

Hu Saye Kock

AND

... Judgment Debtor

Sivli Sdn Bhd

...Judgment Creditor

(High Court of Brunei Darussalam)
(Bankruptcy No. 193 of 2020)

Muhammed Faisal Bin PDJLD Kol(B) DSP Haji Kefli, J.C.

Date of Ruling: 22nd September, 2026.

Headnotes: Bankruptcy — Rules 45 and 46 — Act of bankruptcy — Application to set aside Bankruptcy Notice dismissed — Date of act of bankruptcy

- *Bankruptcy — Section 6(1)(c) — Three-month period — Appeal — Effect of pending appeal*
- *Bankruptcy — Section 100(4) — Extension of time — Scope of discretion — Statutory time limit*
- *Bankruptcy — Exercise of discretion — Particular procedural history — Appeal withdrawn — Liberty to file Creditor's Petition*
- *Bankruptcy — Extension of time — Petition filed out of ordinary time — Time extended retrospectively — Petition allowed to proceed*

Mr. Czar Calabazaron of Messrs Rudi Lee, Annie Kon & Associates for the Judgment Debtor.
Mr. Brandon Chin of Messrs Yusof Halim & Partners Advocates and Solicitors for the Judgment Creditor.

Cases cited:

Re Haji Khalid bin Abdullah (BP-29-54-2005-III/II, 26 September 2007)

Abdul Rashid Mohamad Isa v PTT International Trading Pte Ltd [2024] 5 MLRA 603

Statutes:

Section 6(1)(c) Bankruptcy Act

Section 100(4) Bankruptcy Act

Rule 45 Bankruptcy Rules

Rule 46 Bankruptcy Rules

RULING

Muhammed Faisal, J.C.:

GROUND OF DECISION

I Introduction

1. This is an application by the Judgment Debtor challenging the validity and continuation of a Creditor's Petition presented against him by the Judgment Creditor.
2. The principal issue arises from the interaction between section 6(1)(c) of the Bankruptcy Act¹ (hereafter referred to as "*the Act*"), section 100(4) of the Act², and Rules 45³ and 46⁴ of the Bankruptcy Rules (hereafter referred to as "*the Rules*").
3. The Judgment Debtor's contention is straightforward; he submits that the act of bankruptcy upon which the present Creditor's Petition is founded occurred on 22 June 2021, when his challenge to the Bankruptcy Notice was dismissed. Since the present Creditor's Petition was not filed until 2 March 2026, he submits that it was filed well outside the three-month period prescribed by section 6(1)(c) of the Act.
4. The Judgment Creditor takes a different position. It relies, among other things, upon the subsequent procedural history, including the appeal filed by the Judgment Debtor against the dismissal of his challenge to the Bankruptcy Notice, the eventual withdrawal of that appeal, and the Order subsequently sealed on 2 December 2025

¹ **Section 6(1)(c) Bankruptcy Act** "*the act of bankruptcy on which the petition is grounded has occurred within 3 months before the presentation of the petition..*"

² **Section 100(4) Bankruptcy Act** "*Where by this Act or by general rules the time for doing any act or thing is limited the Court may extend the time either before or after the expiration thereof upon such terms, if any, as the Court may think fit to impose.*"

³ **Rule 45 Bankruptcy Rules** "*(1) Every bankruptcy notice shall be indorsed with the name and place of business of the advocate actually suing out the same, or if no advocate be employed, with a memorandum that it is sued out by the creditor in person.*

(2) There shall also be indorsed on every bankruptcy notice an intimation to the debtor that, if he has a counterclaim, set-off or cross demand which equals or exceeds the amount of the judgment debt and which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar.

(3) In the case of a notice served in Brunei the time shall be 3 days. In the case of a notice served elsewhere with the leave of the Court under section 3 of the Act, the Registrar when issuing the notice shall fix the time."

⁴ **Rule 46 Bankruptcy Rules** "*The filing of such affidavit shall operate **as an application to set aside the bankruptcy notice** and thereupon the Court shall fix a day for hearing the application, and not less than 3 days before the day so fixed the Registrar shall give notice thereof both to the debtor and the creditor and to their respective solicitors, if known. If the application cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the Court shall extend the time and **no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.***"

which expressly gave the Judgment Creditor liberty to file a Creditor's Petition within three months from the date of that sealed Order.

