to continue with legal proceedings, whether commenced by himself or commenced against him, can

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[1] Affidavit of Pradeepto Kumar Biswas for HC/OA 152/2022 (HC/SUM 2247/2023) dated 26 July 2023 at p 10.

be found in ss 327 and 401 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). More pertinently, ss 401(1) and 401(3) provide as follows:

> **Disabilities of bankrupt**
>
> **401.**—(1) Where a bankrupt has not obtained his or her discharge —
>
> (*a*) unless the bankrupt has obtained the previous sanction of the Official Assignee, the bankrupt is incompetent to commence, continue or defend —
>
> (i) any action other than —
>
> (A) an action for damages in respect of any injury to the bankrupt's person; or
>
> (B) a matrimonial proceeding; or
>
> (ii) any appeal arising from any action referred to in sub-paragraph (i); and
>
> …
>
> (3) A bankrupt who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

Pursuant to s 39 of the IRDA, the PTIB has the same functions, duties, and powers as the Official Assignee referred to in s 401(1).

18 The meaning and application of s 401(1) is clear. The Court of Appeal dealt with s 401(1)'s predecessor provision – s 131(1) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) (the "BA"), which was the prevailing statute in force at that time – in *Standard Chartered Bank v Loh Chong Yong Thomas* [2010] 2 SLR 569 ("*Thomas Loh*"). Because of the material similarities in the framing of s 131(1) of the BA and s 401(1) of the IRDA, I was of the view that the Court of Appeal's observations on s 131(1) in *Thomas Loh* apply equally to s 401(1). In this regard, the Court of Appeal explained in *Thomas Loh* that the

requirement of previous sanction was introduced to "give the [Official Assignee] full control of the administration of a bankrupt's estate for the benefit of the creditors" (at [28]). This much is clear from a survey of the legislative history of s 131(1), which I summarise as follows.

(a) Section 131(1)(*a*) of the BA can be traced back to s 33(1)(*a*) of the Bankruptcy Ordinance 1888 (SS Ord No 2 of 1888) of the Straits Settlements (the "Bankruptcy Ordinance"). This was an innovation in the bankruptcy legislation of the Straits Settlement, as it was not found in the bankruptcy laws of England or any other Commonwealth jurisdiction (see *Thomas Loh* at [20]).

(b) In 1885, the then Governor of the Straits Settlements ordered an enquiry into the then existing bankruptcy legislation. The Commission Report (at para 7) suggested that a provision be introduced to protect creditors, which would include measures "as desirable for the protection of trade and as calculated to check fraud to a great extent" (see *Thomas Loh* at [21], citing Appendix No 46 of Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council of the Straits Settlements for 1885*). This suggested provision stated that "the bankrupt shall be incompetent to maintain any civil action for a sum or cause of action above $50 without the consent of the Official Receiver". This bears an unmistakeable resemblance to s 131(1) of the BA (see *Thomas Loh* at [22]).

(c) Similar concerns were echoed in the course of the debate in the Straits Settlements Legislative Council on the Bill which was subsequently enacted as the Bankruptcy Ordinance. In particular, the then Attorney-General emphasised that "bankruptcy does not affect the

> creditors alone, but is a matter in which the community as a whole is interested". The undischarged bankrupt will "labour under certain decided disadvantages", including that "he will be incapable of maintaining an action without the previous sanction of the Official Assignee" (see *Thomas Loh* at [24]–[26]).

19 As the Court of Appeal stressed, notwithstanding the more enlightened view prevailing in the community which acknowledges that businesses and personal undertakings can falter and/or fail for entirely legitimate reasons and that bankrupts should not be permanently stigmatised, there is no gainsaying the fact that Parliament nevertheless still considers it important that significant disabilities should continue to be imposed on bankrupts during their bankruptcy (see *Thomas Loh* at [27]). With this background in mind, it is clear that the requirement for "previous sanction of the Official Assignee" means "*prior* sanction and not *retrospective* sanction" [emphasis in original] (see *Thomas Loh* at [28]).

20 Thus, unless the exceptions in s 131(1) of the BA (and now s 401(1) of the IRDA) applied, the bankrupt is incompetent to commence, continue, or defend "any action" without the previous sanction of the Official Assignee or the PTIB, as the case may be.

