AmBank (M) Bhd v Yong Kim Yoong Raymond
[2009] SGCA 5

Case Number : CA 156/2007

Decision Date : 22 January 2009

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Sivakumar Murugaiyan and Parveen Kaur Nagpal (Madhavan Partnership) for the appellant; Roderick Edward Martin and Trinel C (Martin & Partners) for the respondent

Parties : AmBank (M) Bhd — Yong Kim Yoong Raymond

Civil Procedure – Foreign judgments – Judgments and orders – Enforcement – Malaysian judgment registered under Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) – Leave to issue writ of execution – Whether s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) required judgment creditor of registered foreign judgment of more than six years to obtain leave pursuant to O 46 r 2(1)(a) Rules of Court (Cap 322, R 5, 2006 Rev Ed) before commencing bankruptcy proceedings – Order 46 r 2(1)(a) Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Insolvency Law – Bankruptcy – Legislative history of Bankruptcy Act (Cap 20, 2000 Rev Ed) – Legislative purpose of s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) – Applicability of s 61(1)(d) – Meaning of "enforceable by execution in Singapore" in s 61(1)(d) – Whether s 61(1)(d) applicable to bankruptcy application based on debt incurred in Malaysia where Malaysian judgment for debt had been registered in Singapore – Whether wide or narrow meaning of "enforceable by execution in Singapore" in s 61(1)(d) should be adopted – Whether s 61(1)(d) required judgment creditor of registered foreign judgment of more than six years to obtain leave pursuant to O 46 r 2(1)(a) Rules of Court (Cap 322, R 5, 2006 Rev Ed) before commencing bankruptcy proceedings – Section 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed)

Statutory Interpretation – Construction of statute – Construction of statutory provisions in bankruptcy legislation Â– Construction of s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) – Legislative purpose of s 61(1)(d) – Meaning of "enforceable by execution in Singapore" in s 61(1)(d) – Whether s 61(1)(d) applicable to bankruptcy application based on debt incurred in Malaysia where Malaysian judgment for debt had been registered in Singapore – Whether wide or narrow meaning of "enforceable by execution in Singapore" in s 61(1)(d) should be adopted – Section 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed)

Words and Phrases – "Enforceable by execution in Singapore" – Whether wide or narrow meaning of "enforceable by execution in Singapore" in s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) should be adopted

22 January 2009 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 The present appeal concerns the proper construction to be accorded to s 61(1)(*d*) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) ("BA 2000"). Section 61(1) of BA 2000 reads as follows:

> **Grounds of bankruptcy application**
>
> **61.**—(1) No bankruptcy application shall be presented to the court in respect of any debt or

debts *unless at the time the application is made* —

(*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $10,000;

(*b*) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;

(*c*) the debtor is unable to pay the debt or each of the debts; *and*

*(*d*) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or award which is* ***enforceable by execution in Singapore***.

[emphasis added]

2 More precisely, the real controversy for us to resolve is the meaning of the words that are italicised in bold above, *ie*, "enforceable by execution in Singapore".

The facts

3 The facts are straightforward. The appellant is AmBank (M) Berhad ("AmBank"), a Malaysian bank that was formerly known as Malaysia Borneo Finance Corporation (M) Berhad ("MBFC"), while the respondent is Mr Raymond Yong Kim Yoong ("YKY"), a Singaporean.

4 On 3 November 1988, MBFC obtained judgment against YKY in Malaysia in Civil Suit No C23-1629-86 ("the Malaysian Judgment") for YKY's failure to honour his obligations under a personal guarantee which he had furnished to MBFC in relation to loans granted by MBFC to two Malaysian companies, namely Tanjong Petrie Enterprises Sdn Bhd and Sun Hun Perumahan Sdn Bhd. After the Malaysian Judgment was obtained against YKY, MBFC changed its name to MBF Finance Berhad. Subsequently, the name was changed again to the present name, AmBank (M) Berhad.

5 On 12 October 1994, after a period of almost six years, the Malaysian Judgment was registered in Singapore ("the Registered Judgment") under the provisions of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA"). This was followed by a further period of utter inactivity of almost 12 years.

6 It was not until 18 September 2006 that AmBank finally served a statutory demand on YKY. As the amount claimed was not paid by YKY, AmBank instituted bankruptcy proceedings against him on 10 October 2006. In response to AmBank's application, YKY filed his notice of objection and supporting affidavit on 13 November 2006. The grounds relied on by YKY to oppose AmBank's bankruptcy application were as follows:[note: 1]

(a) The Malaysian Judgment was time barred under s 6(3) of the Limitation Act (Cap 163, 1996 Rev Ed), which provides that no action upon a judgment shall be brought after the expiration of 12 years from the date on which the judgment became enforceable.

(b) The Registered Judgment was not a debt "enforceable by execution in Singapore" under s 61(1)(*d*) of BA 2000 because AmBank had not obtained the leave of court under O 46 r 2(1)(*a*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which provides that a writ of execution to enforce a judgment may not be issued without the leave of the court if more than six years have

passed since the date of the judgment:

> **2.**—(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:
>
> (*a*) where 6 years or more have lapsed since the date of the judgment or order;

(c) AmBank had failed to comply with O 46 r 2(1)(*b*) of the Rules of Court by failing to obtain the leave of the court to enforce the Registered Judgment because the Registered Judgment (as well as the Malaysian Judgment) had been obtained in MBFC's name and not AmBank's name. Order 46 r 2(1)(*b*) provides as follows:

> **2.**—(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:
>
> …
>
> (*b*) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

7 The bankruptcy application was heard by an assistant registrar ("the AR") on 4 January 2007 and 2 February 2007, and the dispute before her centred largely on the time-bar issue. The AR eventually dismissed YKY's objections and allowed AmBank's application. She was of the view that the limitation period started to run only from the date of the Registered Judgment and not the date of the Malaysian Judgment, and thus the bankruptcy application was not time barred. She further noted that bankruptcy proceedings were governed by a separate statutory regime that did not include O 46 r 2(1) of the Rules of Court and hence the leave of the court was not required before a bankruptcy application could be filed even though more than six years had passed from the date of the Registered Judgment. YKY appealed against the AR's decision. On appeal to a High Court judge, YKY jettisoned ground (a) (see [6] above) and relied only on grounds (b) and (c).

