IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 310/2015

(arising in XP 105/2014)

[2016] SCSC 8

CHINNAKANNAN SIVASANKARAN

Applicant

versus

(1) BMIC LTD
(2) POWER TRADE CAPITAL LTD
(3) BROADCOURT INVESTMENTS LTD
(4) STANDARD CHARTERED BANK (SINGAPORE)
(5) REED SMITH LLP (UK)
(6) CHINNADURAI S. PILLAI
(7) BERNARD POOL (OFFICIAL RECEIVER)

Respondents

Heard:	1 December 2015, 4 December 2015, 10 December 2015
Counsel:	Mr. B. Hoareau for the for applicant
	Mr. B. Georges for 1st respondent Mr. Rouillon for the 2nd & 3rd Respondents Mr. Chinnadurai S. Pillai in Person Mr. Bernard Pool in Person
Delivered:	18 January 2016

RULING **ON MOTION**

Karunakaran J

[1] Following the declaration of bankruptcy - order-made by this Court on 26th August 2014, in EX PARTE: CHINNAKANNAN SIVASANKARAN - Civil Side 105 of 2014 - the instant application - dated 18th August 2015 - is made by the Official Receiver Mr. Bernard Pool - hereinafter called the "Receiver" under Section 82 (4) of the Insolvency Act 2013(hereinafter called the Act)seeking an order for the approval of the Post-Bankruptcy Composition-hereinafter called the "Composition" proposed by the bankrupt Mr. Chinnakannan Sivasankaran. This composition has already been accepted by the majority of creditors of the bankrupt in terms of Section 81 (1) the Act. The major creditor one BMIC, a Company did not accept the said composition. This major creditor is now objecting to the approval sought by the Receiver and the bankrupt jointly in this matter.

[2] On the 21st July 2014, Mr. Sivasankaran, as a debtor, petitioned the Court under Section 13 (1) of the Act, for a bankruptcy order and sought a declaration of bankruptcy against him invoking the declaratory jurisdiction of this Court in terms of Section 3 of the Act.

[3] The debtor made the insolvency-petition - hereinafter called the petition - on the ground that he was unable to pay his debts and the combined sum of which debts exceeded SCR25,000/- AND more specifically he claimed that he was a judgment-debtor and as such he owed judgment-debt in the sum of US$211,240,499.82 - equivalent to (approximately) SCR 2,619,382,197.77 - to a company BMIC Limited, the Judgment-creditor by virtue of a judgment given on 12th June 2014 by the High Court of Justice, Queen's Bench Division, per Mr. Justice Poppelwell, Commercial Court in claim no. 2012 Folio No.1439 (hereinafter referred to as the "foreign judgment") whereby the judgment debtor was ordered to pay the said sum of US$211,240,499.82 to the judgment-creditor.

[4] Besides, the petitioner claimed that he incurred the said judgment-debt by virtue of a personal guarantee he had furnished to the judgment-creditor for the benefit of a third party, which is also a company and principal debtor to the said judgment-debt. When the

debtor reliably came to learn that the judgment-creditor had registered the said foreign judgment in the Supreme Court of Seychelles for the purpose of enforcement within its Jurisdiction, he immediately instituted the said insolvency proceeding by filing the petition with a motion for an urgent hearing of the matter.

[5] When the petition came up first time before the Court on the 8th August 2014, the petitioner through his counsel Mr. Basil Hoareau sought an adjournment of the case for a period of 7 days on the ground that despite his inability to pay off the said judgment-debt in full, the petitioner was attempting to settle the debt with the judgment-creditor amicably -out of Court -in order to satisfy the said judgment-debt at least in part thereof acceptable to the creditors.

[6] The Court after hearing the petitioner under oath and his counsel Mr. Basil Hoareau accepted the petition of the debtor on the same date. However, with a view to give debtor sufficient time and opportunity to make an attempt at a settlement of the said debt amicably with his creditors and considering the best interest of both parties, the Court, in exercise of its equitable powers and jurisdiction conferred by Section 6 of the Courts Act (Cap 52) read with Section 14 (1) of the Act, granted an adjournment until the 18th of August, 2014 for report as to settlement if any, had been reached by then. However, on the 18th of August 2014, when the case came up before the Court for hearing, Learned Counsel for the debtor informed the Court that despite sincere attempts by the debtor, no settlement could be reached with the judgment-creditor but the negotiations were still in progress. Therefore, he again sought an adjournment of the case giving a last chance for an amicable settlement acceptable to the creditors until the 21st August 2014. When the matter again came up for report on the intended settlement, Mr. Basil Hoareau again informed the Court that all last-ditch attempts at settlement were not successful. Hence, counsel finally moved the Court to proceed with the hearing of the Insolvency-petition. This necessitated the Court - hereinafter referred to as the Insolvency Court - to proceed, consider and determine the debtor’s petition on merits for a bankruptcy Order in accordance with law.

[7] Having meticulously perused and examined the petition including the affidavits filed in support of the petition, the statements of affair, financial statements on assets and liabilities of the petitioner, and all other relevant documents annexed thereto, the Court found and concluded that:

(i) The debtor had filed the said petition with the Court for a bankruptcy order on lawful ground that he was unable to pay his debts and he has combined debts of more than SCR25,000, which debt remained due and payable to his creditors; The statement of the affairs dated 14th August 2014 of the debtor, which accompanied the petition *ex facie*, in the opinion of the Court, was correct and complete, and the petition was therefore, acceptable to the Court;

(ii) Having accepted the said petition, the Court held that the debtor was not entitled to withdraw the petition without leave of the Court.

(iii) The statement of affairs referred to in finding (ii) supra showed all material particulars of the debtor's assets, debts, liabilities, creditors, securities and privileges in favour of the creditors, which all were disclosed to the satisfaction of the Court.

(iv) Furthermore, the Court noted that some of the requests made therein by the debtor such as, the ones seeking orders for the sustenance allowance and the legal expenses appeared to be premature and fell under the administrator of the estate, and therefore, the Court found that those requests should at first instance, be made to the Official Receiver. Hence, the Court declined to grant any of those orders or reliefs to the petitioner at that stage of the proceeding.