5. The Judgment Creditor further submits that, if the Petition is found to have been filed outside the ordinary period prescribed by section 6(1)(c) of the Act, the Court has power under section 100(4) of the Act to extend the relevant time.
 6. The issues therefore require the Court to consider, first, the proper effect of Rules 45 and 46 of the Rules and to determine when the relevant act of bankruptcy arose. Secondly, if the Petition was filed outside the ordinary period prescribed by section 6(1)(c) of the Act, it is necessary to consider whether section 100(4) of the Act is capable of applying to that requirement and, if so, whether the Court should exercise its discretion on the particular facts and circumstances of this case.
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II Background and history

7. The Judgment Creditor obtained summary judgment against the Judgment Debtor in 2019. A Bankruptcy Notice dated 29 June 2020 was subsequently issued and served upon the Judgment Debtor.
8. The Judgment Debtor challenged the Bankruptcy Notice pursuant to the procedure under Rules 45 and 46 of the Rules. That challenge was heard and dismissed by the Registrar on 22 June 2021.
9. On 23 June 2021, the Judgment Debtor filed a Notice of Appeal against that decision. The appeal remained outstanding for a substantial period before it was ultimately withdrawn.
10. Following the withdrawal of the appeal, an Order sealed on 2 December 2025 recorded the withdrawal and gave the Judgment Creditor liberty to file a Creditor's Petition based upon the Bankruptcy Notice within three months from the date of the sealed Order. The Judgment Debtor's right to object to any such Petition was expressly preserved.
11. The present Creditor's Petition was filed on 2 March 2026. The Judgment Debtor now challenges the validity of that Petition on the ground that the act of bankruptcy upon which it is founded occurred on 22 June 2021 and that the Petition was therefore presented outside the period prescribed by section 6(1)(c) of the Act.
12. The detailed procedural history is relevant to the Court's consideration of the discretion under section 100(4) of the Act and will be addressed later in these grounds.

III The parties' positions

13. The Judgment Debtor submits that the relevant act of bankruptcy arose when the Registrar dismissed his challenge to the Bankruptcy Notice on 22 June 2021.
14. He submits that the filing of a subsequent appeal did not suspend, postpone or otherwise alter the date upon which the act of bankruptcy arose.
15. On that basis, he contends that section 6(1)(c) of the Act required any Creditor's Petition founded upon that act of bankruptcy to be presented within three months of its occurrence. The present Petition, having been filed on 2 March 2026, was therefore filed out of time.
16. The Judgment Creditor, on the other hand, relies upon the unusual procedural history of the matter and, in particular, upon the fact that the appeal remained outstanding until it was withdrawn and that the subsequent sealed Order expressly gave the Judgment Creditor liberty to file a Creditor's Petition within three months from the date of that Order.
17. Both parties rely upon *Re Haji Khalid bin Abdullah*⁵, although they rely upon different parts of the reasoning in that decision.
18. The Judgment Debtor relies principally upon the part of the judgment in which the Judicial Commissioner considered that the act of bankruptcy arose when the application to set aside the Bankruptcy Notice was dismissed by the Senior Assistant Registrar⁶.
19. The Judgment Creditor relies upon the subsequent part of the same judgment, in which the Judicial Commissioner addressed the practical difficulty arising where an appeal against that dismissal remained pending and expressed the view that there should not be any hearing of the Creditor's Petition pending the hearing, disposal or withdrawal of that appeal⁷.
20. The respective reliance placed by counsel upon those different passages is important. It demonstrates that the issue in the present case cannot be resolved simply by referring to one isolated proposition from *Haji Khalid*. The reasoning must be considered in its proper context.