The decision below

8 Tan Lee Meng J heard the appeal against the AR's decision, and he agreed with YKY that the words "enforceable by execution in Singapore" meant that a petitioning creditor must have in hand a judgment that was immediately enforceable by execution (see *AmBank (M) Berhad v Raymond Yong Kim Yoong* [2008] 1 SLR 441 ("the Judgment") at [24]–[25] where Tan J observed with his customary clarity):

> In view of the arguments advanced by Mr Martin [counsel for YKY] and the legislative history of the present Act, there is no basis for the words "which is enforceable by execution in Singapore", which follow the word "judgment" in s 61(1)(*d*) of the present Act to be ignored as surplusage. ....
>
> In my view, *for debts incurred outside Singapore, the petitioning creditor must have in his hands a judgment that is enforceable by execution and if leave is required before it can be executed, it must be obtained before a bankruptcy application founded on a failure to pay the judgment debt in question can be presented*.
>
> [emphasis added]

9 As more than six years had lapsed since the Registered Judgment was obtained, Tan J noted (at [11]–[12]) that the leave of the court under O 46 r 2(1)(*a*) of the Rules of Court was required before AmBank could execute the Registered Judgment, and that such leave had not been obtained by AmBank:

> By the time AmBank sought to have YKY declared a bankrupt in September 2006, the registered judgment was no longer enforceable by execution in Singapore without leave of the court because almost 12 years had passed by since the Malaysian judgment was registered. This is due to O 46 r 2(1)(*a*) of the Rules of Court …
>
> It was common ground that leave to enforce the registered judgment had not been obtained.

10 Tan J thus concluded that AmBank was not entitled to present a bankruptcy application, given that it had failed to obtain the requisite leave pursuant to O 46 r 2(1)(*a*) and had therefore not satisfied the requirement in s 61(1)(*d*) of BA 2000. The appeal was accordingly allowed. Tan J was also of the view that, in the light of his conclusion on O 46 r 2(1)(*a*), it was unnecessary to consider ground (c) (see [6] above) relied on by YKY (at [26] of the Judgment):

> As I have found that AmBank was not entitled to apply for YKY to be made a bankrupt as it did not obtain the leave of the court under O 46 r 2(1)(*a*) of the Rules of Court, it is not necessary for me to consider the effect of O 46 r 2(1)(*b*) and the change of the original creditor's name on AmBank's right to apply for YKY to be made a bankrupt.

11 AmBank has, in turn, appealed against Tan J's decision.

The parties' arguments

12 In the present appeal, AmBank's case against Tan J's decision is essentially two-pronged.

13 Firstly, AmBank contends that s 61(1)(*d*) of BA 2000 is irrelevant and inapplicable to its application. This, it says, is because s 61(1)(*d*) applies only when the debt relied upon to present the bankruptcy application is "incurred outside Singapore". Since s 3(3)(*a*) of RECJA provides that a foreign judgment that is registered is "of the same force and effect" as a judgment "originally obtained" in the Singapore courts, AmBank contends that the Malaysian Judgment, upon registration, is effectively converted to a Singapore judgment. Accordingly, "the Registered Judgment by virtue of registration under section 3(3) of the RECJA became for all intents and purposes a 'Singapore debt'"[note: 2] and thus s 61(1)(*d*) does not apply.

14 Secondly, AmBank submits that even if s 61(1)(*d*) applied, Tan J had misinterpreted the words "enforceable by execution in Singapore". AmBank submits that these words only required the Registered Judgment to be "*capable* of enforcement" [emphasis in original] and "does not ... require that all procedural steps for execution under Order 46 rule 2(1)(*a*) [of the Rules of Court] first be complied with".[note: 3] Further, AmBank contends that the present O 1 r 2(2) of the Rules of Court made it clear that the Rules of Court shall not apply to bankruptcy proceedings (save for O 63A and items 71D to 71I and 75 of Appendix B to the Rules of Court) and thus O 46 r 2(1)(*a*) or r 2(1)(*b*) simply had no application in the present case.[note: 4]

15 YKY, on the other hand, relied on the same grounds of objections canvassed below before Tan J, *ie*, grounds (b) and (c) (see [6] above). As such, the time-bar issue canvassed before the AR below is also not before us.

The issues on appeal

16 Flowing from the arguments raised by AmBank and the grounds of objections relied on by YKY, there are only three issues for our consideration:

(a) Does s 61(1)(*d*) of BA 2000 have any application to the present bankruptcy application filed by AmBank?

(b) If applicable, what is the proper construction to be accorded to s 61(1)(*d*), especially the words "enforceable by execution in Singapore"?

(c) Is AmBank prevented from commencing bankruptcy proceedings against YKY by O 46 r 2(1)(*b*) of the Rules of Court, given that the Registered Judgment was, in name, only in favour of MBF and not AmBank?

17 In arriving at his decision, Tan J broadly considered the legislative history of s 61(1)(*d*) of BA 2000 (see [8] above and the Judgment at [22]–[23]). As it appears that s 61(1)(*d*) is being interpreted by the local courts for the first time, it would be useful for us to also examine the legislative history and purpose of s 61(1)(*d*) prior to resolving the three issues.

Legislative history and purpose of section 61(1)(*d*) of BA 2000

18 Prior to 1995, the bankruptcy law in Singapore had its origin in the Bankruptcy Ordinance of 1888. This was introduced to the Straits Settlement in 1888 and was modelled on the English Bankruptcy Act 1883 (c 52). For the next 107 years, this legislation continued to apply in Singapore largely untouched, save for a few piecemeal amendments (Kala Anandarajah *et al*, *Law and Practice of Bankruptcy in Singapore and Malaysia* (Butterworths Asia, 1999) ("*Law and Practice of Bankruptcy*") at pp 4–5). The enactment of the Bankruptcy Act (Act 15 of 1995) ("BA 1995") in 1995 brought with it radical changes. The Act in turn was inspired by the enactment of the Insolvency Act 1986 (c 45) (UK) ("the UK Insolvency Act") which had entirely revamped insolvency laws there. One notable amendment brought by BA 1995 (following the UK Insolvency Act) was to substitute the archaic concept of an "act of bankruptcy" with the single ground of *inability to pay* as the *basis* for commencing bankruptcy proceedings (see *Law and Practice of Bankruptcy* at p 11). Prof S Jayakumar, the then Minister for Law, explained during the second reading of the Bankruptcy Bill (Bill 16 of 1994) that the rationale for this particular amendment was to streamline and update the then existing cumbersome bankruptcy procedures (*Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at cols 403–404):