[8] In view of all the above, after having diligently considered the petition of the Debtor Chinnakannan Sivasankaran and after perusing the statements of affairs and upon hearing his counsel Mr. Basil Hoareau, the Insolvency Court in the Supreme Court No: 2, presided by the under signed Judge at Palais De Justice, Ile Du Port, Mahé, Republic of Seychelles on26thday of August 2014 -in exercise of the powers conferred on this Court

under the provisions of the Insolvency Act 2013 read with Sections 5 and 6 of the Courts Act Cap 52 of the Laws of Seychelles - declared that the debtor Chinnakannan Sivasankaran was bankrupt and a bankruptcy order was made accordingly in terms of Section 14(1) of the Insolvency Act 2013. The declaration and commencement of bankruptcy was ordered to take effect from the date of the said declaration.

[9] By virtue of the said declaration and orders Mr. Bernard Pool, the Official Receiver attached to the Court was appointed as receiver and manager of the estate of the said Chinnakannan Sivasankaran with immediate effect. The Official Receiver was directed to investigate the petitioner's financial affairs, financial statements, assets and liabilities and file a preliminary Report to Court at the earliest, not later than three months from the date hereon and carry out his duties under the Act.

[10] The Official Receiver was thus authorized to retain or appoint a suitably qualified accountant, a fit and proper person as an expert to assist the Official Receiver and the Court in this matter.

[11] The Official Receiver was also directed to comply with the procedural requirements particularly stipulated under Section 20 of the Act and perform his duties in exercise of his Powers and functions under Part II, Sub-Part VII and under other relevant provisions of the Act.

[12] The counsel for the debtor Mr. Basil Hoareau, was directed to ensure that his client was made fully aware of the nature, extent and the effect of the Declaration of Bankruptcy made herein, on his personal status and civil life, particularly the provisions under Part II - Sub-Part III of the Insolvency Act 2013.

[13] In addition, the Bankrupt, Chinnakannan Sivasankaran, who was present in Court at the time of the said declaration was also put under the following Notice:

"The Official Receiver Mr. Bernard Pool attached to this Court is by virtue of this order receiver and manager of your estate. You have certain duties to the official receiver as set out under Part II - Sub-Part V of the Insolvency Act 2013. These include the duty to provide the official receiver such inventory of the estate and such other relevant information financial or otherwise and to attend on the official receiver at such times, as the official receiver may reasonably require."

[14] In consequence of the said bankruptcy declaration, the Court also granted a stay, in terms of Section 21 of the Act of all civil proceedings against the debtor, including the execution of any judgment commenced by any creditor against the debtor within the jurisdiction of the Court and any other civil proceeding arose incidental or ancillary or consequential thereto or in relation to any judgment-debt the bankrupt owed to any of his creditors.

[15] Following the said declaration, orders, and notification thereof to the Official Receiver, the matter was adjourned sine die with liberty for the Official Receiver or the petitioner to restore and make any application to Court for the due execution of their respective duties and enforcement of their rights and liabilities under the Act or for any variation of the orders made hereinbefore.

[16] In these backdrop of facts, the bankrupt's estate vested in the Official Receiver. Having accepted and undertaken the assignment the Receiver submitted a preliminary report to Court on the assets and liabilities of the estate. After holding the meetings of the creditors and the bankrupt, the Official Receiver has now come before this Court with the application first above-mentioned seeking the approval of this Court for the Post Bankruptcy Composition offered by the bankrupt and accepted by the majority of the creditors as detailed in the Official Receiver's report dated 18th August 2015. The said composition was in fact, accepted by the majority or all of the creditors of the bankrupt save BMIC by passing a special resolution in the meeting of all the creditors held on the 8th August 2015.

[17] The said report of the Official receiver reads - in verbatim- thus:

OFFICIAL RECE1VER'S REPORT TO THE COURT

ON A 'COMPOSITION OFFER' MADE BY THE BANKRUPT

IN ACCORDANCE WITH SECTION 82(6) OF THE INSOLVENCY ACT 2013

1. Legal Requirements

(i) Section 81(1) of the Insolvency Act 2013 allows the bankrupt to propose a "post-bankruptcy composition to his creditors in satisfaction of the debts due to them.

(ii) Section 81(2) requires that the 'offer of composition" be passed by a special resolution of creditors in order to be effective.

(iii) Section 82 provides inter alia that:

a) The composition offer once approved by the creditors as above be further subject to approval by the Court on the application of the bankrupt or the Official Receiver.

b) The composition offer once approved by the Court shall bind all the creditors in respect of provable debts due to them by the bankrupt (my underlining).

c) That prior to the Court approving a composition

(1) The Official Receiver shall make a report on the terms of the composition and the bankrupt's conduct.

2) The Court shall hear any objection by or on behalf of a creditor.

3) The Court may correct or supply any formal or accidental error or omission without altering the substance of the composition.

4) The Court may refuse to approve a composition if it considers that the terms of the composition are not reasonable or are not calculated to benefit all the creditors.

(iv) Section 83 provides that under certain conditions a creditor may not be bound by a composition.

(v) Section 84 requires the Court to "approve" the composition within 1 month of the date of the passing of the special resolution approving the composition, (1 month from 8th August 2015)

2. Official Receiver's Report

(i) Conduct of the Bankrupt - Section 82(6).

During the currency of my appointment as Receiver in Bankruptcy of the Estate of Mr. C. Sivasankaran on 26th August 2014 to date, most of my time has been spent on meetings for negotiating and arriving at a composition offer which would be acceptable to the creditors and the bankrupt.

In view that BMIC is the major creditor and that prior to the recent amendment to the Act, (Act 5/2015) any resolution under Section 81 would not have been approved unless BMTC was in agreement thereto. the first few "draft composition offer" was discussed with BMIC only.

During that period, various meetings were held and the bankrupt attended thereto whenever requested to do so without hesitation.

Whenever called on to reply to and provide assistance with regards to the bankruptcy proceeding the bankrupt was always at hand.

Following a request by BMIC for the bankrupt to be examined on oath under either Section 49 or 50, 1 summoned the bankrupt under powers vested in me under Section 49(1). The Bankrupt turned up at the appointed time and answered the questions put to him.

The conduct of the Bankrupt is therefore deemed to be satisfactory by me.

(3) Terms of Composition

The first formal "offer of composition" dated 28th May 2015 was tabled at the meeting of creditors held on 22nd June 2015 together with my report as required by Section 81(2) of the Act.

The offer of composition "did not receive the required majority to be adopted (see copy of minutes of meeting attached herewith at Appendix I).

However as requested by the creditors at that meeting, a revised offer would be considered.