21 In the present case, it is clear that OA 152 does not fall within either of the exceptions provided for in s 401(1)(*a*)(i). First, it is not "an action for damages in respect of an injury to the bankrupt's person". The Court of Appeal considered the substantially identical phrase in the context of s 131(1)(*a*) of the BA in *Thomas Loh*. The court held (at [42]) that such an action is "concerned with physical injury to the bankrupt's *body* (which may include, *inter alia*, injury to the bankrupt's *mind* such as nervous shock and psychological or

psychiatric injury)" [emphasis in original]. OA 152 is clearly not an action concerned with any such physical injury to the appellant's body. Second, OA 152 is also not a "matrimonial proceeding", which is defined by s 401(4) to mean a proceeding under, among others, Parts 8, 9, or 10 of the Women's Charter 1961 (2020 Rev Ed). As such, none of the exceptions to s 401(1)(*a*) apply to the appellant. The appellant must therefore seek the PTIB's previous sanction before he can continue with OA 152. Since he has not done so, he cannot so continue, and SUM 2247 must be dismissed.

22 For completeness, I also considered the appellant's reliance on the High Court decision of *Re Mohamed Yunos Valibhoy* [1991] SGHC 91 ("*Yunos*") for the proposition that the PTIB's previous sanction is not needed for him to continue with OA 152. In that case, the High Court held that the word "action" as used in then s 38(1)(*a*) of the then prevailing Bankruptcy Act, was restricted to "legal proceedings to recover property vested in the Official Assignee under section 24(4) of the Bankruptcy Act". The court had justified this approach on the basis that the word "action" is used only in respect of s 38(1), in contrast to the wider expression, "action or other legal proceedings" used elsewhere in the Bankruptcy Act. For completeness, s 38(1)(*a*) had read as follows:

> **38.**—(1) Where a bankrupt has not obtained his discharge —
>
> (*a*) the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Official Assignee;

As such, the appellant argued that because OA 152 is not an action to recover property vested in the PTIB but is rather an application for pre-action discovery, the PTIB's previous sanction is not needed in the present case.

23 I disagreed with the appellant's argument because it is clearly incompatible with the plain meaning of s 401(1)(*a*) of the IRDA, in so far as the provision conveys an absolute prohibition on a bankrupt to commence, continue, or defend "any action" without the requisite sanction. The appellant's argument was also plainly inconsistent with the legislative intention behind s 401(1)(*a*), which is to give the Official Assignee full control over the administration of the bankrupt's estate for the benefit of creditors. I therefore also disagreed with the appellant that "any action" does not include an application for pre-action discovery or any such interlocutory application.

24 Moreover, the High Court decision of *Yunos* has clearly been superseded by the Court of Appeal decision of *Thomas Loh* and subsequent decisions. As I alluded to above, the Court of Appeal was quite clear in *Thomas Loh* that the effect of s 131(1)(*a*) of the BA was to render the bankrupt incompetent to commence, continue, or defend "any action" without the previous sanction of the Official Assignee or the PTIB, subject *only* to the two exceptions found in s 131(1)(*a*)(i) of the BA. These observations are equally applicable to s 401(1)(*a*)(i) of the IRDA. Indeed, the Court of Appeal in *Ho Yu Tat Edward v Chen Kok Siang Joseph and another* [2020] 1 SLR 1357 applied *Thomas Loh* and held (at [39] and [46]) that a bankrupt must "obtain the [Official Assignee's] prior sanction even in respect of claims which do not vest in the [Official Assignee], so long as the claims do not fall within the exceptions listed in s 131(1)(*a*) of the Singapore Bankruptcy Act" and that a bankrupt is "required to obtain the sanction of the [Official Assignee] before he commences 'any action'… [which] includes claims which vest in the [Official Assignee] and claims that do not vest in the [Official Assignee]". This last statement appears to have overruled *Yunos*, even if this was not made clear expressly.

25 For all of these reasons, I dismissed SUM 2247, with the result that there was no further need to consider OA 152, which was not before me in any event pending the resolution of SUM 2247.