> … Sir, *the Bill streamlines and updates cumbersome, complex and archaic bankruptcy procedures*. Sir, bankruptcy proceedings, bankruptcy administration and discharge from bankruptcy will be streamlined and simplified. *This will result in greater efficiency and lower costs*. *For example, the single ground of inability to pay will replace the outmoded concept of acts of bankruptcyon which proceedings are based*. Furthermore, a new 2-tier court process consisting of bankruptcy petition and bankruptcy order will replace the present 4-tier process of notice, petition and two court orders. *These innovations have also been adopted by the United Kingdom*. [emphasis added]

19 The offspring of this particular piece of legislative reform is s 61(1)(*c*) of BA 2000 (see [1] above; see also s 267(2)(*c*) of the UK Insolvency Act) which stipulates that a bankruptcy application shall not be presented unless the debtor is *unable* to pay "the debt, or each of the debts". This court has also confirmed in *Medical Equipment Credit Pte Ltd v Sim Kiok Lan Alice* [1999] 1 SLR 70 that the

inability to pay is at present the "underlying foundation" underpinning every bankruptcy application (at [20]):

> The *underlying foundation* of a petition in bankruptcy against a debtor, whether it be a petition under s 57(1)(a)(i) or under s 57(1)(a)(ii), is the *inability of the debtor to pay a debt* which satisfies the requirements of s 61 of the [Bankruptcy] Act … [emphasis added]

20 Another significant revision was the refinement of the concept of jurisdiction (of the court) as regards bankruptcy proceedings. Section 60(1) of BA 2000 (following s 265 of the UK Insolvency Act) now stipulates for the necessary territorial connection that an individual debtor must have with Singapore so as to make him amenable to bankruptcy proceedings here:

> **Conditions to be satisfied in respect of debtor**
>
> **60.**—(1) No bankruptcy application shall be made to the court under section 57(1)(*a*) or 58(1)(*a*) against an individual debtor unless the debtor —
>
> (*a*) is domiciled in Singapore;
>
> (*b*) *has property in Singapore*; or
>
> (*c*) has, at any time within the period of one year immediately preceding the date of the making of the application —
>
> (i) been ordinarily resident or has had a place of residence in Singapore; or
>
> (ii) carried on business in Singapore.
>
> [emphasis added]

21 Section 60(1)(*b*), which provides that a bankruptcy application can be made against a debtor here so long as he has property in Singapore, is not mirrored in s 265 of the UK Insolvency Act (*Law and Practice of Bankruptcy* ([18] *supra*) at p 75). It appears that the rationale for the inclusion of this limb is the considered legislative view that no useful purpose is served by making a foreigner with no property here a bankrupt and that the taxing of the Official Assignee's Office with the administration of the estates of bankrupts with no assets in Singapore should be avoided (see the *Report of the Select Committee on the Bankruptcy Bill* (Parl 1 of 1995, 7 March 1995) (Chairman: Mr Tan Soo Khoon) ("the Select Committee's Report"), Appendix IV, Minutes of Evidence (25 January 1995), at paras 67–69, which recorded the exchange between Prof Jayakumar and Mr Kau Jee Chu, Chairman of the Finance Houses Association, at the public hearing of the Select Committee on 25 January 1995). In those three paragraphs, Prof Jayakumar observed:

> 67. I move on to your paragraph 2.1. You seem to be of the view that jurisdiction of the court in respect of bankruptcy proceedings should be extended over any person who incurs a debt in Singapore. As I understand it, it is for the purpose of ensuring that such a person would not return to Singapore. Am I right in understanding you? - (*Mr Kau Jee Chu*) Yes.
>
> 68. But I must ask you whether you are quite satisfied with clause 60. ***You turn to clause 60(1)(b) which permits a bankruptcy petition to be presented against a debtor on the basis that he has some property in Singapore. This is a departure from the present Bankruptcy Act. In relation to that, I want to ask your Association what useful purpose is***

achieved in making a bankrupt, say, a foreigner who neither resides in Singapore nor has any property here. What are the objectives you are trying to achieve if you want Parliament to do that? - (*Mr Kau Jee Chu*) I think objective is mainly to prevent the foreigner who has no asset in Singapore to come back the second time, or third time, to obtain loans from a finance company. If he has been made bankrupt, then at least we know that he has to disclose that he has been made a bankrupt, and we will be careful not to extend further loans to him.

6 9 . ***Would not the alternative be really for creditors to be more vigilant in lending money to foreigners, rather than to require a Government agency, that is, the Official Assignee's Office, to administer the estates of the bankrupts when they have no assets in Singapore at all*?**

[emphasis added in bold italics]

22 These amendments to the Bankruptcy Act have helpfully illuminated, and certainly simplified, the bankruptcy process for creditors (including foreign creditors). However, the new simplified bankruptcy regime also raised concerns that foreign creditors could then, with relative ease, initiate bankruptcy proceedings in Singapore (so long as the debtor owns property here) in respect of any unpaid debt incurred abroad. In other words, there were concerns that bankruptcy proceedings might be casually brought in Singapore in respect of *foreign* debts that had *no connection* with Singapore (*Law and Practice of Bankruptcy* ([18] *supra*) at p 81; see also [23] below). This was, in fact, the worrying catalyst engendering the enactment of s 61(1)(*d*). As correctly pointed out by Tan J (see the Judgment at [22]), the Bankruptcy Bill did not initially contain a provision similar to s 61(1)(*d*) of BA 2000. The originally tabled s 61(1) merely read as follows:

Grounds of bankruptcy petition

61. —(1) No bankruptcy petition shall be presented to the court in respect of any debt or debts unless at the time the petition is presented —

(*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $2,000 [this has now been increased to $10,000];

(*b*) the debt or each of the debts is for a liquidated sum payable to the petitioning creditor immediately; and

(*c*) the debtor is unable to pay the debt or each of the debts.

23 Section 61(1)(*d*) was a late insertion following the recommendation of the Select Committee tasked to consider the Bankruptcy Bill. As paras 6.4–6.6 of the Select Committee's Report explicated:

6.4 Clause 61 sets out the grounds for the presentation of a bankruptcy petition.

6.5 In view of the fact that clause 60(1)(*b*) allows a bankruptcy petition to be presented against a debtor so long as he has property in Singapore, *one representor stated that a person with property in Singapore may be made a bankrupt by a foreign creditor to whom he owes a debt although the debt may have no nexus with Singapore or ought properly to be enforced abroad*.

6.6 The Committee agreed that this is undesirable and that *clause 61(1) should be amended to provide that a bankruptcy petition may be grounded on a debt incurred outside Singapore*

only if the debt is payable by the debtor to the petitioning creditor by virtue of a judgment or award which is enforceable by execution in Singapore.