The bankrupt made a revised offer dated 26th June 2015 on similar terms as the former but with certain increases in the various amounts to be settled to the various creditors. At the meeting held on l7 July 2015 (see copy of the minutes attached Appendix II) the creditors voted for an adjournment of the meeting to allow BMIC and any others to further consider the revised final offer. For ease of reference I attach herewith (Appendix 111) communications between the Bankrupt and Mr. B. Georges (Attorney for BMIC) on the terms of the composition.

The final composition offer made by the Bankrupt dated 26th June 2015 was by a majority of creditors at the adjourned meeting held on 8th August 2015 (copy of minutes of the adjourned meeting held on 8th August is attached at Append IV - which were circulated to all the creditors on 13th August 2015).

Section 284 (2) as amended by Act 5/20 15 reads:

"at any meeting of creditors required to be passed as a special resolution, the resolution is passed where a majority in number of the creditors voting in personor by proxy vote in favour of the resolution".

As mentioned above, the Court may refuse to approve the composition if the terms thereof are not reasonable etc. (Section 82 (3) (b). The terms of the composition offered by the Bankrupt provides different treatment between the various creditors. In considering the "reasonableness" of the offer, the Court should take note that "terms of the composition" were circulated to all the proven creditors and that each creditor is/was

aware of the terms proposed to each individual creditor at the time the offer was made by the bankrupt. Further in granting an adjournment of 22 days for evaluation of the composition offer. before a final vote was taken on the offer, all creditors is deemed to have had sufficient time to consider the terms thereof. 1 therefore consider that the offer was not in contravention of Section 82 (3) (b) in that it could not be deemed to be not calculated to benefit all the creditors".

(***4) Other Matters***

a) Section 82(3) (d) provides that the Court may "refuse to approve a composition where the composition does not provide for the payment, before any other debts are paid. of debts that have priority under Section 340.

To the best of my knowledge and belief and from the various records and information produced to me by the bankrupt there are no debts and liabilities which would qualify to be settled under section 340 of the Act.

I further confirm that no claims have been made to me as Receiver in bankruptcy of C. Sivasankaran by the Seychelles Revenue Authorities or any other persons who may have debts that could arise under Section 340 of the Act.

b) Included in the approved composition offer is payment to "Tata Group" for the sum of US$ 2.040000 (Two Million and Forty Thousand).

Per letter dated 8th August 2015 (copy of which is attached at Appendix V Ms. Samantha Aglae - Attorney-at-law acting on behalf of Tata Capital Financial Services Ltd confirmed that Tata Capital is "not yet a creditor of the bankrupt (not even a contingent creditor)". I have discussed the matter with the bankrupt and he has informed me that in view that Tata Capital has confirmed after the offer was made that there are no debts due to the group as at present date then the composition offer should be amended to delete the reference to "Tata Group".

(c) Section 82(9) prescribes that the Court shall, where it has approved the composition, on payment to the Official Receiver of such commission as may he prescribed

In view that regulations under the Act regarding any fees or commission that should be paid to the Receiver in any bankruptcy or liquidator of any company in liquidation has not yet been enacted, I humbly suggest that it be set at a rate of 3% of the proceeds of the bankruptcy and be paid out before any distribution is made to the creditors under the composition. Should regulations be published before the completion of the said bankruptcy then the rate prescribed therein should supersede that given in this order. It is to be noted that the bankruptcy proceedings have now lasted close to a year and if the "composition" is approved, a further period of at least one year will be required to be spent by the Receiver to complete the collection and distribution of the proceeds of the "composition"

[18] In the light of all the above and in accordance with Section 82(4) of the Insolvency Act 2013, the Receiver and the bankrupt now request the Court to consider and grant the necessary approval for the Composition Offer made by the bankrupt on 26th June 2015 in terms of Section 81 of the Act, which offer was accepted by a majority of creditors at the meeting held on 8th August 2015.

[19] Furthermore, it is the request of the Receiver that- if the Court considers it appropriate to approve the composition offer in accordance with Section 82(7) of the Insolvency Act 2013 - the Tata Capital Financial Services (TATA Group) be deleted from the composition offer due to an error on the part of the bankrupt in including the company as a creditor of the estate of the bankrupt C. Sivasankaran.

[20] On the side of the proven creditors, all of them have accepted the composition except the major creditor BMIC - herein represented by its Attorney Mr. B. Georges. The BMIC is now in the instant application raising objection to the granting of approval for the proposed composition.

[21] <u>The case of the objecting Creditor-BMIC</u>

[22] The objection of BMIC is grounded on the following points of law and facts vide Amended Objection dated 1st December 2015: -

[23] Plea In Limine Litis -On points of Law- Section 83 Argument

BMIC Limited contends that it is not bound by the Composition insofar as it has not voted in favour of the Composition at the creditors' meeting held on 8thAugust2015, and it does not agree to it. In essence, it is the submission of counsel Mr. Georges that in terms of Section 83 (b) of the Act, the bankrupt is liable for the unpaid balance of the debt payable to BMIC since the creditor has not agreed to the composition. According to Mr. Georges, Section 83 (1) (a) and (b) should be read disjunctively and interpreted isolating paragraph (b) from (a) to make sense. Besides, counsel submitted that since the creditor has not accepted the Composition and has not voted in favour of the Composition at the creditors' meeting, the Court should not grant approval and declare that the composition is not binding the creditor BMIC and that the bankrupt is still liable to pay the unpaid balance of the debt to BMIC.

[24] On the Merits

BMIC objects to the application of the Official Receiver for approval of the Composition contending that the terms of the Composition are unreasonable and are not calculated to benefit BMIC, for the following reasons:

1. The Composition was approved at the Third Creditor's Meeting on 8 August2015 by three creditors whose total debts were only valued at USD 54million approximately compared to BMIC, whose debt is valued at USD 213million approximately.

2. The resolution of the creditors approving the Composition is a sham in that the Insolvency Act was amended simply to permit those creditors to do so and to benefit the bankrupt thereby.

3. The sum offered to BMIC is highly unreasonable and unfair taking into account:

(i) the significant size of the debt of BMIC compared to the amount offered in the Composition, which emanated from a UK High Court Judgment entered against the bankrupt on 12thJune 2014(the Judgement).

(ii)the fact that a substantial part of the Composition relates to an offer made by Mrs. Sivasankaran, the former wife of the bankrupt, who obtained some 40 properties in Seychelles alone in a divorce settlement with the bankrupt some 6 weeks prior to the delivery of the judgment in the UK courts establishing the debt to BMIC, and against whom the Official Receiver has given notice of a voidable preference action and BMIC has a pending *Paulian Action* pending before the Court.