26 At the hearing before me, Mr Lim then submitted that I should still stay the other matters and allow the appellant to seek the PTIB's sanction to continue with OA 152. In essence, Mr Lim had asked me to keep OA 152 in abeyance pending the appellant's resolution of the sanction issue with the PTIB. He explained that the PTIB had taken inconsistent positions as to whether its previous sanction was needed, and this was why the appellant had filed SUM 2247 to seek the court's direction on this matter. However, the appellant has not exhibited these other correspondences with the PTIB in any of his affidavits. In fact, in the only letter that was exhibited dated 6 July 2023, the PTIB reiterated that its previous sanction is needed for OA 152. In any event, even taking the appellant's case at its highest, and that there was some uncertainty as to the PTIB's position on the need for previous sanction, I did not think that I had the power under s 401(1) to keep OA 152 in abeyance once I decided that the PTIB's previous sanction was needed. This is because s 401(1) is quite clear on its face that a bankrupt is incompetent to commence, continue, or defend any action without such previous sanction. It must follow that once I decided that the appellant required such previous sanction but did not obtain it, he had become incompetent to continue with OA 152, such that the action falls away. As such, I then proceeded to hear the other four matters (excluding RA 131), for which I reserved my decision. I now give my decision and reasons below.

SUM 268

27 I turn first to SUM 268 ahead of the other matters since the appellant seeks to adduce fresh evidence that may affect the hearing of RA 343, RA 344, and RA 348. The evidence is contained in the appellant's affidavit dated 1 February 2023. According to the appellant, the evidence relates to "how the hearing of the [three] applications [before AR Tan] proceeded that morning and how natural justice was breached".[2] The evidence also explains "how the [a]ppellant is a person of means and is not insolvent and why a bankruptcy order against him should never have been made".[3]

28 I begin with the applicable law. Whether it is the Rules of Court (2014 Rev Ed) (the "ROC 2014") or Rules of Court 2021 that applies, and regardless of whether the applicable statutory provision prescribes as such (see, *eg*, "special grounds" in O 55D r 11(1) and O 57 r 13 of the ROC 2014), the courts have consistently imposed the threefold requirements set out in the seminal English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") (see, *eg*, the Court of Appeal decisions of *Toh Eng Lan v Foong Fook Yue and another appeal* [1998] 3 SLR(R) 833 at [34], *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 at [99], and *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [21]). In this regard, the three requirements in *Ladd v Marshall* are:

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2 Appellant's Written Submissions for RA 343, RA 344, and RA 348 dated 1 February 2023 ("AWS") at para 9.

3 AWS at para 9.

(a) first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial or hearing;

(b) second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

(c) third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

29 However, the *Ladd v Marshall* requirements do not apply with full force in all appeals. In this regard, the Court of Appeal in *Anan Group* set out a two-step analysis that a court should adopt in dealing with an application to adduce fresh evidence on appeal. At the first stage, the court should consider the nature of the proceedings below and evaluate the extent to which it bore the characteristics of a full trial. The cases should be analysed as lying on a spectrum as follows (see *Anan Group* at [35]).

(a) On one end of the spectrum, there are appeals against a judgment after trial or a hearing bearing the characteristics of a trial, where the court should apply the *Ladd v Marshall* requirements in its full rigour.

(b) On the other end of the spectrum, which consists of interlocutory appeals or appeals arising out of hearings which lack the characteristics of a trial, the court remains guided by the rule in *Ladd v Marshall* but is not obliged to apply it in an unattenuated manner.

(c) However, for cases falling in the middle of the spectrum, which include appeals against a judgment after a hearing of the merits but which did not bear the characteristics of a trial, the court is to determine

> the extent to which the first requirement, *ie*, the criterion of non-availability, should be applied strictly. Relevant non-exhaustive factors include: (i) the extent to which documentary and oral evidence was adduced for the purposes of the hearing; (ii) the extent to which parties had the opportunity to revisit and refine their cases before the hearing; and (iii) the finality of the proceedings in disposing of the dispute between the parties.

30 At the second stage, the court should determine whether there are any other reasons for which the *Ladd v Marshall* requirements ought to be relaxed in the interests of justice (see *Anan Group* at [37]–[55]). In any event, the court should conduct a balancing exercise between the interests of finality and the right of an applicant to put forth relevant and credible evidence, having regard to the considerations of proportionality and prejudice (see *Anan Group* at [59]).

31 Bearing these principles in mind, in my judgment, SUM 268 should be dismissed.

32 In the first place, I agree with the respondents that, properly considered, some of this so-called evidence is not really evidence. They are more akin to submissions. Therefore, SUM 268 should never have been made in the first place because there is no "evidence" to admit. Although the appellant is perfectly entitled to make his submissions about why he thought that natural justice was breached at the hearing below, he is not entitled to characterise these submissions as "evidence" and seek to "admit" as such.