[emphasis added]

It appears that this added requirement for foreign debts was first mooted by Prof Jayakumar at the public hearing of the Select Committee (see the Select Committee's Report, Appendix IV, Minutes of Evidence (25 January 1995), at paras 24–25, which recorded an exchange between Prof Jayakumar and Assoc Prof Terrence Tan, at the public hearing of the Select Committee on 25 January 1995):

24. … I go on to your second point which is about your concern on extra-territorial effect. You are concerned, I take it, that any foreign creditor can now come to Singapore and have a person who is owning property here declared a bankrupt in respect of a debt incurred abroad. I take it that that is one of your concerns, am I right? - (*Mr Terence Tan*) It is mainly in connection with the extra-territorial nature of the criminal provisions.

25. If you look at clause 60(1)(b), the element of having a property in Singapore is a new element. ***Would it go some way to meet your concern if, in clause 60 or in clause 61, we have an amendment to exclude a foreign debt which is incurred other than one based on a judgment recognised by Singapore courts? Of course, bankruptcy proceedings do follow from a court's judgment. Or there can be restrictive enforcement of foreign debt that is recognised by the Singapore courts***. Would it meet some of your concerns if it excluded foreign debts other than those based on a judgment recognised by Singapore courts? - (*Mr Terence Tan*) Yes, I think it would help a lot. Lawyers refer to this property provision sometimes as silk handkerchief jurisdiction. It is a person just having a silk handkerchief which entitles your country to take jurisdiction over him. I think that would help a lot.

[emphasis added in bold italics]

Thus, at the final meeting of the Select Committee to consider the amendments to be made to the Bankruptcy Bill, Prof Jayakumar proposed the addition of subls (*d*) to s 61(1) of the Act (see the Select Committee's Report, Appendix VI, Official Report, Consideration of Bill (clause by clause) (27 February 1995), at p E 3):

In page 29, after line 5, to insert -

"(d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the petitioning creditor by virtue of a judgement or award which is enforceable by execution in Singapore.".

If I may explain, Sir, clause 61 sets out the grounds for the presentation of a bankruptcy petition.

In view of the fact that clause 60(1)(b) allows a bankruptcy petition to be presented against a debtor so long as he has property in Singapore, you will recall that one representor (Mr Terence Tan) stated that a person with property in Singapore may be made a bankrupt by a foreign creditor to whom he owes a debt although the debt may have no nexus with Singapore or ought properly to be enforced abroad. This was undesirable.

I have considered this point and to address the problem, I propose that clause 61(1) should be amended to provide that a bankruptcy petition may be grounded on a debt incurred outside

Singapore only if the debt is payable by the debtor to the petitioning creditor by virtue of a judgment or award which *is enforceable* by execution in Singapore.

[emphasis added]

24 It can be readily gleaned from the relevant parliamentary debates and the Select Committee's Report discussed above that the objective of s 61(1)(*d*) was to give some added measure of *protection*, in the light of the far-reaching amendments to the bankruptcy regime brought about by the enactment of BA 1995, to persons with property in Singapore against bankruptcy proceedings based on debts incurred outside Singapore. A preliminary requirement that such debts have a *nexus* with Singapore through "a judgment or award which is enforceable by execution in Singapore" must first and foremost be satisfied. It is also abundantly clear that s 61(1)(*d*) has purely local roots and has neither been adopted nor adapted from the UK Insolvency Act.

25 With this legislative history and stated objectives of s 61(1)(*d*) in mind, we turn now to consider in detail the three issues raised in the present appeal.

Whether section 61(1)(*d*) of BA 2000 is applicable to AmBank's bankruptcy application

26 In our view, this first issue can be easily disposed of and need not detain us for long before we consider the main issue in the present appeal, *ie*, the second issue concerning the proper construction of s 61(1)(*d*) (as mentioned at [1] above). AmBank's argument (see [13] above) that s 61(1)(*d*) of BA 2000 does not apply to its bankruptcy application because, by virtue of s 3(3)(*a*) of the RECJA, registration under RECJA converted the Malaysian Judgment into a Singapore judgment, and, accordingly, "the Registered Judgment … became for all intents and purposes a 'Singapore debt'"[note: 5] is wholly without merit for two reasons.

27 First, whether a debt is incurred outside Singapore under s 61(1)(*d*) is, in the final analysis, a question of fact and not of law. Facts simply cannot be jettisoned after they become inconvenient. The registration of a foreign judgment does not mask the origins of the debt or change its character. It may change the characteristics or attributes of the judgment for other purposes such as the available processes for execution and/or the impact of the limitation period but that is altogether a separate matter. Contrary to AmBank's contention, the effect of registration under s 3(3)(*a*) of RECJA has no bearing on the applicability of s 61(1)(*d*) of BA 2000. Section 3(3)(*a*) of RECJA merely provides that a foreign judgment that is registered under RECJA is "of the same force and effect" as a judgment "originally obtained" in the Singapore courts with effect from the date of registration:

Where a judgment is registered under this section —

(*a*) the judgment shall, *as from the date of registration*, be *of the same force and effect*, and proceedings may be taken thereon, as if it had been a *judgment originally obtained or entered upon the date of registration in the registering court*;

[emphasis added]

28 The fact that the foreign judgment has been registered under RECJA (and for that matter converted into a Singapore judgment on the assumption that s 3(3)(*a*) of RECJA does indeed have the effect of converting a foreign judgment into a Singapore judgment as contended by AmBank) cannot and does not change the fact that the debt itself was in substance actually incurred outside Singapore. The substance and origin of the debt remains the same. To say that the conversion of the foreign judgment to a Singapore judgment would effectively transform the true character of the debt

incurred overseas to a Singapore debt (given, as contended by AmBank, a Singapore judgment is to all intent and purposes a local debt) is to improbably and mistakenly confuse the term "debt" in s 61(1)(*d*) of BA 2000 with the effect a registered judgment is deemed to have. It is clear from the legislative history and purpose of s 61(1)(*d*) that this sub-section is meant to apply to all bankruptcy applications based on foreign debts. Indeed, the opening words of s 61(1)(*d*) are "where the debt or each of the debts is incurred outside Singapore". There is an unmistakable emphasis on the word "debt". Thus, all foreign debts, whether registered as foreign judgments or not, continue to be firmly embraced by the ambit of s 61(1)(*d*). The sub-section will apply so long as the underlying debt relied on for the bankruptcy application is incurred outside Singapore.