(iii) that there has been no thorough and complete examination of the bankrupt by the Official Receiver notwithstanding several requests by BMIC that this be effected in order that all creditors would have a full and complete understanding of the assets of the bankrupt.

(iv) the fact that, following the approval of the Composition, the bankrupt made offers to BMIC in excess of value and size to the offer made in the Composition.

(v) the condition requiring BMIC's withdrawal of all of its pending applications anywhere in the world against the bankrupt upon the approval by this Honourable Court of the Composition is highly prejudicial, unfair and unacceptable to BMIC, which has specifically not accepted the Composition - noting that BMIC currently has a pending and operational UK High Court World Wide Freezing Order being enforced by it in the UK, Bermuda and British Virgin Islands, which currently attaches to it all of the bankrupt's existing and future assets (either within his ownership or control).

(vi) the wording of the composition, which requires BMIC to provide up front to the bankrupt, a significantly wide and unconditional release in relation to:

(a) the Judgement;

(b) its UK High Court World Wide Freezing Order and injunctions that seek to enforce the Judgement in other international jurisdictions, and any other applications pending currently before any other international courts in return for a general promise in vague, uncertain and incomplete terms to undertake certain transfers and make certain payments to BMIC in the future.

(vii) the fact that in an affidavit recently filed the bankrupt has made known a further liability of US$ 160 million not hitherto disclosed to the Official Receiver or his other creditors.

4. It is the contention of BMIC that the bankrupt is possessed, directly or indirectly of sufficient assets to enable the composition offer to be increased by the bankrupt.

5. In the alternative, BMIC contents that if the composition is not approved by this court and the Receiver is ordered to continue his administration of the estate of the bankrupt, including examining him before this court thoroughly and pursuing the voidable transaction action against Mrs. Sivasankaran, it is very likely that there will be more funds for distribution among the creditors.

[25] In view of all the above, BMIC contents that the terms of the composition are not reasonable and not calculated to benefit BMIC and therefore, requests this Court for an order refusing the approval of the composition accepted by the creditors of the bankrupt, other than BMIC, at a creditors' meeting held on the 8th August 2015.

[26] **<u>The case of the Applicant/Bankrupt/Official Receiver</u>**

[27] On the other side counsel for the applicant/bankrupt/official receiver Mr. Hoareau contended that the terms of the composition accepted by the majority of the creditors are reasonable and calculated to benefit all the creditors.

[28] It is the submission of Mr. Hoareau on the **plea *in limine litis*** that Section 83 come into play only after the approval of the composition if any, granted by the Court, which shall

bind all the creditors in respect of provable debts due to them by the bankrupt in terms of section 82 (2) of the Act. Furthermore, to invoke section 83 the creditor (1) should have alleged fraud against the bankrupt in incurring or increasing the debt and (2)in addition he should not have agreed to the composition. Only upon satisfying these two conditions conjunctively as required under Section 83 (1) (a) and (b),one can have recourse to section 83.However, according to the applicants, there is no allegation of fraud raised against the bankrupt in this matter. Moreover, Section 83 has no relevance to the instant application for approval. It is also the submission of the applicant that that BMIC has completely misunderstood the purpose and the intent of section 83. There is no evidence as required under section 83 (1) (a)(i) of the Insolvency Act 2013 that the bankrupt by means of fraud incurred or increased the debt. There is no evidence as required under section 83 (1) (a) (ii) that the bankrupt by means of fraud on or before the date of the composition, obtained for bearance on the debt. There is no evidence of fraud on record at all. Hence, counsel argued that section 83 is irrelevant and has no application to the instant proceeding in relation to the approval of the Composition.

[29] Thus Mr. Hoareau contended that section 83-argument advanced Mr. B. Georges is not tenable either in law or on facts.

[30] **On the merits** it is the submission of the applicant that this matter is listed only to consider the application made by the Bankrupt and the Official Receiver pursuant to section 82 (4) of the Insolvency Act 2013 (as amended). The Court is considering a Post-Bankruptcy Composition offer provided on the 25thJune2015 and accepted by the majority of creditors on the 8 August 2015. Sections 81 - 86 of the Insolvency Act 2013 (as amended) sets out the regime for Post Bankruptcy Composition. On 18thAugust 2015 the Official Receiver applied to the Court for approval of the Composition. In this instance, the Official Receiver has complied with section 82 (6) (a) of the Insolvency Act 2013 and has submitted a detailed report in relation to the financial status of the bankrupt with reference to relevant evidence as to what assets are available to satisfy the creditors. The Official Receiver has also set out the bankrupt's conduct and has confirmed that he has co-operated fully throughout the procedure.

[31] It is the case of the applicant that the Composition was accepted by the creditors by passing a special resolution in accordance with law as per section 284 of the Insolvency Act 2013 (as amended). It adopted and agreed by the majority of the creditors, who voted in favour of the Composition except BMIC.

[32] Although BMIC contents that the resolution of the creditors approving the composition is a sham and that the insolvency Act was amended simply to permit those creditors to do so and to benefit the bankrupt thereby, it has not produced any evidence to substantiate these serious allegations. In any event, these allegations are refuted by the applicant. The Amendments to the Act was carried out by the Parliament in Compliance with the constitution of the Republic of Seychelles. These allegations are purely speculative statements without any evidential support whatsoever. According to the applicant, the financial affairs of the bankrupt have been fully examined by the official Receiver over the course of last 12 months. After the examination of financial status, the official Receiver has approved the composition that has been put forward as the best available option in terms of assets.

[33] As such, the assertions of BMIC are again without evidential foundation and that the offer is reasonable, fair and proportionate in the circumstances of the bankrupt's finances. The offer is based on what is available to the bankrupt and it has been put forward as 'Post Bankruptcy Composition', though it will not achieve the full amount desired by BMIC. It is the contention of the applicant that the financial settlement of the divorce proceedings between the bankrupt and his former wife Mrs. Sivasankaran is not a matter for consideration under Post Bankruptcy composition pursuant to section 81 Insolvency Act 2013' It is an irrelevant consideration. The issues of Paulian Action and any other applications are matters that are not relevant to the consideration of the Post Bankruptcy Composition as approved by the creditors on the 8th August 20l5.

[34] As regards, BMIC’s complaint that there has not been a through examination of the bankrupt by the Official Receiver, the applicants content that there is no evidential basis for this suggestion. The bankrupt has given complete records of his financial affairs over a period of 12 months to the Receiver. The bankrupt has also offered assistance and

cooperation throughout and has been interviewed on numerous occasions by the official Receiver. In addition, the bankrupt has also provided a written statement to the Official Receiver on the 17th August 2015in relation to his financial status. So the suggestion that there has not been a thorough examination of the bankrupt is incorrect. This head of objection does not relate to the conduct of the bankrupt but a complaint against the Official Receiver. As such, this is an irrelevant consideration. In any event, such suggestions are refuted by the applicant.