⁵ *Re Haji Khalid bin Abdullah* (BP-29-54-2005-III/II, 26 September 2007)

⁶ *Haji Khalid* at pp 22 (line 25) – pp 23

⁷ *Haji Khalid* at pp 23 (line 10 – 15)

IV The relevant statutory provisions

Section 6(1)(c) of the Act

21. Section 6(1)(c) of the Act provides, in substance, that a creditor is not entitled to present a bankruptcy petition unless the act of bankruptcy upon which the petition is based has occurred within three months before the presentation of the petition⁸.
22. The provision therefore imposes a time limit between the act of bankruptcy and the filing of the petition.
23. The first question which therefore arises is: when did the relevant act of bankruptcy occur?
24. The answer to that question depends, in the first instance, upon the effect of the Judgment Debtor's challenge to the Bankruptcy Notice under Rules 45 and 46 of the Bankruptcy Rules.

Rules 45 and 46 of the Rules

25. Rule 45 explains how a debtor can challenge a Bankruptcy Notice⁹.
26. The filing of the affidavit constitutes the means by which the debtor seeks to set aside the Bankruptcy Notice.
27. Rule 46 then addresses what follows once that procedure has been invoked. It provides for the hearing of the application and, where necessary, for the extension of the period within which the debtor would otherwise be required to comply with the Bankruptcy Notice¹⁰.
28. Most significantly for present purposes, Rule 46 provides that no act of bankruptcy shall be deemed to have been committed under the Bankruptcy Notice until the application has been heard and determined.
29. It is the meaning of the expression "heard and determined" which lies at the center of the present dispute.

⁸ *ibid* at n.1

⁹ *ibid* at n.3

¹⁰ *ibid* at n.4

30. The Judgment Debtor submits that the application referred to in Rule 46 is the application which arises from the Rule 45 procedure. Once that application has been heard and determined before the Registrar, the suspension created by Rule 46 comes to an end. A subsequent appeal, he submits, is a separate proceeding and does not alter the date upon which the act of bankruptcy arose.
31. The Judgment Creditor takes a broader view. It submits that, in the circumstances of this case, the matter could not realistically be regarded as finally concluded while the appeal against the dismissal of the challenge remained outstanding.
32. There are merits to both sides. The Judgment Debtor's construction gives the word "application" its immediate procedural meaning. The application is the one initiated under Rule 45 and it is heard and determined before the Registrar.
33. That construction also provides a clear and identifiable point at which the suspension created by Rule 46 comes to an end.
34. The Judgment Creditor's submission, however, draws attention to a genuine practical difficulty. If the act of bankruptcy is regarded as having arisen immediately upon dismissal of the application, while an appeal against that dismissal remains pending, the creditor may face the statutory time limit during a period in which the underlying challenge to the Bankruptcy Notice has not yet finally run its course.
35. It is this practical difficulty which appears to have troubled the Judicial Commissioner in *Re Haji Khalid bin Abdullah*¹¹.
36. Nevertheless, the question is whether Rule 46 itself provides that the occurrence of the act of bankruptcy is postponed until the final disposal of an appeal.
37. In my opinion, the better reading of the Rule is that it does not.
38. The "application" referred to in Rule 46 is the application brought under the procedure established by Rule 45. The Rule itself establishes the procedure for the hearing and determination of that application. Once it has been heard and determined, the express suspension contained in Rule 46 comes to an end.
39. A subsequent appeal against that determination is procedurally a separate step. Rule 46 does not expressly provide that the filing of an appeal suspends the occurrence of the act of bankruptcy or postpones the date upon which it arises.

¹¹ *Haji Khalid at pp 23*

40. That conclusion does not, however, mean that an appeal is legally irrelevant. It is necessary to distinguish between two separate questions:

First, when does the act of bankruptcy arise?

Secondly, what is the proper course in relation to a Creditor's Petition while an appeal against the dismissal of the underlying application remains pending?

41. These questions are fundamentally different. This difference explains why counsels have relied on different passages of *Haji Khalid*.