29 The effect of registration under s 3(3)(*a*) of RECJA has previously been considered by the Singapore High Court on a number of occasions. In *Re Cheah Theam Swee, ex p Equiticorp Finance Group Ltd* [1996] 2 SLR 76, Warren L H Khoo J made the following observations in relation to s 3(3)(*a*) of RECJA, at 83, [20]:

> Section 3(3)(a) is framed in very wide and general terms. It clearly provides that a registered judgment shall have the *same force and effect as a judgment of the registering court*. It also provides that proceedings may be taken on it *as if* it had been a judgment of the registering court. [emphasis added]

30 In the later case of *Re Tan Patrick, ex p Walter Peak Resorts Ltd* [1994] 2 SLR 728, Lai Kew Chai J unequivocally declared that s 3(3)(*a*) of RECJA did not convert a foreign judgment, after registration, into a Singapore judgment. The registration scheme, he noted, merely allowed a foreign judgment to be treated *as if* it were a judgment of a court in Singapore (at 733, [21]–[22]):

> The fact of registration gives [a] foreign judgment 'the same force and effect … as if it had [been] a judgment originally obtained or entered upon the date of registration in the registering court' (s 3(3)(a)). The New Zealand judgment is to be treated 'as if it had been a judgment originally obtained' in a local court. In the Australian case of *Re Abrahamson* [(1978) 34 FLR 217], Neasey J considered similar phraseology within the context of the Service and Execution of Process Act 1901–1973. Under s 2(2) of that Act, proceedings may be taken upon the certificate of registration 'as if the judgment had been a judgment' of the registering court. The learned judge held, at p 216, that the phrase 'shows that the legislative assumption is that the judgment remains a judgment of the court out of which it was issued.'
>
> *Similarly, s 3(3)(*a*) of the RECJA does not transform a foreign judgment into a Singapore judgment. It simply provides for a foreign judgment to be treated 'as if' it had been a judgment of a court in Singapore*. In my view, the New Zealand judgment remained a judgment of the court out of which it was issued. Notwithstanding the operation of s 3(3)(a), the judgment in the present case remained a judgment of the High Court of New Zealand, Dunedin Registry.
>
> [emphasis added]

31 Given our conclusion above, that whether a debt is incurred outside Singapore under s 61(1)(*d*) of BA 2000 is a question of fact and that the registration of a foreign judgment cannot change the fact that the debt itself was incurred outside Singapore, the effect of registration under s 3(3)(*a*) of RECJA simply has no bearing on the applicability of s 61(1)(*d*). In these premises, there would be no need for us here to consider the effect of registration under s 3(3)(*a*) of RECJA or the views taken by the High Court in the above-mentioned cases.

32 Reverting to the facts of the present case, there can be no doubt that the debt in question

arose in Malaysia, and it is, in every way, a debt "incurred outside Singapore". AmBank itself has had to acknowledge this reality. In the affidavit of Sandra Jean Corray ("Sandra"), the Senior Manager of AmBank, dated 10 October 2006, filed in support of AmBank's bankruptcy application, the full particulars of the debt which formed the basis of the application were stated in Annexure B of the affidavit as follows:[note: 6]

Particulars of Debt

Judgment was obtained by the Plaintiffs against the Defendant in ***Malaysia vide Civil Suit No. C23/1629 of 1986*** on 3 November 1988 ("the Malaysian Judgment"). The Malaysian Judgment was registered in Singapore *vide* Originating Summons No. 1004 of 1994 on 12 October 1994. …

AMOUNT DUE AS AT 5TH OCTOBER 2006

Amount due and owing:-

a)	*Balance due under Judgment obtained in Civil Suit No.C23/1629 of 1986, including interest thereon*, calculated at a rate of 15.5% per annum from 3 November 1985 to date ...	MYR689,650.44	
b)	Costs awarded under Originating Summons No. 1004 of 1994		S$ 500.00
		MYR689,650.44	**S$ 500.00**

…

[emphasis added in bold italics]

Further, in Sandra's affidavit of non-satisfaction of debt dated 13 November 2006, filed in support of AmBank's bankruptcy application, it was also stated as follows at para 2:[note: 7]

It is within my knowledge that since the issue of the Creditors' Bankruptcy Application, the abovenamed Defendant, **RAYMOND YONG KIM YOONG (NRIC No. S1140718H)** of No 638 Dunearn Road, Watten Estate, Singapore 289624, is still indebted to the Plaintiffs in the *aggregate sum of MYR688,772.79 and costs of S$500.00 (not inclusive of further interest) as at 10 October 2006 pursuant to a Judgment obtained by the Plaintiffs in Malaysia vide Civil Suit No. C23/1629 of 1986* and registered in Singapore vide Originating Summons No. 1004 of 1994 on 12 October 1994. [emphasis added in italics]

33 It is therefore clear to us that AmBank itself was relying on the balance due under the Malaysian Judgment as the "debt" for its bankruptcy application. As rightly contended by YKY, this is "a debt incurred and became due as a judgment debt *in Malaysia*"[note: 8] [emphasis added]. Accordingly, s 61(1)(*d*) of BA 2000 would apply to AmBank's bankruptcy application, which was undisputedly premised on a foreign debt.

34 The second reason is that if AmBank's argument on the inapplicability of s 61(1)(*d*) is

accepted, it leaves one wondering when, if ever, s 61(1)(*d*) might apply. This is a point also raised, quite rightly, by YKY.[note: 9] AmBank's argument is *literally* to say that because the debt incurred by YHY was incurred in Malaysia, it had to register the Malaysian Judgment in Singapore under RECJA (presumably to satisfy s 61(1)(*d*)) so as to bring about bankruptcy proceedings against YKY here. But upon registration, the Malaysian Judgment becomes a Singapore judgment and converts the Malaysian debt into a Singapore debt, rendering the operation of s 61(1)(*d*) irrelevant or inapplicable. With respect, such an argument incorporates jesuitical niceties and wears an air of distinct unreality. If the registration of a foreign judgment under RECJA has the immediate effect of rendering a foreign debt a Singapore debt, s 6(1)(*d*) would have no meaning whatever.

35 For all of the above reasons, we are of the unequivocal view that s 61(1)(*d*) of BA 2000 is applicable to AmBank's bankruptcy application in the present case.

The proper construction to be accorded to s 61(1)(*d*) of BA 2000

36 It remains to be considered how s 61(1)(*d*) of BA 2000 is to be interpreted, especially the words "enforceable by execution in Singapore".