[35] It is suggested by BMIC that after the approval of the Composition in the meetings of the creditors, the bankrupt has made offers in excess of the composition. These suggestions have no details whatsoever but a blanket allegation of the 'offer'. The allegations are completely refuted and in any event, there is no evidence at all that these 'offers' have been made and most importantly, there is no evidence that any such additional and/or excess assets are available to satisfy the alleged excess offers. The Court is only concerned with the Composition as approved by the Creditors on the 8th August 2015 and nothing else. The allegations of excess assets and/or offers according to the applicant, are purely speculative, prejudicial and unfair.

[36] Moreover, it is the contention of the applicant that BMIC’s complaint about the withdrawal of foreign proceedings, such complaint has no relevance to section 82(3) of the Insolvency Act 2013 at all. The withdrawal of foreign proceedings is an obvious and correct procedure, so that the assets of the bankrupt are managed quickly. The freezing order needs to be discharged so that the properties can be sold to satisfy the Creditors. In fact, the bankrupt has no rights over the properties as all the properties are still vested with the Official Receiver. Therefore, the release of the bankrupt from foreign proceedings are again sensible, so that the bankrupt's assets can be realized immediately to settle the creditors including BMIC, the major beneficiary of the composition.

[37] The assertions in relation to the liability of the bankrupt of US$l60 million was notified to the Official Receiver, who did not admit the claim as it related to Siva Ltd. In any event, this matter has now been withdrawn in Bermuda. There is no evidence that here are additional assets available to satisfy the creditors.

[38] In view and on the strength of all the above, the applicant urged the Court to reject the objections of BMIC and approve the Composition - as the offer and terms are reasonable, fair and proportionate in the circumstances of the financial status of the bankrupt and most beneficial to BMIC. In any event, BMIC have been treated separately and are the major beneficiary of the Composition. The applicant further contented that none of the conditions listed in Section 82 (3) apply here to refuse the approval. More importantly there are no other compelling reasons under section 82 (3) (e) either justify refusal by the Court. Hence, the bankrupt/Receiver prayed the court to approve the Post Bankruptcy composition as accepted by the majority creditors on the 8th August 2015 and cancel the bankruptcy order forthwith and render justice in this matter.

[39] **<u>Decision</u>**

[40] I carefully perused the entire record of proceedings, pleadings, affidavits and other relevant documents and exhibits produced in the course of the proceedings in this matter. I meticulously, examined the Receiver's Report as well as both affidavits of Ms. Bemadette Baynie, Group General Counsel of BMIC, dated 27th October and 29th November 2015, filed in support the objections raised by BMIC.

[41] First of all, it is pertinent to note that the law applicable and relevant to the instant application is founded in Sections 81, 82, 83, 84, and 85 of the Act, which read thus:

[42] **Resolution to accept composition**

[43] 81. (1) The creditors of a bankrupt may accept a post-bankruptcy composition in satisfaction of the debts due to them from the bankrupt by passing a special resolution that contains the terms of the composition.

(2) The notice of the meeting to pass the special resolution shall —

(a) state the terms of the composition; and

(b) be accompanied by a report of the Official Receiver.

[44] Procedure for approval of composition

82. (1) The Court may, on being satisfied with the terms of the composition, approve the composition.

(2) A composition approved by the Court shall bind all the creditors in respect of provable debts due to them by the bankrupt.

(3) The Court may refuse to approve a composition where it considers that —

(a) section 81 has not been complied with;

(b) the terms of the composition are not reasonable or are not calculated to benefit all the creditors;

(c) the bankrupt is guilty of misconduct that justifies the Court in refusing, qualifying, or suspending the bankrupt's discharge;

(d) the composition does not provide for the payment, before any other debts are paid, of debts that have priority under section 340; or

(e) there are other reasons for not approving composition.

(4) The bankrupt or the Official Receiver may apply to the Court to approve a composition.

(5) Notice of the application under subsection (4) shall be given to each creditor.

(6) Prior to approving a composition the Court shall —

(a) obtain a report from the Official Receiver as to the terms of the composition and the bankrupt's conduct; and

(b) hear any objection by or on behalf of a creditor.

(7) The Court may, where it approves a composition, correct or supply any formal or accidental error or omission without altering the substance of the composition.

(8) As soon as practicable after the Court has approved a composition, the bankrupt and the Official Receiver shall execute the terms of the composition.

(9) The Court shall, where it has approved the composition, on payment to the Official Receiver of such commission as may be prescribed

(a) direct that the composition is entered and filed with the Court; and

(b) cancel the declaration of bankruptcy.

(10) A cancellation of a declaration of bankruptcy under subsection (9)(b) shall not revest the bankrupt's property in the bankrupt in accordance with section 80(1).

(11) Where the Court has approved the composition and cancelled the declaration of bankruptcy, the bankrupt's property to which the composition relates vests and shall be dealt with as provided for in the composition.

[45] Unpaid balance of debt obtained by fraud

83. (1) A bankrupt who makes a composition with his or her creditors remains liable for the unpaid balance of a debt where —

(a) the bankrupt, by means of fraud —

(i) incurred or increased the debt; or

(ii) on or before the date of the composition, obtained forbearance on the debt; and

(b) the creditor has not agreed to the composition.

(2) In subsection (1) (b), a creditor does not agree to the composition solely by proving the debt and accepting payment of a distribution of the assets in the estate.

[46] Time for approval and execution of composition

84. (1) (a) The Court shall approve the composition under section 81 (1) within 1 month after the special resolution referred to in section 81 is passed.

(b) The bankrupt shall execute the deed of composition within 10 working days after the Court approves the composition or within such time as the Court may allow.

(2) Where a composition is not approved or executed within the time referred to in subsection (1) —

(a) immediately on the expiry of the period referred to in subsection (1), the proceedings in the bankruptcy shall resume as if there had been no special resolution in terms of section 81 accepting a composition; and

(b) the period referred to in subsection (1) shall not be taken into account in the calculation of any period of time specified for any purpose of this Act.

[47] Endorsement of composition by Court

85. (1) The Court shall, after the deed of composition has been entered on the file of the Court, —

(a) endorse on the deed that it has been entered and filed with the Court; and

(b) if requested by the Official Receiver, deliver the deed to the Official Receiver.