V Re Haji Khalid bin Abdullah

42. Both parties relied upon *Re Haji Khalid bin Abdullah*.
43. In that case, an application to set aside the Bankruptcy Notice had been dismissed by the Senior Assistant Registrar. The debtor subsequently appealed. The Court was required to consider the consequences of that procedural history.
44. The Judicial Commissioner first addressed the question of when the act of bankruptcy arose. Having considered the relevant statutory and procedural provisions, he expressed the view that the act of bankruptcy came into being when the Senior Assistant Registrar dismissed the application¹².
45. The Judicial Commissioner then considered the further question whether the filing of an appeal stopped time from running¹³. He observed that there was no clear answer to that difficulty in the Bankruptcy Act and that, once the application had been dismissed, an act of bankruptcy had arisen which required the creditor to act within the prescribed period¹⁴.
46. This is the part of the reasoning upon which the Judgment Debtor principally relies.
47. I believe, that part of the decision supports the proposition that the filing of an appeal does not, by itself, prevent an act of bankruptcy from arising. On that analysis, once the application has been dismissed, the act of bankruptcy comes into existence notwithstanding the subsequent appeal.
48. However, the Judicial Commissioner did not stop there.

¹² *Hj Khalid* at pp 22 line 28

¹³ *Hj Khalid* at pp 23 line 1

¹⁴ *Hj Khalid* at pp 23 line 4

49. He proceeded to consider the consequences of the debtor's right of appeal and described the resulting position as one in which there was a lacuna in the law¹⁵.
50. In order to address that difficulty, he expressed the view that, while the creditor should file the Creditor's Petition within the prescribed period, there ought not to be any hearing of that Petition pending the hearing, disposal or withdrawal of the debtor's appeal¹⁶.
51. This is the passage upon which the Judgment Creditor principally relies.
52. The Judicial Commissioner explained that such an approach would preserve the rights of both parties. It would enable the creditor to comply with the relevant statutory time requirement while at the same time avoiding the possibility that the bankruptcy proceedings might proceed to a hearing before the debtor's challenge to the Bankruptcy Notice had been finally resolved¹⁷.
53. If the appeal failed, the Creditor's Petition could proceed. If the appeal succeeded and the Bankruptcy Notice was set aside, there would be no basis upon which the Petition could continue¹⁸.
54. In my opinion, the two passages of *Haji Khalid* relied upon by the parties are not necessarily inconsistent. They address two different aspects of the procedural problem.
55. The first concerns the occurrence of the act of bankruptcy. On that question, *Haji Khalid* supports the conclusion that the act arises upon the dismissal of the application.
56. The second concerns the appropriate procedural treatment of the Creditor's Petition while an appeal remains pending. On that question, the Judicial Commissioner recognised the practical difficulty created by the appeal and proposed a means of preserving the respective positions of creditor and debtor.
57. Thus, properly understood, *Haji Khalid* distinguishes between:
- a) the occurrence of the act of bankruptcy, which arises upon the dismissal of the application; and

¹⁵ *Haji Khalid* pp 23 at line 9

¹⁶ *Haji Khalid* pp 23 at line 12

¹⁷ *Haji Khalid* pp 23 at line 14

¹⁸ *Haji Khalid* pp 23 at line 17 - 19

- b) the hearing of the Creditor's Petition, which, according to the approach suggested in that case, ought not to proceed while the debtor's appeal remains outstanding.
58. This distinction is significant in the present case. The Judgment Debtor is correct that *Haji Khalid* does not hold that an appeal automatically postpones the occurrence of the act of bankruptcy.
59. The Judgment Creditor is equally correct that *Haji Khalid* recognises a genuine procedural difficulty where an appeal remains outstanding. The solution proposed in that case was not to postpone the occurrence of the act of bankruptcy but to permit the creditor to file within time while withholding the hearing of the Petition until the appeal had been resolved.
60. The present case, however, did not follow that precise course. The Creditor's Petition was not filed within three months of 22 June 2021. Instead, the appeal remained pending for a substantial period until it was eventually withdrawn.
61. Referring back to *paragraphs 10 to 11* above, the proceedings subsequently culminated in the Order sealed on 2 December 2025, which expressly gave the Judgment Creditor liberty to file a Creditor's Petition based upon the Bankruptcy Notice within three months from the date of that sealed Order. The present Petition was filed on 2 March 2026.
62. The present case therefore raises a further question not directly resolved by *Haji Khalid*; where the ordinary statutory period has expired in the course of an unusual and prolonged procedural history involving an appeal, its eventual withdrawal, and a subsequent Order expressly contemplating the filing of a Creditor's Petition within a specified period, does the Court possess and should it exercise a statutory power to extend the relevant time?
63. It is to that question that section 100(4) of the Act becomes relevant.

