

Section 8(2A) of the Bankruptcy Act, 1967 (“the Act”)

Section 8(2A) of the Act (“the Section”) provides *“Notwithstanding subsection (2), no secured creditor shall be entitled to any interest in respect of his debt after the making of a receiving order if he does not realize his security within six months from the date of the receiving order.”*

It is our considered view that Section 8(2A) of the Act applies only when a secured creditor is realising its security against the bankrupt debtor¹.

The Section merely limits the secured creditor’s right to continue to impose interest on the amount outstanding to him vis-à-vis the bankrupt and the property of that debtor².

The application of Section 8(2) of the Act is restricted to “that debtor” refers to in Section 8(1) of the Act, i.e. a security provided by “that debtor” under Section 8(2) is an exception to Section 8(1) of the Act. Accordingly, the Section expressly restricted the entitlement of the secured creditor to charge interest “in respect of his debt” and nobody else’s debt; his debt means that debtor’s debt.

It has been confirmed by the Court of Appeal³ and the Federal Court that the Section does not apply to “the properties or persons of parties against whom no receiving order is made.”⁴

The Federal Court stated in its early statement that the Section is restricted to “the Bankrupt” or “the Bankrupt Debtor” and not any bankrupt. Hence, akin to the Guarantor and third party indemnifier⁵, the Section has no application to any other third parties, inter-alia, a Third Party Chargor or Pledgor.

What if the Third Party Chargor is a bankrupt? The Section restricts interest being charged on “his debts”, i.e. the Bankrupt Debtor’s debts. It does not apply to interest charge on a third party’s debt, i.e. the Guarantor’s or Indemnifier’s debt.

¹ *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 499 Federal Court*, at para 14 page 457

² *United Overseas Bank (M) Bhd v Andrew Lee Siew Ling [2012] 3 CLJ 708 Court of Appeal*, at para 44 H, I at page 722

³ *United Overseas Bank (M) Bhd v Andrew Lee Siew Ling [2012] 3 CLJ 708*, at para 43 E, F at page 722

⁴ *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 499*, at para 14 C page 457

⁵ *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 499*, at para 11 A page 456

Accordingly, the Section do not apply to a Third Party Chargor's debt, whether or not that Chargor is a bankrupt. Where that Chargor is a bankrupt, the Section will apply to interest chargeable on his debt but it does not restrict interest to be charged on other party's debt (for which the Chargor's property is charged).

It should be noted from the judicial trend in the Court of Appeal and the Federal Court in the cases referred to above, which is to restrict the application of the Section with the purposive approach to the interpretation of the Section. The stated purpose of the Section is to prevent the depletion of the Bankrupt Debtor's estate by the accumulation of interest on the Bankrupt Debtor's debt. Notwithstanding the cap on the interest recoverable from the Bankrupt Debtor, there is no restriction on the secured creditor's right to recover the same vis-à-vis a third party guarantor and indemnifier. Similarly, there is no restriction on the secured creditor's right to recover the same from any other third parties; recovering such interest accrued does not deplete the Bankrupt Debtor's estate but the third party's estate.

It is fanciful to suggest that once a Third Party Chargor is adjudicated bankrupt, one should immediately realize his security on any third party's debt, which such third party may not be in default. By contrast, once adjudicated bankrupt, the Bankrupt Debtor's loan would be in default as he could no longer make any repayment thereto.