33 Even if I am wrong and the appellant is indeed seeking to adduce evidence, I find that the appellant has not satisfied the requirements of the *Ladd v Marshall* test. For present purposes, I find that the present case is one that falls

in the middle of the spectrum identified in *Anan Group*, as the three applications before AR Tan involved a hearing of the merits but did not bear the characteristics of a trial. Having regard to the non-exhaustive factors suggested in *Anan Group*, I am satisfied that the criterion of non-availability should apply strictly in the present case. This is chiefly because the applications before AR Tan were intended to finally dispose of the dispute between the parties.

34 I turn to examine the *Ladd v Marshall* requirements. First, I am satisfied that some parts of the appellant's affidavit dated 1 February 2023 contained the appellant's account of the hearing before AR Tan on 1 December 2022. Assuming that this constitutes "evidence", which I do not think it is (see [32] above), this naturally would not have been available prior to the hearing on 1 December 2022. Be that as it may, the other parts of the affidavit, such as the documents annexed to the affidavit, have all been available prior to 1 December 2022. The appellant has not explained why those documents could not have been obtained with reasonable diligence for use at the hearing before AR Tan. I therefore conclude that these documents fail the first requirement of the *Ladd v Marshall* test as to non-availability.

35 Second, having perused AR Tan's detailed minute sheets of the applications before him, I am satisfied that natural justice has not been breached. AR Tan accorded the appellant the full process of the law. I am also satisfied that the appellant has had ample opportunity to present his case before AR Tan and the Singapore courts, given the multiple applications that he has filed since the Judgment was granted on 11 December 2018. As such, I conclude that the appellant's evidence in relation to the hearing before AR Tan fails the second requirement of the *Ladd v Marshall* test. It is irrelevant and will not have an important influence on the result of the present appeals.

36 Third, I do not think that the appellant's evidence that he is a person of means is relevant. If the appellant has the means to satisfy the SD, then it is inexplicable why he has not done so since it was issued in July 2019, or even paid the Judgment debt when it first arose in December 2018 to prevent the issuance of the SD. Indeed, it is irrelevant whether he is well-off or not because the basis of B 2425 is that the appellant has failed – either because he has no means or because he has intentionally refused – to satisfy the SD. In either scenario, the basis of the bankruptcy order made in B 2425, which is the appellant's failure to satisfy the SD, is met. Even if that evidence is relevant, I am also not satisfied that the appellant has the means to satisfy the SD. Although he had asked for six weeks from AR Tan to bring in the funds to satisfy the SD on 1 December 2022, more than six *months* have now passed. If he indeed had the means to do so, the appellant could have easily raised the funds in this period to satisfy the SD and set aside the bankruptcy order against him. While Mr Lim submitted on the appellant's behalf that the bankruptcy order affected the latter's ability to pay, the fact remains that the appellant has had ample opportunity to pay up even before the bankruptcy order was made but chose not to do so. I therefore also conclude that this evidence fails the second requirement of the *Ladd v Marshall* test in that it will not have an important influence on the result of the present appeals.

37 Fourth, the evidence which the appellant provides in his affidavit dated 1 February 2023 as to his supposed means is not supported by adequate documentary evidence. Indeed, all that he states is the following (see paragraphs 21 and 22):

> 21. I have all the means to pay off the judgment debt. I am 100% owner of the Indian Ocean Group which is headquartered in Singapore with global operations in multiple regions – India, Sri Lanka, Maldives, the Middle East to name a few. It has business divisions spanning real estate, merchant trading

> distressed assets, technology, food processing and distribution. IOG, with the grace of God and its well-wishers, has a global workforce in excess of 500 people on-date, across all its subsidiaries and associated entities.
>
> 22. In Singapore, IOG's presence, to name a few, is in: -
>
> (a) FC Asia Pte Ltd ("**FC Asia**"), a pan-Asia plant food, e-commerce distribution business for food majors;
>
> (b) Energy and Environmental Engineering Pte Ltd ("**EEEPL**"), which owns the award-winning patented technology "Air-O-Water", a solar microgrid design business, and a precision robotics and design engineering business;
>
> (c) D-Simlab Technologies Pte Ltd ("**D-Simlab**"), in which IOG has been its first pre-series A investor since 2012 and is a spin-out of A*STAR, which is a statutory board under the Ministry of Trade and Industry dedicated to fostering scientific research and knowledge-based economy; and
>
> (d) Ecosoftt Pte Ltd ("**Ecosoftt**"), a social enterprise where IOG led its convertible loan reset and its first capitalisation as a shareholder in 2015. In 2016, Ecosoftt went on to win the Zayed Sustainability Prize 2019. Exhibited in "***PKB-1***" at ***pages* 198 to 199** is a Facebook post by Mr Masagos Zulkifli congratulating Ecosoftt. Ecosoftt is head-quartered at the Public Utilities Board.
>
> [emphasis in original]