VI Abdul Rashid

64. The parties also referred to *Abdul Rashid Mohamad Isa v PTT International Trading Pte Ltd*¹⁹.
65. The significance of that authority must be understood in the context of its facts.

¹⁹ *Abdul Rashid Mohamad Isa v PTT International Trading Pte Ltd* [2024] 5 MLRA 603

66. In that case, the application to set aside the Bankruptcy Notice had not been heard. Nevertheless, an act of bankruptcy had purportedly been declared.
67. The Court held, in substance, that there was no act of bankruptcy upon which the Creditor's Petition could properly be founded because the application to set aside the Bankruptcy Notice remained unheard²⁰.
68. The case reinforces the importance of the protection afforded by Rule 46. A debtor who has properly invoked the procedure to challenge a Bankruptcy Notice is not to be treated as having committed an act of bankruptcy before that application has been heard and determined.
69. The authority is therefore of assistance in identifying the point before which an act of bankruptcy cannot arise.
70. It is, however, distinguishable from the present case because here the Rule 45 application was in fact heard and dismissed by the Registrar on 22 June 2021.
71. I do not therefore read *Abdul Rashid* as deciding that a subsequent appeal means that no act of bankruptcy arises until the appeal has been finally determined.
72. Rather, read together with *Haji Khalid*, the authorities support the conclusion that an act of bankruptcy cannot arise while the relevant application remains unheard, but that once the application has been heard and dismissed, a subsequent appeal gives rise to a separate procedural difficulty.

VII When did the act of bankruptcy arise?

73. The Judgment Debtor's challenge under the Rule 45 procedure was heard and dismissed by the Registrar on 22 June 2021.
74. For the reasons already given, Rule 46 does not postpone an act of bankruptcy until all subsequent appeals are exhausted.
75. *Abdul Rashid* does not dictate otherwise, as the application to set aside the Bankruptcy Notice in that case had not yet been heard.
76. Following *Haji Khalid*, I find that the relevant act of bankruptcy arose upon the dismissal of the Judgment Debtor's application on 22 June 2021.

²⁰ *Abdul Rashid* at pp 605 para [2]

77. The filing a subsequent appeal did not retrospectively alter the date upon which the act of bankruptcy arose.
78. I accept the Judgment Debtor's core submission on this point.

VIII Section 6(1)(c) of the Act

79. Once that finding is made, the consequence under section 6(1)(c) of the Act must be addressed. Section 6(1)(c) of the Act requires that the act of bankruptcy upon which the Creditor's Petition is founded must have occurred within three months before the presentation of the Petition.
80. On the finding that the act of bankruptcy occurred on 22 June 2021, the ordinary three-month period expired long before the present Petition was filed on 2 March 2026.
81. On a strict application of section 6(1)(c) of the Act, therefore, the Petition was not presented within the prescribed period.
82. To this extent also, I accept the Judgment Debtor's submission.
83. The matter does not, however, end with that conclusion. It is necessary to consider section 100(4) of the Act, which confers upon the Court a power to extend time where the time for doing an act or thing is limited by the Act or by the Rules.
84. The next question is therefore whether the three-month requirement in section 6(1)(c) of the Act is a limitation of time which falls within the scope of section 100(4) of the Act.

IX Section 100(4) and its relationship with section 6(1)(c)

85. Section 100(4) of the Act reads:-

"Where by this Act or by general rules the time for doing any act or thing is limited the Court may extend the time either before or after the expiration thereof upon such terms, if any, as the Court may think fit to impose."

86. The sub-section expressly applies to where the time for doing an act or thing is limited "by this Act or by general rules". The words "by this Act" are significant. The provision is therefore not confined to periods of time prescribed solely by the Bankruptcy Rules or by procedural directions of the Court.

