**THE HIGH COURT**

**BANKRUPTCY**

**[No. 1920P]**

**IN THE MATTER OF A PETITION FOR ADJUDICATION OF BANKRUPTCY BY THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND AGAINST ALISON SMYTH (OTHERWISE ALISON LAYDIER)**

**JUDGMENT of Ms. Justice Costello delivered on the 16th day of January, 2017**

1. In this case the court is asked to consider whether or not it should exercise its discretion to adjourn, stay or dismiss the petition for the adjudication of the debtor as a bankrupt pursuant to the provisions of the s. 14 (2) of the Bankruptcy Act, 1988, as amended, and/or the inherent jurisdiction of the court.

**The facts**

2. The facts of this case are largely undisputed. The petitioner obtained a judgement against the debtor on 13th November, 2014 in the sum of €2,797,754.52. On the 3rd July, 2015 the petitioner demanded payment of the sum then due and owing pursuant to the judgment. On 12th October, 2015 a bankruptcy summons was issued in favour of the petitioner and, as the petitioner did not discharge the sum claimed, she committed an act of bankruptcy. Within three months of the act of bankruptcy the petitioner presented a petition for the adjudication of the debtor as a bankrupt on 26th January, 2016 returnable for 7th March, 2016. It is accepted that the debtor is domiciled within the State and thus that the requirements of s. 11 (1) of the Act of 1988 have been complied with.

3. The debtor engaged the services of a personal insolvency practitioner to ascertain whether her inability to pay her debts could be more appropriately dealt with by an alternative to bankruptcy, more particularly a debt settlement arrangement or a personal insolvency arrangement. She obtained a protective certificate pursuant to section 61 of the Personal Insolvency Act, 2012, as amended. The debtor prepared a prescribed financial statement. Based upon the information provided by the debtor, the personal insolvency practitioner prepared a debt settlement arrangement (DSA). The proposal showed that the debtor was married with four dependant children. She is a full-time parent and is not employed and is living as a caretaker in her current residence. She has no assets and no secured debts. As of the date of the preparation of the DSA the sum due to the petitioner had risen to €3,143,603. There were also monies due to KBC Bank (Ireland) plc, Promontoria ( the purchaser of a debt formerly due to Ulster Bank (Ireland) plc) and Ulster Bank (Ireland) plc, giving a total of €8,355,658. Her sole monthly income is €560 from the Department of Social Protection but this exceeds her monthly expenditure by €116.08.

4. It is thus clear from the prescribed financial statement and the proposed DSA that the debtor has no assets to be realised and she has no surplus income available or the prospect of any such surplus income available from which to make income payments in respect of the debts due to her creditors.

5. The proposed DSA was based upon an offer by her grandmother to pay €150,000 towards a resolution of her debts. It was proposed that a lump sum be paid within two months of the court approval of the DSA and that the creditors would be in receipt of the monies payable within three months of the approval of the DSA. Under the proposal KBC Bank plc would receive 7.35% plus 0.83% (in respect of two separate debts) of the settlement monies being €10,679.43 plus €1,209.89; the petitioner would receive 37.62% being €54,659.66, Promontaria would receive 54.11% being €78,619.57 and Ulster Bank would receive 0.08% being €118.95. This makes a total repayment to unsecured creditors net of the Personal Insolvency Practitioner's fees of €145,287.50.

6. The DSA included a comparison with the expected outcome in the event of a bankruptcy. If the DSA were approved then the sum of €145,288 was available for unsecured creditors, which amounted to recovery of 1.74% of the total debt. The recovery in the event of the bankruptcy of the debtor was nil.

7. 65% of the votes were required to accept the proposed DSA. The petitioner held 37.62% of the voting rights and it voted against the proposal. Thus the DSA was rejected, as the petitioner holds a blocking percentage of the votes of the creditors.

8. The petition was adjourned from time to time while the debtor obtained a protective certificate pursuant to s. 57 of the Personal Solvency Act, 2012 and her personal insolvency practitioner prepared the DSA as I have outlined above. The DSA was rejected on 12th September, 2016. When the petition was next in the bankruptcy list, the petitioner sought to proceed with the petition. The debtor argued that the court had power under the Personal Insolvency Act, 2012 and s. 14 (2) of the Bankruptcy Act, 1988 to direct that a defeated proposal for a DSA be resubmitted in either its existing or in an improved form and she sought a hearing on this issue. The matter was heard by me on 13th December, 2016.