38 However, beyond some further elaboration of Indian Ocean Group's presence in Singapore, as well as a Facebook post of Minister Masagos Zulkifli "congratulating" one of the local companies,[4] the appellant has provided no evidence on the financial status of any of these companies, nor has he even exhibited any documentary proof of his ownership of Indian Ocean Group. I

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[4] Affidavit of Pradeepto Kumar Biswas for HC/SUM 268/2023 dated 1 February 2023 at pp 198–199.

therefore conclude that this evidence also fails the third requirement of the *Ladd v Marshall* test in that it is not apparently credible.

39 For these reasons, I dismiss SUM 268.

RA 343 and RA 348

40 I turn then to RA 343 and RA 348, which both relate to the stay and dismissal of B 2425 on the common ground that the Judgment is "false", and that the SD is defective.

41 I dismiss both RA 343 and RA 348 because these issues have been considered and dismissed by the courts on various occasions. As such, the appellant is precluded by the doctrine of issue estoppel from relitigating these very issues (see the High Court decision of *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd and others* [2020] 5 SLR 665 at [43] and the Court of Appeal decision of *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at [179]). It is aptly clear that the requirements of issue estoppel are satisfied in the present case. In RA 343 and RA 348, the appellant is seeking, respectively, a stay and dismissal of B 2425 on the grounds that the Judgment is "false", and that the SD is defective. Yet, as I have recounted at length above, these issues have been extensively considered and dismissed by the courts. Indeed, I find that the appellant's repeated attempts to relitigate these issues before the courts to be a clear abuse of process designed to vex the respondents.

42 Further, in relation to RA 343, I also find that the appellant has not discharged his burden of justifying a stay of B 2425. It is clear that under s 315

of the IRDA, the court can stay bankruptcy proceedings. In this regard, the applicable standard that an applicant seeking a stay needs to satisfy is the same as that for resisting an application for summary judgment. Thus, the appellant in the present case must raise triable issues (see the Court of Appeal decision of *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 ("*Chimbusco*") at [16] and [18]). However, it is not enough for the appellant to simply *allege* a triable issue without more. As the Court of Appeal observed in *Chimbusco* (at [30]), "it will not suffice for a debtor to raise spurious allegations in order to fend off bankruptcy proceedings". While the court made these observations in the context of ss 64, 65(5), and 65(6) of the BA, these provisions are substantively similar to ss 315, 316(5), and 316(6) of the IRDA, and therefore remain highly relevant in the interpretation of these provisions. Moreover, where there is a judgment debt, the applicant has a more onerous burden and must raise more than triable issues (see the High Court decision of *Seto Wei Meng (suing as the administrator of the estate and on behalf of the dependants of Yeong Soek Mun, deceased) and another v Foo Chee Boon Edward* [2021] SGHCR 5 at [35] and [40]).

43 Applied to the present case, the appellant's claim, taken at its highest, is that the discovery of the so-called Pacatolus Documents would prove that the Pacatolus Fund did exist. In this regard, I agree with AR Tan that Ang J did not make any finding in S 1270 that the Pacatolus Fund did not exist. Thus, the discovery of the Pacatolus Documents would not prove that the respondents had committed perjury at the trial or S 1270. More fundamentally, such discovery would also not disturb Ang J's decision in S 1270. As AR Tan rightly observed, Ang J's decision on the appellant's liability in relation to the Pacatolus Fund was based on the following findings: (a) that the appellant had breached his

fiduciary duties to the respondents by his conduct after the respondents invested in the Pacatolus Fund; and (b) that the appellant was liable in deceit as he had made fraudulent misrepresentations to the respondents in relation to the Pacatolus Fund investment. These reasons have nothing to do with a finding that the Pacatolus Fund did not exist. Thus, the appellant has not even raised any triable issue in relation to the Judgment, let alone met the more onerous standard to obtain a stay in respect of the Judgment debt.

44 Moreover, the appellant has not challenged his liability in respect of the other investments in S 1270, which amount to a total principal sum of US$1.2m. This sum is still part of the subject matter of the SD that remains unsatisfied. Thus, *even if* the appellant is correct that Ang J had made a finding of fact on the non-existence of the Pacatolus Fund, he would still be made a bankrupt by virtue of him not contesting his liability for this sum of US$1.2m.