87. Next, the provision refers broadly to “the time for doing any act or thing”.
88. In the present context, the relevant act is the presentation of a Creditor's Petition. Section 6(1)(c) of the Act Rules attaches a time limit to the creditor's entitlement to present a Petition founded upon a particular act of bankruptcy by requiring that the act relied upon must have occurred within three months before the presentation of the Petition.
89. Section 6(1)(c) of the Act sets a strict rule for when a creditor can start a bankruptcy case, rather than just setting a simple deadline. The debtor is correct to say that this three-month limit is an important statutory safeguard, not just a minor rule to brush aside.
90. However, section 100(4) of the Act must also be given effect according to its own language. The Court must, read both provisions as part of the same statutory scheme.
91. If section 100(4) of the Act were confined only to provisions which expressly stated that an act must be performed “within” a specified period, its language would be considerably narrower than the language actually employed. Instead, the provision speaks generally of a case where “the time for doing any act or thing is limited”.
92. In my judgment, the presentation of a Creditor's Petition founded upon a particular act of bankruptcy is an act to which section 6(1)(c) of the Act attaches a clear time limitation.
93. A further feature of section 100(4) of the Act is particularly significant; the Court may extend time “either before or after the expiration thereof”. The Bankruptcy Act expressly contemplated that a relevant time limitation may already have expired before the Court is asked to intervene.
94. This is of direct relevance to the present case. The issue is not merely that the Judgment Creditor failed to obtain an extension before the expiry of the ordinary three-month period. Section 100(4) of the Act, by its express terms, permits the Court to consider an extension after the relevant period has expired.
95. Reading sections 6(1)(c) of the Act and 100(4) of the Act together, I consider that section 6(1)(c) of the Act establishes the ordinary time requirement, while section 100(4) of the Act confers a separate statutory power upon the Court, in an appropriate case, to extend time where the time for doing an act or thing is limited by the Act or by the Rules.

96. The provisions are therefore capable of operating together; section 6(1)(c) of the Act remains the ordinary statutory rule and continues to govern the presentation of a Creditor's Petition unless the Court is satisfied that it is appropriate to exercise the discretion conferred by section 100(4) of the Act.
97. The remaining question is whether the discretion should be exercised in the present case.

X The exercise of discretion under section 100(4)

98. Section 100(4) of the Act confers a statutory discretion. The discretion is broad, but it is not arbitrary and must be exercised judicially. The provision does not prescribe an exhaustive list of circumstances or criteria governing its exercise. Nor have I been referred to any authority directly considering the application of Section 100(4) of the Act to the three-month requirement under section 6(1)(c) of the Act.
99. In those circumstances, I do not consider it either necessary or appropriate to formulate an exhaustive or general test governing the exercise of the discretion. To do so may unnecessarily extend the reasoning beyond the facts presently before the Court and may inadvertently introduce criteria which the legislature itself has not prescribed. At the same time, the absence of a prescribed checklist does not mean that the discretion is to be exercised merely because the result might otherwise appear harsh. The discretion remains a statutory one and must be exercised judicially, having regard to the relevant circumstances of the particular case.
100. The question is therefore a narrow one: having regard to the particular circumstances and procedural history of this case, is this an appropriate case in which the Court should exercise the discretion expressly conferred by Section 100(4) of the Act?

XI The circumstances of this case

101. I begin by making clear what this decision is not based upon. I am not extending time simply because the Judgment Debtor filed an appeal. A debtor is entitled to pursue such appellate remedies as are available to him, and the mere existence of an appeal cannot, without more, entitle a creditor to disregard the statutory time requirement in section 6(1)(c) of the Act. Nor am I treating the filing of an appeal as automatically suspending or stopping time. For the reasons already given, I have concluded that the act of bankruptcy arose upon the dismissal of the Rule 45 application on 22 June 2021, and that the subsequent appeal did not retrospectively alter that date.