37 Does "enforceable by execution in Singapore" in relation to the judgment or award mean "immediately executable" (without the leave of the court) or "potentially executable" (with the leave of the court)? It is essentially the meaning of this expression that the parties vigorously dispute; AmBank contends that "enforceable by execution in Singapore" in s 61(1)(*d*) means only that a judgment be *capable* of execution or that the phrase generally refers to *enforceability* or the *enforcement of a judgment*,[note: 10] while YKY contends that the phrase must mean that the judgment can be *immediately* executed by one of the specified modes of execution provided under the Rules of Court.[note: 11] The latter of the two would be the narrower meaning of the phrase "enforceable by execution in Singapore".

3 8 AmBank also contends that its stance comports with the established principle of law that insolvency proceedings, including bankruptcy, are not technically considered to be proceedings to the actual execution or enforcement of a judgment (see *In re Silber* [1915] 2 KB 317; *In re A Company* [1915] 1 Ch 520; *In re Parker Davies and Hughes Ld* [1953] 1 WLR 1349; *In re A Debtor (No 50A-SD-1995)* [1997] Ch 310).

39 In the proceedings below, Tan J was well aware of this general principle of law, but was not at all persuaded that it was relevant. He was content to rely on certain other decisions under the repealed Bankruptcy Act (Cap 20, 1985 Rev Ed) ("BA 1985"). Those decisions have held that the words "execution thereon not having been stayed" employed in s 3(1)(*i*) of BA 1985 meant that a creditor had in his hands a final judgment that could be enforced *immediately* (see the Judgment at [14]):

> That an application to make a judgment debtor bankrupt does not involve the execution of a judgment is clear (see, for instance, Chitty LJ's judgment in *In re A Bankruptcy Notice* [1898] 1 QB 383, 386). Nonetheless, under the old Bankruptcy Act (Cap 20, 1985 Rev Ed) ("the old Act"), where the words "execution thereon not having been stayed" were used in s 3(1)(*i*) in contrast to the words "which is enforceable by execution" in s 61(1)(*d*) of the present Act, the courts had always insisted that although the question of an execution of a judgment does not arise when a bankruptcy petition is presented, a judgment creditor who seeks to make the judgment debtor bankrupt on the basis of an unsatisfied judgment debt must have in his hands a final judgment that can be enforced *forthwith or immediately*. As such, where the leave of the court is required for whatever reason before a judgment may be enforced, such leave must be

obtained before a person can be made bankrupt on the basis of that judgment. [emphasis in original]

40 Section 3(1) of BA 1985 provided a list of acts of bankruptcy (in subl ss (*a*) to (*j*)), and a creditor had to be able to prove one of those acts (*cf* the present Act (BA 2000) where the sole ground for a bankruptcy application is the inability to pay) in order to present a bankruptcy petition (see s 5(1)(*c*) of BA 1985). Section 3(1)(*i*) of BA 1985 applied to a situation where a creditor had obtained a final judgment or order against a debtor:

> **3.**—(1) A debtor commits an act of bankruptcy in each of the following cases:
>
> …
>
> (*i*) *if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed* has served on him in Singapore, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and he does not within 7 days after service of the notice in case the service is effected in Singapore, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action or proceeding in which the judgment or order was obtained;
>
> [emphasis added]

41 Tan J accepted the arguments of YKY's counsel, Mr Roderick Martin, that the protection given to debtors by the words "execution thereon not having been stayed" in s 3(1)(*i*) of BA 1985 had been mutely transposed to s 61(1)(*d*) of BA 2000 (see the Judgment at [19] and [24]). Bearing also in mind the legislative history and purpose of s 61(1)(*d*), Tan J was of the view that for debts incurred outside Singapore, the creditor must have in his hands a judgment that was enforceable by execution immediately, *ie*, the judge adopted the narrow meaning of the phrase "enforceable by execution in Singapore" (at [24]–[25], see also [8] above where the relevant paragraphs have been reproduced). However, we are of the view that the old cases on s 3(1)(*i*) of BA 1985 are of limited value here in construing s 61(1)(*d*) of BA 2000. It bears reiteration that the enactment of BA 1995 revamped bankruptcy laws in Singapore; the acts of bankruptcy were phased out and were replaced by the sole ground of inability to pay (see [18]–[19] above). Section 61(1)(*d*) is an entirely new statutory provision. Section 3(1)(*i*) of BA 1985, although dealing with a situation where final judgment had been obtained by a creditor against a debtor, was simply not its progenitor. Further, these two provisions are plainly not *in pari materia* in other material respects and the link between them is, at best, dubiously tenuous. It would therefore be difficult to accept (as Mr Martin has argued) that the protection given to debtors by the words "execution thereon not having been stayed" in s 3(1)(*i*) of BA 1985 has been silently carried over to the present BA 2000. Nevertheless, the reasons below (that we will deal with shortly) are sufficient to warrant the adoption of the narrow meaning of "enforceable by execution in Singapore" for s 61(1)(*d*) of BA 2000, and there is no need to place reliance on the old cases on s 3(1)(*i*) of BA 1985.

42 In our view, it would be altogether anomalous that, for a registered foreign judgment in Singapore where more than six years have lapsed since the date of judgment, the leave of the court is required before a writ of execution can be issued (O 46 r 2(1)(*a*) of the Rules of Court), yet, if the

wide meaning of "enforceable by execution in Singapore" (as contended by AmBank (see [37] above)) is adopted in s 61(1)(*d*), no leave at all is required to commence the manifestly more *draconian* bankruptcy proceedings. As Lord Esher MR held in *In re North* [1895] 2 QB 264 at 270:

> The bankruptcy law is a law of public social policy, and affects in a *very detrimental manner* the status of those who are brought under its operation; in old times, indeed, to make a man a bankrupt was to make him a criminal … [emphasis added]

Indeed, the learned authors of *Law and Practice of Bankruptcy* ([18] *supra*) have also rightly pointed out (at p 3) that the social stigma of bankrupts has not been entirely obliterated in modern society. Ian F Fletcher portrays this stigma in the following stark terms (*The Law of Insolvency* (Sweet & Maxwell, 3rd Ed, 2002) at para 3‖002):

> *In everyday usage, the terms "bankruptcy" and "bankrupt" carry heavy connotations of personal disaster accompanied by social stigma, giving rise to the supposition that bankruptcy is a fate to be avoided at all costs*. To the extent that bankruptcy constitutes a species of "ultimate" remedy importing sweeping and profound consequences for the debtor and his entire property, *the popular conception of bankruptcy is indeed founded upon the truth*. [emphasis added]