**The submissions of the debtor**

9. It was not contested that the debtor has no assets to be realised and had no income from which any bankruptcy payment orders could be made. Bankruptcy of the debtor could not result in the realisation of any monies for the benefit of creditors. In *McGinn v. Beagan* [1962] I.R. 364 Budd J. stated that:—

> *"The proper purpose of bankruptcy proceedings is to make assets available to creditors. The debtor in this case has very big debts, and I am quite satisfied that he has no assets to meet them. Judgments remain unsatisfied and creditors have failed to obtain instalment orders."*

9. The decision in *McGinn* was followed by Baker J. in *ACC Loan Management Ltd v. P.* [2016] IEHC 117. At para. 7 of the judgment she stated:—

> *"I consider that there is an inherent jurisdiction to stay proceedings including bankruptcy proceedings that are, or have become, oppressive or an abuse of process, and that in the case of a petition for adjudication in bankruptcy, the principles identified in* McGinn v. Beagan, *are engaged, and the court may inquire whether the petition was presented, and is genuinely being prosecuted for the purposes of recovering the debt."*

10. Baker J. also quoted from the judgment of Dunne J. in *D. v. D.* [2008] IEHC 435 where Dunne J. found that the petition was not being pursued for an ulterior or improper motive but that the petitioner in that case had been *"driven to take these steps in order to secure the payments of the money provided for in the order of the court"*

11. The debtor accepts that the petition had not been brought for an improper purpose. Her issue is with the continuance of the petition proceedings. She says that a bankruptcy petition must be for the purpose of realising assets or recovering debts on the basis of the authorities in *McGinn, ACC Loan Management* and *D. v. D*. Once the debtor presented her DSA it then became apparent to the petitioner that there were no assets to be realised and there was no prospect of recovering any payment of the debt due by the debtor to the petitioner. Thus she submits that the maintenance of the proceedings is for an improper purpose and on that basis the petition should be stayed or dismissed as an abuse of process.

2. The second submission is based upon the provisions of s.14 as amended by the Act of 1988. This provides:—

> *"14. (1) Subject to subsection (2), where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of section 11 (1) have been complied with, by order adjudicate the debtor bankrupt.*
>
> *(2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed with the Court, be more appropriately dealt with by means of- (a) a Debt Settlement Arrangement, or*
>
> *(b) a Personal Insolvency Arrangement, and where the Court forms such an opinion the Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing."*

13. Counsel for the debtor submits that the proposed DSA showed that there could be recovery for unsecured creditors, including the petitioner, if the DSA was approved but that there would be no recovery for the creditors if the debtor was adjudicated bankrupt. The Court could assess the nature and value of the assets to the debtor and the extent of her liabilities. He submits that the Court could, in the circumstances, conclude that the debtor's inability to meet her engagements could be more appropriately dealt with by means of a DSA. He makes this submission while acknowledging that the debtor already had obtained a protective certificate and that her proposed DSA had been rejected. He submits that it is open to the debtor to make a second application to the High Court pursuant to s. 57 (2) of the Insolvency Act, 2012 notwithstanding the fact that she had been the subject of a protective certificate issued pursuant to s. 61 of the Act of 2012 less than 12 months prior to the date of a proposed second application for a protective certificate. He so argues on the grounds that the prohibition on applying for a second protective certificate does not apply:—

> *"Where the debtor has, on notice to the Insolvency Service, made an application to the appropriate court and the court has made an order stating that it is satisfied that the current insolvency of the debtor arises by reason of exceptional circumstances or other factors which are substantially outside the control of the debtor and that it would be just to permit the debtor to make a proposal for a Debt Settlement Arrangement." (S. 57(2) of the Act of 2012)*

He says it would be open to a court to conclude that the debtor could apply for a second protective certificate pursuant to s.57(2) of the Act of 2012, as amended.

14. Counsel submits that s. 14(2) confers upon the Court the discretion to assess *inter alia* whether the debtor's inability to meet his engagements could be more appropriately dealt with by means of a debt settlement arrangement. If the Court forms such an opinion then the Court is given discretion to adjourn the hearing of the petition to allow the debtor an opportunity to enter into a debt settlement arrangement (the relevant alternative to bankruptcy in this case). He emphasises the fact that the rejection of the DSA has prejudiced the other creditors of the debtor. It is not disputed that they will receive nothing in a bankruptcy and this was a matter to which the Court should have regard in construing s. 14(2) and in the exercise of its discretion pursuant to the subsection.