102. The significance of the appeal lies instead in the particular procedural history which followed. This is not, in my view, an ordinary case in which a creditor simply overlooked the statutory period or allowed it to expire through unexplained inaction.
103. Following the dismissal of the Rule 45 application on 22 June 2021, the Judgment Debtor filed a Notice of Appeal on the following day, 23 June 2021. That appeal remained pending notwithstanding the disposal of the separate substituted-service proceedings. The practical difficulty arising from such a situation was itself recognised in *Haji Khalid*. Although the approach suggested in that case was for the creditor to file the Petition within time and for its hearing to await the outcome of the appeal, the present case did not follow that precise course.
104. Instead, the Rule 45/46 appeal remained pending for a substantial period. As late as May and June 2024, correspondence was still taking place concerning its hearing, and the Judgment Creditor filed submissions on 29 August 2024 in anticipation of the issue being ventilated. The matter was eventually brought before the Court on 23 August 2025.
105. The subsequent sealed Order dated 2 December 2025 recorded that the Judgment Debtor's Notice of Appeal dated 23 June 2021 was withdrawn. Of particular significance, however, the Order did not merely record the withdrawal of the appeal. It expressly provided that the Judgment Creditor was at liberty to file a Creditor's Petition based on the Bankruptcy Notice dated 29 June 2020 within three months from the date of the sealed Order. The Order also expressly preserved the Judgment Debtor's liberty to object to the Creditor's Petition. The present Petition was filed on 2 March 2026, within the three-month period specified in the Order.
106. I do not treat the Order of 2 December 2025 as itself automatically resolving the statutory question under section 6(1)(c) of the Act, nor as retrospectively changing the date upon which the act of bankruptcy occurred. The legal finding remains that, on the strict construction adopted earlier in this judgment, the act of bankruptcy arose on 22 June 2021. The Order therefore did not, by itself, cure the expiry of the period under section 6(1)(c) of the Act.
107. Nevertheless, the express terms of the Order are highly material to the exercise of discretion under Section 100(4) of the Act. The Order did not merely give the Judgment Creditor a general liberty to proceed; it specified a period within which the Creditor's Petition could be filed²¹. It was made after the appeal had been withdrawn and after the matter had come before the Court. The Judgment Creditor

²¹ "b) The Judgement Creditor is at liberty to file a Creditor Petition based on the Bankruptcy Notice dated June 2020 within 3 months from the date of this sealed order;" – **Court Order 23 August 2025**

thereafter acted in accordance with its terms by filing the present Petition on 2 March 2026.

108. The earlier Order did not, by implication alone, determine the present legal question under section 6(1)(c) of the Act. Indeed, the Judgment Debtor's right to object to the Creditor's Petition was expressly preserved²². However, once the Court is considering whether to exercise its express statutory discretion under Section 100(4) of the Act, it would be impossible to ignore the fact that the parties' previous proceedings culminated in an Order which expressly contemplated and authorised the filing of the Creditor's Petition within a defined period.
109. The significance of that Order is therefore not that it retrospectively cured any statutory defect. Rather, it forms an important part of the factual and procedural circumstances which the Court may properly taken into account in deciding whether the discretion under Section 100(4) of the Act should be exercised.
110. The Judgment Debtor submits, in substance, that the Court should look only to the original date of the act of bankruptcy and the subsequent expiry of the three-month period. I accept that those matters are the starting point. Indeed, I have found in favour of the Judgment Debtor on both propositions. However, once Section 100(4) of the Act is engaged, the Court is no longer concerned solely with the calculation of the original three-month period. It must consider whether the circumstances which led to the Petition being filed outside that period justify the exercise of the statutory discretion.
111. In undertaking that exercise, the relevant circumstances include the following. The Judgment Debtor invoked the procedure under Rules 45 and/or 46, and the resulting challenge was heard and determined by the Registrar on 22 June 2021. He immediately pursued an appeal on 23 June 2021. I make no criticism of him for exercising that right, but the appeal necessarily became part of the procedural context in which the bankruptcy proceedings subsequently developed. The appeal remained unresolved for a substantial period and continued to be the subject of procedural activity before it was ultimately withdrawn.
112. The appeal was not determined in a manner which overturned the Registrar's ruling or resulted in the Bankruptcy Notice being set aside. Following its withdrawal, the Court made the Order sealed on 2 December 2025, expressly giving the Judgment Creditor liberty to file a Creditor's Petition based upon the existing Bankruptcy Notice within three months from the date of the sealed Order. The Judgment Creditor

²² "c) The Judgement Debtor is at liberty to object at the Creditor's Petition;" – Court Order 23 August 2025

filed the present Petition on 2 March 2026, within that period, while the Judgment Debtor's right to object to the Petition was expressly preserved.