43 In respect of leave to issue a writ of execution under O 46 r 2(1), it is settled practice that leave to extend time beyond the six-year period under the corresponding English provision will not be granted unless it is "*demonstrably just* to do so" [emphasis added] and it is for the judgment creditor to establish this requirement to the satisfaction of the court, as held by Evans-Lombe J in *Duer v Frazer* [2001] 1 WLR 919 ("*Duer*") at [25]:

> It seems to me that these two passages from judgments in the Court of Appeal [in *National Westminster Bank plc v Powney* [1991] Ch 339 and *BP Properties Ltd v Buckler* [1987] 2 EGLR 168] apply to govern the exercise of the discretion to permit the issue of execution after the expiry of six years under RSC [Rules of the Supreme Court] Ord 46, r 2, and that they are support for the proposition that *the court would not, in general, extend time beyond the six years save where it is demonstrably just to do so. The burden of demonstrating this should, in my judgment, rest on the judgment creditor*. *Each case must turn on its own facts* but, in the absence of very special circumstances such as were present in *National Westminster Bank plc v Powney* [1991] Ch 339, the court will have regard to such matters as the explanation given by the judgment creditor for not issuing execution during the initial six-year period, or for any delay thereafter in applying to extend that period, and any prejudice which the judgment debtor may have been subject to as a result of such delay including, in particular, any change of position by him as a result which has occurred. The longer the period that has been allowed to lapse since the judgment the more likely it is that the court will find prejudice to the judgment debtor. [emphasis added]

(See also *Singapore Court Practice 2006* (LexisNexis, 2006) (Jeffrey Pinsler gen ed) at para 46/2/1.) This principle applies to registered foreign judgments as well (*Duer* was, in fact, a case where the judgment in question was a German judgment that had been registered in England and leave to execute the judgment in England was denied as the judgment creditor did not satisfy the court that it was just to do so).

44 Adopting the approach taken in *Duer*, the English Court of Appeal held in *Dipika Patel v Sarbjit Singh* [2002] EWCA Civ 1938 at [21] that the starting position was as follows:

> [T]he lapse of six years may, and will ordinarily, in itself justify refusing the judgment creditor permission to issue the writ of execution, *unless the judgment creditor can justify the granting of permission by showing that the circumstances of his or her case takes it out of the ordinary*. [emphasis added]

45 Likewise, in the recent case of *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2008] EWHC 801, Tomlinson J commented at [21]:

> The specific language used in RSC Order 46 rule 2 [O 46 r 2(1) of our Rules of Court] and its predecessors has given rise to a body of law to the effect that the lapse of six years after the judgment will ordinarily, in itself, justify refusing the judgment creditor permission to issue a writ of execution, *unless the judgment creditor can justify the granting of permission by showing that the circumstances of his or her case takes it out of the ordinary* – see per Peter Gibson LJ at paragraph 21 of his judgment in *Patel v. Singh*. [emphasis added]

46 The onus is therefore on the judgment creditor to satisfy the court that the circumstances of his or her case takes it out of the ordinary in instances where leave for the issuance of the writ of execution is sought. If the judgment debtor is able to reasonably demonstrate that he or she had been misled by the judgment creditor's inaction and had suffered irremediable prejudice as a consequence, it would be highly unlikely that the judgment creditor would be able to discharge this burden. That said, it is always open to the judgment creditor to show, for instance, that the delay was due to difficulties it had in locating the assets of the judgment debtor (especially in today's wired world), despite making reasonable efforts to do so (see also *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2008] SCGA 48 at [26]).

47 At the end of the day, we agree with Evans-Lombe J in *Duer* that "[e]ach case must turn on its own facts" (at [25]; see [43] above where the passage is cited), but the burden, nonetheless, rests ultimately on the judgment creditor to show that the circumstances of his or her case takes it out of the ordinary. It therefore seems quite inappropriate to us that a foreign judgment creditor can circumvent this burden by alternatively commencing the altogether more draconian bankruptcy proceedings. The patent absurdity of this situation is accentuated by the stark fact that the "dead hand" of a judgment (in so far as no writ of execution can be issued without the leave of the court to enforce the judgment, *ie*, the Registered Judgment in the present case) can be moved so as to obtain a bankruptcy order against the debtor, though no writ of execution can be issued as of right. It is trite that a court should seek to avoid a construction that creates an anomaly or otherwise produces an irrational or illogical result (F A R Bennion, *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) at p 986). Adopting the wide meaning of "enforceable by execution in Singapore" in s 61(1)(*d*) would, in our view, produce such an anomalous outcome.

48 At this juncture, it would be appropriate for us to deal with two further issues pertaining to O 46 r 2(1) of the Rules of Court. As mentioned (see [14] above), in support of its contention that the phrase "enforceable by execution in Singapore" should be given the wide meaning, AmBank argues that the present O 1 r 2(2) of the Rules of Court makes it plain that O 46 r 2(1), or the Rules of Court (save for those expressly mentioned in O 1 r 2(2)), does not apply at all to bankruptcy proceedings, and the relevant rules should be the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed), which are "silent on whether leave to issue execution proceedings under the Rules of Court is a prerequisite to commencement of bankruptcy proceedings"[note: 12] for a judgment of more than six years. There is no doubt that the governing rules should be the Bankruptcy Rules, and only the Rules of Court expressly said to apply to bankruptcy proceedings in O 1 r 2(2) will apply to bankruptcy proceedings (see *Re Rasmachayana Sulistyo; ex parte The Hongkong and Shanghai Banking Corp Ltd* [2005] 1 SLR 483). The only exception to this is where "lacunae in procedural issues" exist (*ibid* at

[6]), *ie*, the Bankruptcy Act or the Bankruptcy Rules are silent on a matter of practice or procedure, and, in such instance, the Rules of Court will then apply (see s 11(1) of BA 2000). However, AmBank's argument here has somewhat put the cart before the horse. If a narrower definition is indeed adopted for "enforceable by execution in Singapore" in s 61(1)(*d*), it can simply be said then that the Act has expressly provided that leave should first be obtained under O 46 r 2(1)(*a*) before a bankruptcy application based on a foreign debt payable by virtue of a judgment for which more than six years have passed since its date of registration can be proceeded with. Perhaps more fundamentally, the *primary* question we are concerned with here is not what procedure to apply to AmBank's application, but the proper interpretation to be accorded to s 61(1)(*d*) of BA 2000. Admittedly, the resolution of this question of interpretation might have a procedural consequence, but, strictly speaking, the applicability of the Rules of Court should not, for any reason, have a bearing on the proper construction to be given to s 61(1)(*d*). It appears this is why Tan J himself, in arriving at his decision, did not find it necessary to address the question of whether O 46 r 2(1) of the Rules of Court could apply in the first place.