15. Counsel submits that the continuance of the bankruptcy proceedings is not for the purpose of making assets available to creditors or for recovering payment for creditors in the circumstances of this case. He therefore submits that a DSA must be more appropriate if the purpose of bankruptcy is to realise assets and to secure payment to creditors. He refers to the full title of the Personal Insolvency Act, 2012 which outlined the following objectives:—

> *"The need to ameliorate the difficulties experienced by debtors in discharging their indebtedness due to insolvency and thereby lessen the adverse consequences for economic activity in the State, the need to enable creditors to recover debts due to them by insolvent debtors to the extent that the means of those debtors reasonably permits, in an orderly and rational manner, and the need to enable insolvent debtors to resolve their indebtedness (including by determining that debts stand discharged in certain circumstances) in an orderly and rational manner without recourse to bankruptcy, and to thereby facilitate the active participation of such persons in economic activity in the state."*

16. Counsel emphasises that it is the clear intent of the Act of 2012 that personal indebtedness be resolved where possible without recourse to bankruptcy.

17. Counsel referred to the decision I gave in the case of *Eric O'Callaghan, a petitioning debtor* [2015] IEHC 185 when I construed the provisions of s. 15(2) of the Bankruptcy Act, 1988 (as amended). In that case a proposed personal insolvency arrangement was rejected by the debtor's principal creditor. Under the proposal the creditor would have recovered a small portion of the sum due but in bankruptcy it would recover far less. He presented a petition for his own bankruptcy and invited the court to conclude that his liabilities could more appropriately be dealt with by the proposed PIA rather than bankruptcy, given the difference between the returns for creditors between the proposed PIA and bankruptcy. He argued that he therefore should not be adjudicated a bankrupt pursuant to his own petition by reason of the provisions of s.15 (2) of the Act of 1988, as amended. I rejected the argument and he was adjudicated a bankrupt on his own petition.

18. Section 15 of the Act of 1988 applies where debtors present their own petitions in bankruptcy and s. 14 applies where creditors present petitions for the adjudication of debtors as bankrupt. The provisions of s.15(2) are identical to those of s. 14(2). Counsel distinguish between the two subsections on the grounds that where a debtor presents a petition for his own adjudication, he must include a sworn statement of affairs which sets out all of his assets and liabilities. Furthermore, a debtor may not present a petition for adjudication unless the petition is accompanied by an affidavit sworn by the debtor stating that he has, prior to presenting the petition, made reasonable efforts to reach an appropriate arrangement with his creditors relating to his debts by making either a proposal for a debt settlement arrangement or a personal arrangement to the extent that his circumstances would permit him to enter into such an arrangement (s. 11(4) of the Act of 1988). The debtor is required to meet a personal insolvency practitioner and to exhibit a letter from the personal insolvency practitioner confirming either that the debtor is not in a position to make a proposal for a debt settlement arrangement or a personal insolvency arrangement or that there is no alternative other than bankruptcy open to him. He also distinguishes the *O'Callaghan* case from this case on the basis that Mr.O'Callaghan's first priority was to return to solvency

rather than to remain in his house and that he wished to be adjudicated a bankrupt pursuant to his petition if the Court was satisfied that it was otherwise appropriate to adjudicate him bankrupt

19. Counsel pointed out that following the decision in the *O'Callaghan* case, the Personal Insolvency Act, 2012 was amended by the Personal Insolvency (Amendment) Act, 2015 by the insertion of s. 115A. This permits the Court to review personal insolvency arrangements which have been rejected by creditors in certain circumstances. The Court is empowered to make an order confirming the coming into effect of the proposed personal insolvency arrangement notwithstanding the fact that it was not accepted by the creditors in accordance with the provisions of Chapter IV of the Act of 2012. He noted that the amendment did not apply to debt settlement arrangements and that it was therefore not open to the debtor in this case.

20. For these reasons the petition should be either stayed, adjourned or dismissed pursuant to the provisions of s.14(2) or the inherent jurisdiction of the court.

**Petitioner's submissions**
21. The petitioner observes that the petition had been adjourned with the consent of the petitioner to allow the debtor to explore the insolvency process. Ultimately her DSA had been rejected by the Bank. Counsel submits that the petitioner was entitled to reject the DSA. She contrasts the position of a DSA with that of a PIA. The Oireachtas saw fit to enact s. 115A of the Personal Insolvency Act, 2012 which permits the Court to review certain PIAs. It made no such amendment in respect of DSAs. She urges the Court to conclude that the Oireachtas did not intend to confer upon the Court an independent right of review in respect of a DSA.