[48] (2) The Official Receiver shall, as soon as practicable after the deed of composition has been entered in the file of the Court -

(a) take all steps necessary to have any vesting provided for in the deed registered or recorded in the appropriate registry or office, and then return the deed to the file of the Court; and

(b) subject to the provisions of the deed, give possession to the bankrupt or the trustee under the composition, as the case may be, of —

(i) the bankrupt's property; or

(ii) so much of the bankrupt's property as the Official Receiver possesses and that, under the composition, revests in the bankrupt or the trustee.

[49] Enforcement of composition

86. The Court may —

(a) on the application of a creditor, order that default in payment of any composition approved by the Court be remedied; or

(b) on the application of an interested person, enforce the provisions of any composition approved by the Court.

[50] For the sake of clarity, it is important that this Court should first clear a couple of incidental issues involving mixed questions of law and facts, before it proceeds to determine the main issue of approval on merits.

[51] Tata Capital Financial Services Ltd

[52] For the avoidance of doubt, it is hereby confirmed thatthis Court by an incidental order made on 1st December 2015 found and declared that Tata Capital Financial Services Ltd is not a creditor of the bankrupt in this matter. It was not even a contingent creditor. Besides, Tata Capital has also through its counsel Ms. Samantha Aglae filed a motion to intervene in the proceedings and confirmed in Court that at the time or after the composition offer was made there were no debts due to them and therefore, the composition offer should be amended to delete if any, reference had been made to include "Tata Group" as a creditor in the list of proven creditors in the proceedings. In

any event, I note the Official receiver himself has rightly deleted and did not include or even consider "Tata Group" as a proven creditor in his report.

[53] Statutory Time Limit for approval

[54] I am aware that Section 84 (1) of the Act has prescribed a time-limit of one month for the approval of the Composition after passing of the special resolution in the creditors' meeting. For the avoidance of doubt, I would like to mention that the said time limit prescribed for approval, may be extended by the Court for sufficient cause, in the interest of justice, provided that the time prescribed, had expired due to judicial delay or intervention. A comparable provision as to such extension of time-limits- by the Court–especially in individual insolvency proceeding is found in Section 376 of the Insolvency Act 1986 (UK). This section of law states that *by any provision or by the rules the time for doing anything is limited, the court in its discretion, may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit (v*ide Tolley's Insolvency Law - Lexis Nexis - updated to Issue 82 June 2012, Court Powers and Procedures C5012). In the instant case, I observe that the time-limit prescribed for obtaining approval has expired due to judicial delay and not due to any fault or laches or inadvertence on the part parties to the proceedings. In any event, under Section 381 (4) of our Insolvency Act 2013 this Court is empowered to, on good cause shown, extend or reduce any period of time for doing any act or taking any proceeding under the Act or any regulations made under the Act as the justice of the case may require. In the circumstances and in exercise of the equitable powers conferred on this Court by Section 6 read with Section 5 of the Courts Act, I hereby extend the time-limit for approval until such time the instant application is disposed of.

[55] Plea in limine litis - Section 83 Argument

[56] I diligently perused the relevant provisions of law pertaining to Section 83- argument advanced by Mr. B. Georges. I carefully analysed the submissions of both counsel on this point of law. From a plain reading of Section 83 (vide supra),to my mind, the very

purpose of this section is to give protection to the creditors against acts of fraud committed if any, by deceitful bankrupt, who has already made composition to the detriment of the creditors, applying fraudulent means. In such cases, the fraudulent bankrupt shall become liable for the unpaid balance of the debt he owed to the creditors, though the creditors have already received part of their debts through Composition in satisfaction of the entire debt. The fraudulent bankrupt thus, cannot escape from liability for the unpaid balance of the debt using composition as a hood or device for exoneration. He will eventually be held liable for the remaining/unpaid balance of the debt he owed to the creditors. In other words, this section creates a statutory right in favour of a creditor to recover the balance of debt from a fraudulent bankrupt, although he has made composition with him. This clearly shows that section 83 is a standalone section, which provides a special and distinct remedy to a creditor, who has suffered loss at the hands of a fraudulent bankrupt through composition. As I see it, this particular section has nothing to do with section 82 of the Act, which exclusively deals with the issue of approval of the post-bankruptcy composition. Needless to say, Section 83will come into operation only after the approval of the composition if any, granted by the Court, which shall bind all the creditors in respect of provable debts due to them by the bankrupt in terms of section 82 (2) of the Act. Furthermore, it is evident from Section 82 (1) (supra) in order for a creditor to invoke section 83 he should have (i) alleged fraud against the bankrupt in incurring or increasing the debt and (ii) he should not have agreed to the composition. Only upon satisfying these two conditions-precedent cumulatively as required under Section 83 (1) (a) and (b), a creditor will be qualified to seek remedy under section 83. Both paragraphs (a) and (b) thereof should be read and interpreted in combination to make sense. The conjunction “and” used by the legislature between paragraphs (a) and (b) implies that both paragraphs should be read conjunctively, not disjunctively as canvassed by Mr. Georges. In any event, in the instant case, there is no allegation of fraud against the bankrupt. I find that Section 83 has no relevance to the instant application for approval. I agree with the submission of the applicant that BMIC has misconstrued the purpose and the intent of section 83. There is no evidence as required under section 83 (1) (a)(i)of the Insolvency Act 2013 that the bankrupt by means of fraud incurred or increased the debt and also there is no evidence as required under section 83 (1) (a) (ii)

that the bankrupt by means of fraud on or before the date of the composition, obtained for bearance on the debt. There is no evidence of or even allegation of fraud. In the circumstances, I find that section 83 is irrelevant and has no application to the instant proceeding, which only relates to the approval of the Composition.

[57] Incidentally, I note that Mr. Georges in his submission invited this Court, to make a pronouncement to the effect that the creditor BMIC is entitled to recover the balance of the debt from the bankrupt in terms of Section 83 of the Act. Obviously, for the reasons stated hereinbefore I find that the statutory remedy available to the creditor under Section 83 is based on fraud, which indeed, constitutes a distinct and separate cause of action that may arise only after the approval if any, granted by the Court for the Composition. With due respect to Mr. Georges, this Court is not empowered to put the cart before the horse. In any event, the purview of this Court in the instant proceeding is very limited; that is, only to determine the issue of approval. I hold that this Court is neither competent nor has the jurisdiction in the instant proceeding to grant such a declaratory relief to the creditor based on Section 83.