113. These circumstances must be viewed cumulatively and not in isolation. I would not exercise the discretion merely because an appeal was filed, merely because the appeal was withdrawn, or merely because liberty to file was subsequently granted. It is the combination of those circumstances, together with the unusual and prolonged procedural history of the matter and the precise terms of the subsequent Order, which is material.

114. These circumstances also take the case outside the ordinary situation in which a creditor has simply allowed the statutory period to expire without explanation or relevant intervening procedural events.

XII Conclusion on the exercise of discretion

115. Having considered the circumstances as a whole, I am satisfied that this is an appropriate case in which to exercise the discretion conferred by Section 100(4) of the Act.

116. The reasons are:

- a) the Rule 45/46 challenge was heard and determined by the Registrar on 22 June 2021;
- b) the Judgment Debtor filed an appeal against that ruling on 23 June 2021;
- c) the appeal remained outstanding for a substantial period and continued to generate procedural activity;
- d) the procedural difficulty created by an appeal in this context is one recognised in *Haji Khalid*;
- e) the appeal was ultimately withdrawn;
- f) the Court subsequently made an Order, sealed on 2 December 2025, expressly giving the Judgment Creditor liberty to file a Creditor's Petition within three months from the date of that sealed Order;
- g) the Judgment Creditor filed the present Petition on 2 March 2026, within that specified period; and
- h) the Judgment Debtor's right to object to the Petition was expressly preserved.

117. Altogether, these circumstances distinguish the present matter from an ordinary case of unexplained delay or inaction. I am therefore satisfied that the discretion under Section 100(4) of the Act should be exercised.

118. I should finally make clear the limited nature of this conclusion. I am not deciding that a pending appeal automatically suspends the operation of section 6(1)(c) of the

Act, nor that every creditor who files outside the three-month period is entitled to an extension of time under Section 100(4) of the Act. Neither is it necessary in the present case to formulate an exhaustive list of criteria governing the exercise of that discretion. The discretion is exercised on the particular facts and procedural history of this case.

XIII Disposition

119. For the reasons set out above, I find that the relevant act of bankruptcy arose on 22 June 2021, when the Judgment Debtor's challenge to the Bankruptcy Notice was heard and dismissed.
120. Accordingly, on the ordinary application of section 6(1)(c) of the Act, the present Creditor's Petition, filed on 2 March 2026, was not presented within three months of the relevant act of bankruptcy.
121. However, I am satisfied that section 100(4) of the Act is capable of applying to the time requirement arising under section 6(1)(c) of the Act.
122. Having regard to the particular and unusual procedural history of this case, including the subsequent appeal, its eventual withdrawal, and the Order sealed on 2 December 2025, which expressly gave the Judgment Creditor liberty to file a Creditor's Petition within three months from the date of that sealed Order, I consider it appropriate to exercise the discretion conferred by Section 100(4) of the Act.
123. In the exercise of that discretion, I extend the time applicable to the presentation of the present Creditor's Petition under section 6(1)(c) of the Act up to and including 2 March 2026, being the date upon which the present Creditor's Petition was filed.
124. The effect of that extension is that the present Creditor's Petition is not liable to be dismissed on the ground that, under the ordinary operation of section 6(1)(c) of the Act, the act of bankruptcy upon which it is founded occurred more than three months before the presentation of the Petition.
125. Accordingly, the Judgment Debtor's application challenging the validity of the Creditor's Petition on the ground that it was filed outside the period prescribed by section 6(1)(c) of the Act is dismissed.

126. The Creditor's Petition, having been filed within the period as extended by this Court pursuant to Section 100(4) of the Act, may therefore proceed in accordance with law.



MUHAMMED FAISAL BIN PDJLD DSP KOL(B) HJ KEFLI
Judicial Commissioner