22. She submits that the reasoning adopted in the *O'Callaghan* case in respect of s. 15(2) applies equally to s. 14(2). In this case she submits that a creditor cannot be obliged to agree to write down a debt.

23. She contrasts the provisions of s. 14(1) with the provisions of (2). She says that the courts have found that the provisions of s. 14(1) are mandatory and that a petitioner who has satisfied the requirements of s. 11(1) is entitled to the adjudication subject only to the requirements of s. 14(2). It is clear that subs. (2) is an exception to the entitlement. She relies upon the decision of Baker J. in *ACC Loan Management Limited v. P.* where, at para. 47 Baker J. stated that s. 14(1) "*creates, in my view*, a prima facie *entitlement on the part of a petitioning creditor that the adjudication order be made, and s. 14(2) must be seen as an exception."*

24. Counsel submits that the purpose of subs. (2) is to facilitate the debtor in exploring whether or not he can avail of either a debt settlement arrangement or a personal insolvency arrangement. In *ACC Loan Management Limited* Baker J. discussed the provisions of s. 14(2) and at para. 39 she held:—

> *"Thus the Oireachtas requires the court to consider whether the personal insolvency route would offer a more beneficial solution in the light of the desire that the debtor be permitted to continue to participate in economic activity. If the personal insolvency solution is reasonably available to a debtor he should be given time to explore that option."*

25. At para. 45 of her judgment she went on to state:—

> *"[B]ut I cannot see that my discretion ought to be exercised in favour of the debtor under s. 14(2) when I am not satisfied that the circumstances point to any reasonable or practical reality in a PIA being available to Mr. P., having regard to the attitude of the Bank which is a secured creditor, and having regard to the amount of his debts and the monetary limit on the availability of the personal insolvency route when the secured debts exceed €3 million.*(emphasis added)

26. The debtor is not obliged to take up this opportunity. It *FCR Media (formerly Truvo Ireland Limited) v. Angela Farrell* [2014] IEHC 252, the debtor chose not to present any information to the Court regarding the nature and value of her assets or the extent of her liabilities or any information to indicate that her inability to meet her engagements could be more appropriately dealt with by means of either a debt settlement arrangement or a personal insolvency agreement. In the circumstances the Court concluded that it could not form the view that her inability to meet her liabilities could be more appropriately dealt with under either of those arrangements and concluded that the petitioner in that case was entitled to an order of adjudication of bankruptcy against the debtor. Counsel for the petitioner submitted that this was illustrative of the fact that s. 14(2) affords the debtor an opportunity, if appropriate, firstly, to explore and secondly, to enter into either a debt settlement arrangement or a personal insolvency arrangement and no more.

27. She submits that in this instance the process ran its course. The debtor engaged a PIP who prepared a DSA and the DSA was rejected.

28. Counsel for the petitioner accepts that the court had an inherent jurisdiction to stay or dismiss proceedings as was held in *McGinn v. Beagan*. She submits that the petition had been properly brought. In considering the inherent jurisdiction of the Court, the Court should have regard to the provisions of s.14 (2). She asks, rhetorically, what would be the purpose in staying the proceedings? There has been no indication that the debtor will present a new proposal and specifically there is no suggestion that more money will be forthcoming. She relies upon the fact that the Court cannot compel the petitioner to accept a DSA. Thus, in effect, the debtor's application must be to dismiss the petition on the grounds that no assets of the debtor can be realised and no monies recovered for creditors. It cannot be for the purpose of compelling the petitioner to accept the DSA which it has already in its discretion rejected. That being so, the application should be refused.

**Discussion.**
29. The first matter for consideration is whether the continuance of the petition proceedings is for an improper purpose in circumstances where the debtor says that she has no assets and that there will be no recovery for creditors in the event that she is adjudicated a bankrupt, matters which are not disputed by the petitioner.

30. In *McGinn v. Beagan* Budd J. accepted that there was an inherent jurisdiction to stay oppressive proceedings or proceedings which are an abuse of the processes of the Court. He stated that the proper purpose of bankruptcy proceedings is to make assets available to creditors. However, the basis for his decision is to be found in the final sentence of the judgment as follows:-

> *"It seems to me that I should not allow the Court's processes to be used for an ulterior and collateral purpose, and I will therefore stay all further proceedings on the debtor's summons."*

In other words he took the view that the proceedings amounted to an abuse of the processes of the Court. The case is not authority for the proposition that if bankruptcy proceedings are not for the purpose of making assets available to creditors they amount to an abuse of process and therefore the proceedings should be stayed.