45 Accordingly, I dismiss RA 343 and RA 348.

RA 344

46 I also dismiss RA 344 because the appellant has not raised any other argument, apart from those in RA 343 and RA 348, in relation to AR Tan's decision to grant the bankruptcy order in B 2425. Indeed, in the appellant's written submissions, it is stated that "SUM 3718/2022 (stay) and SUM 4306/2022 (Dismissal of bankruptcy application) also goes [*sic*] to the heart of the Statutory Demand and the bankruptcy application".[5] It therefore must follow the dismissal of RA 343 and RA 348, and the substantial grounds therein, that RA 344 is also dismissed.

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5 AWS at para 12.

Miscellaneous points

47 For completeness, I address two miscellaneous points that the appellant raises in his written submissions.

48 First, the appellant argues that the SD was in breach of "[rr] 64(1)(*e*) and (2) of [the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020]",[6] which provides as follows:

> **Form and contents of statutory demand**
>
> **64.**—(1) A statutory demand —
>
> …
>
> (*e*) if the creditor making the statutory demand holds any property of the debtor or any security for the debt, must specify —
>
> (i) *the full amount of the debt; and*
>
> (ii) *the nature and value of the property or the security;* and
>
> …
>
> (2) If the creditor making the statutory demand holds any property of the debtor or any security for the debt, the amount of the debt of which payment is claimed is the full amount of the debt less the amount specified in the statutory demand as the value of the property or security.
>
> [emphasis added]

I fail to see the relevance of this provision. In any case, beyond citing this provision and making a bare assertion that the SD is in breach of it, the appellant does not explain *why* the SD is in breach of the provision.

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6 AWS at para 14.

49 Second, the appellant argues that AR Tan was wrong in not granting the six weeks which he requested for in order to bring in sums to satisfy the SD. The appellant then says that he has satisfied the three grounds in r 95(2) of the PIR 2020, which sets out the grounds on which a bankruptcy hearing can be adjourned. I fail to see the relevance of this because the appellant has not appealed against AR Tan's decision to not adjourn the hearing of B 2425.

Conclusion

50 For the reasons above, I dismiss SUM 2247, SUM 268, RA 343, RA 344, and RA 348. I make no order as to RA 131 as it is moot. In conclusion, I agree with the respondents that they have had to contend with the appellant's numerous applications over the years to deprive them of their fruits under the Judgment. As the courts have repeatedly found, the appellant's applications are clearly intended to vex the respondents and constitute a clear abuse of process. Indeed, as I said above, I find that the present matters before me were also commenced by the appellant in abuse of process. These are all baseless and spurious attempts to delay the enforcement of the Judgment and the ensuing bankruptcy order in B 2425.

51 I also observe that the appellant had in the hearing before AR Tan labelled the court's decision as a "sham judgment and order" and stated that the courts are "corrupt" and "enforced [*sic*] in sham exercises" and that AR Tan is a "corrupt judge". While the appellant had appeared in person before AR Tan, when he had not been represented by solicitors, these are clearly unacceptable and improper statements about the Singapore courts. At the hearing before me, I pointed these statements out to Mr Lim, who appeared for the appellant. While Mr Lim acknowledged that these were clearly unacceptable and improper

statements and said that he will speak to the appellant about this, I observed to him that the appropriate actions may still be taken against the appellant.

52 In closing, the parties are to tender their written submissions on costs, limited to seven pages each, within 14 days if this decision. If the parties do not tender their written submissions on time, the court will proceed to make the appropriate costs order regardless without any further notice.

Goh Yihan
Judicial Commissioner

See Chern Yang, Cheng Hiu Lam Larisa and Joshua Quek Wen Chieh (Drew & Napier LLC) for the plaintiffs in HC/B 2425/2021 and the third and fourth respondents in HC/OA 152/2022;
Lim Tean (Carson Law Chambers) for the defendant in HC/B 2425/2021 and the claimant in HC/OA 152/2022;
Chan Daniel, Yu Zheng Yi Victoria and Ang Guo Qiang (WongPartnership LLP) for the first respondent in HC/OA 152/2022;
Tham Hsu Hsien, Lim Jie Hao Sampson and Abigail Anousha Fernandez (Allen & Gledhill LLP) for the second respondent in HC/OA 152/2022;
Brenda Chow (RSM Corporate Advisory Pte Ltd) for the private trustee in HC/OA 152/2022.