[58] Hence, I find that section 83- argument advanced by Mr. B. Georges is not maintainable either in law or on facts. The plea in limine is therefore, dismissed in its entirety accordingly.

[59] I will now proceed to examine the application for approval and the objections thereto on merits. This matter is listed only to consider the application made jointly by the Bankrupt and the Official Receiver pursuant to section 82 (4) of the Insolvency Act 2013 (as amended) and rule on the objection raised by BMIC. The Court is now considering a Post-Bankruptcy Composition offer provided on the 25thJune2015 and accepted by the majority of creditors on the 8 August 2015. Sections 81 - 86 of the Insolvency Act 2013 (as amended) vide supra sets out the regime for Post Bankruptcy Composition. On 18thAugust 2015 the Official Receiver applied to the Court for approval of the Composition. In this instance, the Official Receiver has complied with section 82 (6) (a) of the Insolvency Act 2013 and has submitted a detailed report in relation to the financial

status of the bankrupt with reference to relevant evidence as to what assets are available to satisfy the creditors. The Official Receiver has also set out the bankrupt's conduct and has confirmed that he has co-operated fully throughout the procedure.

[60] I find that the resolution in the creditors' meeting adopting the Composition has been passed in accordance with law as per section 284 of the Insolvency Act 2013 (as amended). There is no dispute that the majority of the creditors voted in favour of the Composition except BMIC.

[61] Although BMIC contents that the resolution of the creditors approving the composition is a sham and that the insolvency Act was Amended simply to permit those creditors to do so and to benefit the bankrupt, indeed, it has not produced any evidence to substantiate these serious allegations, let alone the fact that this court has no jurisdiction to question the wisdom and the integrity of the legislature and the objects and reasons for enacting amendments to any Act. In any event, the Amendments to the Act was carried out by the Parliament in Compliance with the constitution of the Republic of Seychelles. These allegations are seen purely speculative statements without any evidential support whatsoever. As per records, the financial affairs of the bankrupt have been fully examined by the official Receiver over the course of last 12 months. After the examination of financial status, the official Receiver has approved the composition that has been put forward as the best available option in terms of assets.

[62] I find that the assertions of BMIC are again without evidential foundation and that the offer is reasonable, fair and proportionate in the circumstances of the bankrupt's finances. The offer is based on what is available to the bankrupt and it has been put forward as 'Post Bankruptcy Composition', though it will not achieve the full amount desired by BMIC. As I see it, the financial settlement of the divorce proceedings between the bankrupt and his former wife Mrs. Sivasankaran is not a matter for consideration under Post Bankruptcy composition pursuant to section 81 of the Act. In my view, this court cannot go beyond its powers conferred by section 82 (3) and consider matters not falling under any of the five grounds stated under section 82 (3) paragraphs (a) to (e). In any event, as far as this court is concerned these are irrelevant considerations since the issues

such as Paulian Action and other applications are matters of subjudice pending before other courts for determination. This court in my considered view, cannot and should not usurp the powers and functions of the other courts and pronounce on those matters pending before them in the thin guise of determining the instant application for approval. Factors based on speculations and guesswork are not relevant for the consideration of the Post Bankruptcy Composition as approved by the creditors on the 8th August 20l5.

[63] Going by the records, it seems to me that there has been a thorough examination of the bankrupt by the Receiver; there is no evidential basis to suggest the contrary. The bankrupt has given complete records of his financial affairs over a period of 12 months. The bankrupt has offered assistance through out and has been interviewed on numerous occasions by the official Receiver. In addition, the bankrupt has also provided a written statement to the Official Receiver on the 17th August 2015in relation to his financial status. So the suggestion that there has not been a thorough examination of the bankrupt seem to be incorrect. I agree with the applicant that as such, this head of objection does not relate to the conduct of the bankrupt but a complaint against the Official Receiver. Obviously, this is an irrelevant consideration.

[64] After the approval of the Composition in the meetings of the creditors, although it is alleged that the bankrupt made - admittedly without prejudice - offers in excess of the composition, there is no evidence on record to show any details of such 'offer'. In any event there is no evidence to show that any such additional and/or excess assets are available with the bankrupt to satisfy the alleged excess offers. As rightly submitted by the applicant the Court is only concerned with the Composition as approved by the Creditors on the 8th August 2015 and nothing else. The allegations of excess assets and/or offers appear to be purely speculative.

[65] The BMIC’s complaint about the withdrawal of foreign proceedings, I find such complaint has no relevance to section 82(3) of the Insolvency Act 2013 at all. The withdrawal of foreign proceedings is an obvious and correct procedure, so that the assets of the bankrupt are managed quickly and disposed of for distribution to the creditors. Obviously, the freezing order needs to be discharged so that the properties can be sold to

satisfy the Creditors. In fact, the bankrupt has no rights over the properties as all the properties are still vested with the Official Receiver. Therefore, the release of the bankrupt from foreign proceedings appear to be sensible, reasonable and necessary, so that the bankrupt's assets can be realized quickly to settle the creditors including BMIC, the major beneficiary of the composition, which BMIC has been treated separately being the major beneficiary of the Composition.

[66] The assertions in relation to the liability of the bankrupt of US$l60 million was notified to the Official Receiver, who did not admit the claim as it related to Siva Ltd. In any event, this matter has now been withdrawn in Bermuda. There is no evidence on record to show that there are additional assets available to satisfy the creditors.

[67] For the reasons stated hereinbefore and on the strength of all the above, the Court is satisfied with the terms of the proposed Composition. If the Court is satisfied with the terms of the proposed composition, it should approve the composition. This is the rule in terms of Section 82 (1) of the Act. The exception to this rule lies in Section 82 (3), which states that the court should refuse to approve, if it finds that the proposed composition is vitiated by any of the five factors or circumstances defined under section 82 (3) under paragraphs (a) to (e). In passing, I would like to observe herein that although the legislature has used the word “may” in this section of law, the court has no judicial discretion in granting or refusing approval. It must either grant or refuse approval applying the law to evidence before it. It is true in ordinary usage “may” is permissive and must is imperative, and in accordance with such usage, the word “may” in a statute will not generally be held to be mandatory. However, the Courts have held that the expression such as “may” or “shall have power” - to say the least- have a compulsory force and so their meaning has been modified by judicial exposition. *See, Re Shuter [1960] 1 QB 142; R vs Governor of Brixton Prison, Ex p Enahoro [1963] 2 QB 455.*

[68] In my considered judgment, I conclude that none of the vitiating factor/circumstances listed in Section 82 (3) under paragraphs (a) to (e) applies or established to my satisfaction to refuse the approval in this matter

[69] With due respect, I decline to uphold the submissions of Mr. Georges on points of law and facts. Especially, his argument that the terms of the proposed composition are not reasonable and are not calculated to benefit all the creditors, does not appeal to me in the least.Indeed, in considering reasonableness, in terms of Lord Green's (M.R) dictum in Cumming vs. Janson 1942 2AELR p653-656, that is: "*the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing and that he must do, in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters, which he ought to take into account"*. Applying the same dictum to the facts and circumstances of the instant case, I find that the terms of the proposed composition in the instant case, are reasonable, fair and proportionate in the circumstances of the financial status of the bankrupt and appears to be most beneficial to BMIC.I am equally satisfied that there are no other compelling reasons under section 82 (3) (e) to refuse approval either.