31. In *ACC Loan Management Ltd v. P.* Baker J. made it clear that the inherent jurisdiction to stay proceedings, including bankruptcy proceedings, is on the basis that they are or have become an abuse of process. She held that a Court may enquire whether a petition was presented and is genuinely being prosecuted for the purposes of recovering the debt. It is not disputed that the petition in this case was presented for the purposes of recovering the debt due by the debtor to the petitioner. The issue is whether it is genuinely being prosecuted for those purposes in light of the information set out in the proposed DSA. The Court is asked to infer that this is not the case on the basis that there are no assets to be recovered and the debtor has no income from which to repay her debts. The Court is further asked to infer that the petition is not being pursued in good faith because the petitioner would have made a limited recovery under the proposed DSA which it rejected but it will recover nothing in a bankruptcy.

32. In order to assess these issues it is necessary to consider the provisions of the Personal Insolvency Act, 2012 relating to debt settlement arrangements. The provisions dealing with debt settlement arrangements are set out in Chapter III of the Act. Section 73, as amended, provides that the voting rights exercisable by a creditor at a creditors' meeting shall be proportionate to the amount of the debt due by the debtor to the creditor on the day the protective certificate issued. Subsection 6, as amended by the Act of 2015, provides:—

> *"(6) A proposal for a Debt Settlement Arrangement shall be considered as having been approved by a creditors' meeting held under this Chapter where a majority of creditors representing not less than 65 per cent in value of the total amount of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal."*

33. Section 72(7) provides that if the proposal is not approved or deemed to have been approved in accordance with s. 73, then the debt settlement arrangement procedure shall be deemed to have come to an end and the protective certificate issued under s. 61 shall cease to have effect.

34. The scheme of the Act entitles creditors to vote for or against a proposed DSA as they see fit. A scheme will only be approved or deemed to have been approved "*where a majority of creditors representing not less than 65 per cent in value of the total amount of the debtor's debts due to the creditors participating in the meeting and voting have voted in favour of the proposal."* In other words a proposal may be voted down if a creditor or creditors participating at the meeting and voting hold more than 35% of the value of the debt and vote against the proposal. The proposal must include a comparison between the outcome on the proposed DSA and the outcome in bankruptcy. In these circumstances the Oireachtas has recognised the right of creditors to reject a proposed DSA even where the creditor(s) are aware that the outcome in bankruptcy will be less favourable than in the proposed DSA. It has not conferred a power on the Court to confirm the coming into effect of a DSA which has not been accepted by the required majority of the debtor's creditors.

35. In those circumstances, is it then open to the Court to infer that the continuance of bankruptcy proceedings after the rejection of a DSA amounts to an abuse of process? In my opinion, put in those terms, without more, it is not. If I were to hold otherwise, it would amount to an indirect compulsion on a petitioning creditor to agree to a DSA. Indeed, it could leave a petitioning creditor in a worse off situation. The DSA may have been rejected and yet the petitioning creditor would not be permitted to continue with the bankruptcy petition. In fairness to the debtor in these proceedings, this is not her intention and she is prepared to represent the DSA for the acceptance of the petitioner.

36. When it enacted the Act of 2012, the Oireachtas struck a balance between creditors and debtors in relation to debt settlement arrangement and personal insolvency arrangements. That balance left the creditors free to accept or reject proposed DSAs or PIAs. Three years later, in 2015, the Oireachtas chose to amend the legislation by providing for Court review of proposed personal insolvency arrangements in certain circumstances as set out in s. 115A of the Act. This is relevant to the considerations of the Court under either ss. 14(2) or 15(2) where the proposed alternative to bankruptcy is a PIA. The Oireachtas elected not to make equivalent amendments in the case of DSAs. Thus, in my opinion, it remains the case that creditors are free to reject a DSA and the Court has no role in reviewing or ultimately compelling creditors to accept a DSA which they have rejected at a creditors' meeting.