49 The second argument raised by AmBank is that a narrow definition of "enforceable by execution in Singapore" would lead to a anomalous divide between debts incurred in Singapore, where the creditor only needs to show that a debt is unpaid and no judgment is needed (let alone require the leave of the court), and foreign debts, where not only must the debt be registered as a judgment in Singapore but the creditor must also apply for leave to issue execution under O 46 r 2(1)(*a*) after six years.[note: 13] The simple counter-argument to this is that Parliament had precisely *intended* a *divide* between the two and for them to be treated *differently*. As pointed out earlier, Parliament had imposed an *additional* requirement in s 61(1)(*d*), on top of those in ss 61(1)(*a*) to 61(1)(*c*), for bankruptcy applications based on foreign debts for the protection of debtors. Undoubtedly, adopting the narrow definition of "enforceable by execution in Singapore" (in contrast to the wide definition) would mean that *more* is demanded of creditors in such applications (since the leave of the court would be necessary in the case of a judgment of more than six years), but it should be borne in mind that this is only so in the event that the creditors choose to delay enforcement of their registered judgments for more than six years without taking any enforcement actions, as in this case.

50 This brings us to the most important reason why the narrow meaning of "enforceable by execution in Singapore" should be adopted. In our opinion, adopting the narrow meaning would best reflect Parliament's policy underpinning the enactment of s 61(1)(*d*). Parliament's intention was to give some *added* protection to debtors against foreign creditors commencing bankruptcy applications based on foreign debts. Adopting the wide meaning of "enforceable by execution in Singapore" in s 61(1)(*d*) might allow creditors to circumvent the need to obtain the leave of the court under O 46 r 2(1)(*a*) of the Rules of Court for instituting proceedings for the execution of the judgment to recover the debt (and, consequently, the need to explain the delay to the court) by opting for the more draconian bankruptcy proceedings. Admittedly, bankruptcy proceedings do not involve the execution of judgment (see [38] above), but both are, in the final analysis, measures to recover debt, and the former is clearly the more draconian measure (see [42] above). In our view, the *added* protection in s 60(1)(*d*) would be somewhat *illusory* if the construction of the provision has the undesirable effect of eroding or taking away some other *general* protection afforded by law to debtors against the recovery of debt (*eg*, the protection afforded to all debtors under O 46 r 2(1)(*a*) of the Rules of Court against any prejudice caused by a judgment creditor's delay in enforcing his judgment that has become stale or unenforceable after six years). Thus, although both constructions can, strictly speaking, be literally consistent with the wording of s 60(1)(*d*), the narrow meaning of "enforceable by execution in Singapore" would give full effect to Parliament's intention.

51 Lastly, there is a suggestion by Lord Esher MR in *In re North* ([42] *supra*) that, as bankruptcy law affects the status of those who are brought under it in a very detrimental manner, statutory

provisions in bankruptcy legislation "ought to be construed as much for the debtor's benefit as possible" (at 271). Thus, in that case, his Lordship construed s 1 of the Bankruptcy Act of 1890 (c 71) (UK), which provided that an act of bankruptcy was committed by a debtor if the sheriff held for 21 days goods seized by him under an execution, to mean that the sheriff must have held the goods for a full 21 days and not just 20 days and a part of a day. It appears thus far that no other cases have cited *In re North* for this point, but it has also not been disapproved in any subsequent case either. In view of the rather serious consequences of being made a bankrupt, there is no reason why a court cannot adopt a purposively strict construction of bankruptcy provisions that benefits debtors so long as the construction accords with Parliament's intention.

52 For all the above reasons that we have given, we are of the view that "enforceable by execution in Singapore" in s 61(1)(*d*) has the narrow meaning as contended by YKY and as accepted by Tan J. Accordingly, we affirm Tan J's decision to adopt the narrow meaning of the phrase. As AmBank has not satisfied s 61(1)(*d*) of BA 2000, r 127 of the Bankruptcy Rules makes it plain that its bankruptcy application must be dismissed.

Whether AmBank is prevented from commencing bankruptcy proceedings against YKY by Order 46 rule 2(1)(*b*) of the Rules of Court

53 Given our conclusion on the second issue, the third issue in this appeal becomes moot. However, the answer to the third issue, *viz*, whether AmBank is prevented from commencing bankruptcy proceedings against YKY by O 46 r 2(1)(*b*) of the Rules of Court, is obviously "no". The change in the parties referred to in O 46 r 2(1)(*b*) (see [6] above) clearly means a change in the identities of the parties, such as when a party to the judgment has died or the judgment has been assigned to another party (see *Singapore Civil Procedure 2007* (G P Selvam ed) (Sweet & Maxwell Asia, 2007) at para 46/2/3). It does not mean a change in the name of a party. A change in name does not affect the rights or liabilities of the party (see s 28(6) of the Companies Act (Cap 50, 2006 Rev Ed), *KRex Finance Ltd v Cheng Chih Cheng* [1993] 1 SLR 46, *MBf Finance Bhd v Ting Kah Kuong* [1993] 3 MLJ 73 and *Re Amran bin Ahmad; ex p MBf Finance Bhd* [2005] 7 MLJ 477).

Conclusion

54 For the reasons above, the appeal is dismissed with costs and the usual consequential orders.

[note: 1]1st Affidavit of Raymond Yong Kim Yoong dated 13 November 2006, Appellant's Core Bundle (vol 2) at pp 50–52.

[note: 2]Appellant's Case at para 42.

[note: 3]Appellant's Case at para 52.

[note: 4]Appellant's Case at para 44.

[note: 5]Appellant's Case at para 42.

[note: 6]Appellant's Core Bundle in vol 2 at p 29.

[note: 7]Appellant's Core Bundle in vol 2 at p 45.

[note: 8]Respondent's Case at para 62.

[note: 8]Respondent's Case at para 62.

[note: 9]Respondent's Case at para 65.

[note: 10]Appellant's Case at paras 52–55.

[note: 11]Respondent's Case at paras 38–41.

[note: 12]Appellant's Case at para 44.

[note: 13]Appellant's Case at para 66.