[70] Official Receiver's commission/remuneration and fees

[71] Having said that, I note the Receiver has claimed his remuneration and fees fixed at 3% *ad valorum* of the property realized in insolvency. He did not file any bill of cost with details giving breakdown on quantity or duration of work done in this matter. His claim is simply based on a comparable fixed fee-schedule prescribed by rules applicable to Official Receiver cum Liquidators in respect of liquidation/winding up works carried out under the Company Act, 1972. It is pertinent to note that in accordance with section 82(9) of the Act, when the Court approves the Composition, the Receiver should also be paid the prescribed rates of commission for his work. However, at present there are no specific rules made as contemplated under Section 389 (1) of Act prescribing the commission or fees payable to Receivers in matters of this nature. In the absence of such rules, the Official Receiver invited the Court to take guidance from the Company Act for payment of his fees. It is interesting to note that section 391 of the present Insolvency Act 2013has saved certain administrative provisions and the appointment of the Official Receiver made under the previous Bankruptcy and Insolvency Act, Cap 13. now repealed by the

present Act. Under the previous Act, vide Schedule ZZ II the Official Receiver in matters of Insolvency is entitled to a remuneration for his services, such sums fixed by the Court, upon consideration of the property, the sum recovered and the nature of the duties performed, which sums appear to Court just and reasonable. Vide Vol 1 Laws of Seychelles Cap 13 page 122.

[72] Be that as it may. I note, the Practice Direction applicable to Insolvency Proceedings in the United Kingdom provides some guiding principles to ensure that the remuneration of an appointee which is fixed and approved by the court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken by the appointee in any given case and is fixed and approved by a process which is consistent and predictable.

[73] The said guiding principles are in essence, as follows:

(1) "Justification"

It is for the appointee who seeks to be remunerated at a particular level to justify his claim.

(2) "The benefit of the doubt"

On any remuneration claim, if there remains any element of doubt as to the appropriateness, fairness or reasonableness of the remuneration sought or to be fixed such element of doubt should be resolved by the court against the appointee.

(3) "Professional integrity"

The court should give weight to the fact that the appointee is a member of a regulated profession and as such is subject to rules and guidance as to

professional conduct and the fact that (where this is the case) the appointee is an officer of the court.

(4) "The value of the service rendered"

The remuneration of an appointee should reflect the value of the service rendered by the appointee, not simply reimburse the appointee in respect of time expended and cost incurred.

(5) "Fair and reasonable"

The amount of the appointee's remuneration should represent fair and reasonable remuneration for the work properly undertaken or to be undertaken.

(6) "Proportionality of remuneration"

The amount of remuneration to be fixed by the court should be proportionate to the nature, complexity and extent of the work to be completed or that has been completed by the appointee and the value and nature of the assets and/or potential assets and the liabilities and/or potential liabilities with which the appointee will have to deal or has had to deal, the nature and degree of the responsibility to which the appointee has been subject in any given case, the nature and extent of the risk (if any) assumed by the appointee and the efficiency (in respect of both time and cost) with which the appointee has completed the work undertaken.

(7) "Professional guidance"

For the fixing and approval of the remuneration of an appointee, the appointee may have regard to the relevant and current statements of practice promulgated by any relevant regulatory and professional bodies in relation to the fixing of the

remuneration of an appointee. In considering a remuneration claim, the court may also have regard to such statements of practice and the extent of compliance with such statements of practice by the appointee.

[74] In the instant case, the Official Receiver is a professional Chartered Accountant, whose practice is regulated by professional bodies. He has effectively and efficiently has completed the work undertaken. The Court gives due consideration inter alia, to the nature, complexity and extent of the work he has completed in the past one year and the future work yet to be completed. The court also considers the value and nature of the assets he had to deal and will have to deal.

[75] In the light of all the above, I consider the sum of US$ 400,000.00 (United States Dollars Four Hundred Thousand) would be just, fair and reasonable remuneration for the work properly undertaken and completed and the one to be undertaken and yet to be completed by the Official Receiver in this matter. Accordingly, I award and approve payment of the said sum to the Official Receiver Mr. Bernard Pool in accordance with section 82(9) of the Act, for an effective and efficient completion of the assignment in this matter.

[76] In the final analysis, for all the reasons stated hereinbefore, the Court HEREBY,

(1) **Rejects** the objection of BMIC in its entirety to the granting of approval in this matter;

(2) **Approves** the Post Bankruptcy composition as accepted by the majority of creditors on the 8th August 2015 in terms of Section 81 (1) of the Act, which shall bind all the creditors in respect of proven debts due to them by the bankrupt; consequently,

(3) Cancels the declaration of bankruptcy order made against CHINNAKANNAN SIVASANKARAN, on 26th August 2014, in accordance with Section 82(9) (b) of the Act.

(4) **Directs** the bankrupt in terms of 84(1) (b) of the Act to execute the deed of composition within 10 working days from the date hereof;

(5) **Directs** the bankrupt and the Official Receiver to execute the terms of the Composition as soon as practicable in pursuance of the approval granted hereof;

(6) **Approves and Orders** the payment of commission in the sum of US$ 400,000.00 (United States Dollars Four Hundred Thousand) to the Official Receiver Mr. Bernard Pool in accordance with section 82(9) of the Act;

(7) **Declares and orders** that the proceeding in the bankruptcy against CHINNAKANNAN SIVASANKARAN in Ex Parte Civil Side 105 of 2014 has come to a logical conclusion in this matter; and

(8) Makes no order as to costs.

Signed, dated and delivered at Ile du Port on 18 January 2016

D Karunakaran
Judge of the Supreme Court