37. It was accepted by Baker J. in *ACC Loan Management Ltd. v. P.* that in considering the inherent jurisdiction of the Court to stay bankruptcy proceedings, the Court should have regard to the provisions of s. 14(1) of the Act of 1988. Baker J. was of the opinion that:—

> *"This creates, in my view, a prima facie entitlement on the part of a petitioning creditor that the adjudication order be made, and s. 14(2) must be seen as an exception."*

Section 14(1) requires simply that the requirements of s. 11(1) of the Act of 1988 have been complied with. There is no requirement that it be shown that there are assets available to be recovered or that the debtor is possessed of moneys from which creditors may be repaid. And it is clear why this is so; creditors usually will not be fully informed of the extent of the debtor's assets and liabilities. There is also the possibility that assets may be concealed or transferred to third parties, though, I should emphasise, there is no such suggestion in this case. Given the mandatory nature of s. 14(1), this militates against the inference which the debtor invites the Court to draw in the circumstances. It is a powerful argument against the Court granting the relief sought unless it can be shown that the proceedings otherwise amount to an abuse of the process of the Court. No other grounds have been advanced to support the suggestion that the petition is being pursued for an improper purpose.

38. For these reasons, I am of the opinion that the continued maintenance of a petition to bankrupt a debtor by a creditor who has voted to reject a proposed DSA does not amount to an abuse of process, notwithstanding the fact that there may be no assets to be realised in the bankruptcy process nor moneys for the payment of debts of creditors.

39. The next matter to be considered is whether or not the debtor's liabilities can be more appropriately dealt with by means of a debt settlement arrangement and if so whether the Court should exercise its discretion to adjourn the hearing of the petition to allow the debtor an opportunity to enter into a DSA.

40. The power of the Court to adjudicate a debtor bankrupt pursuant to s. 14(1) is subject to subsection 2. If the Court forms a certain opinion then subs. 2 authorises the Court to adjourn the hearing of the petition "*to allow the debtor an opportunity to enter into*" a DSA or PIA as the Court may specify. In other words, the Court's power is to adjourn the hearing of the petition in order to afford the debtor an opportunity to enter into an arrangement. In this case the Court has already adjourned the petition over a number of months in order to allow the debtor an opportunity to enter into a DSA, albeit without the Court forming the opinion specified in subs. 2, as it was by consent of the parties. Thus the debtor has had the benefit of the operation of s. 14(2).

41. Once a debtor has been given that opportunity, as occurred here, then I can see no difference in principle between the situation

under s. 14(2) and the situation under s. 15(2). Just as there were detailed provisions set out in Chapter IV of the Personal Insolvency Act, 2012 governing personal insolvency arrangements, there are also detailed provisions governing debt settlement arrangements set out in Chapter III of the Act. In each case the Oireachtas has given the right to creditors of a debtor to vote to either accept or to reject a proposed PIA or DSA. It therefore seems to me that the reasoning I applied in the *O'Callaghan* case to s. 15(2) applies equally to the construction of s. 14(2). The Court is not empowered to compel a creditor to vote to accept a DSA.

42. That being so, what would be the purpose in this case of adjourning the petition to allow the debtor to represent her DSA? There was no suggestion that she was going to present a different proposal or that there would be significantly more money on offer. The petitioner indicated that it would refuse the proposal if it were offered again. In *ACC Loan Management Ltd. v. P.* Baker J. formed the opinion that if a secured creditor owed more than €3 million indicated that it would not consent to the debts being dealt with by way of a PIA, then there was no likelihood of the liabilities of the debtor being dealt with under the insolvency regime. At para. 45 she stated:-

> *" but I cannot see that my discretion ought to be exercised in favour of the debtor under s. 14(2) when I am not satisfied that the circumstances point to any reasonable or practical reality in a PIA being available to Mr. P., having regard to the attitude of the Bank which is a secured creditor, and having regard to the amount of his debts and the monetary limit on the availability of the personal insolvency route when the secured debts exceed €3 million."*

43. I accept the approach of Baker J. to the exercise of the Court's discretion under s. 14(2). I am not satisfied in the circumstances of this case that there is any reasonable or practical reality, in the words of Baker J., in a DSA being available to the debtor having regard to the attitude of the petitioner in this case. Just as the bank in *ACC Loan Management Ltd*. effectively had a veto on any possible PIA by reason of the level of secured debt and its refusal to consent in writing to the limit having no application in that case, so also the petitioner in this case, having 37% of the voting rights, has the ability to veto any DSA which the debtor may present to her creditors.

44. I therefore have formed the opinion that the debtor's inability to meet her engagements could not be more appropriately dealt with by means of a DSA and therefore it follows that I ought not to exercise my discretion to grant an adjournment or to stay the petition pursuant to s. 14(2). For the same reasons I will not dismiss the petition. It follows that the creditor is entitled to proceed with the petition. The requirements of s.11(1) of the Act have been satisfied. I adjudicate the debtor a bankrupt in accordance with s. 14 (1) of the Act.