

HONG KONG / JUDGMENT

RE CHAN CHIU SUM ROYDEN

[2026] HKCFI 2255**COURT**
Court of First Instance**DECIDED**
27 April 2026**CASE / FILE NUMBER**
HCB6450/2025

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Before: Deputy High Court Judge Alan Kwong in Open Court Date of Hearing: 13 April 2026 Date of Judgment: 13 April 2026 Date of Reasons for Judgment: 27 April 2026

REASONS FOR JUDGMENT

By petition filed on 21 August 2025, Niche Capital Ltd (the Petitioner) seeks to bankrupt Mr Chan Chiu Sum Royden (the Debtor). At the hearing on 13 April 2026, I granted the usual bankruptcy order against the Debtor. These are the reasons for my judgment. The petitioning debt is based on the liability under a deed of guarantee dated 8 February 2024 (the Guarantee) executed by the Debtor jointly together with Madam Cinderella Ng Fung King . Pursuant to the terms of the Guarantee, the Debtor and Madam Ng agreed that they should jointly and severally guarantee and indemnify the Petitioner in respect of the obligations and liabilities of Regal Gain Investments Ltd under a loan facility dated 7 February 2024 (the Facility). On 18 July 2025, the Petitioner served a statutory demand on the Debtor, demanding the Debtor to pay GBP1,118,253.15 pursuant to the terms of the Guarantee. The said statutory demand was neither complied with nor set aside. Thus, on 21 August 2025, the Petitioner took out the petition herein. As summarized by Mr Toby Brown (for the Petitioner), the Debtor resisted the petition on 2 grounds: - the Facility contravenes the provisions under the Money Lenders Ordinance (Cap 163); and the Guarantee contains an exclusive jurisdiction clause in favour of England & Wales. I was not of the view that there is substance in these grounds of opposition. As pointed out by Mr Brown, the Facility is governed by English law. It is hence obvious that the provisions under the Money Lenders Ordinance are not applicable. The Debtor has plainly failed to raise a bona fide dispute on substantial ground. As regards the Debtor s reliance on the exclusive jurisdiction clause in favour of England & Wales under the Guarantee, the approach to be applied in the present context was

set out in *Re Lam Kwok Hung Guy* (2023) 26 HKCFAR 119. As explained by French NPJ: - The determination of whether the petition debt is bona fide disputed on substantial grounds, while being an issue of the jurisdiction conferred on the court, is a threshold question (at para 98), and is part of the exercise of the court's bankruptcy jurisdiction. The threshold character of that question leaves room for the court to exercise discretion to decline exercising its bankruptcy jurisdiction to determine that question. A circumstance where such discretion would be exercised is the fact that the parties have agreed to have all their disputes under the agreement giving rise to the debt be determined exclusively in another forum (at para 100). Two public policy considerations are involved: on the one hand, the public policy interest in holding parties to their agreements, and on the other, the public policy underpinning the legislative scheme of the court's bankruptcy jurisdiction (at para 101). The former comes into play when the parties have agreed to litigate their disputes under the agreement giving rise to the debt exclusively in another forum. In respect of the public interest underlying the statutory scheme on bankruptcy jurisdiction, two relevant matters may bring such public policy into play. First, the more obviously insubstantial the grounds for disputing the debt, the more it comes into prominence (at para 101). Second, such public policy is relevant where the creditor community is at risk, which may be evidenced by another creditor presenting a petition (at 102). Whether that discretion should be exercised is to be decided by a multi-factorial approach, depending on a range of considerations (at para 104). Upholding the majority approach in *Guy Lam (CA)*, French NPJ summarised the position thus at para 105: [I]n the ordinary case of an EJC, absent countervailing factors such as the risk of insolvency affecting third parties and a dispute that borders on the frivolous or abuse of process, the petitioner and the debtor ought to be held to their contract. In *Re Simplicity & Vogue Retailing (HK) Co Ltd* [2023] HKCFI 1443 at paras 36 to 37, Linda Chan J stated: -

36. The only other point made by Mr Smith is the absence of any supporting creditor which, he submits, is one of the 2 requirements for a petitioner to come within the exception discussed in *Guy Lam*. I do not read the CFA judgment as laying down any general rule that if the agreement which gave rise to the petitioning debt contains an arbitration clause and there are no supporting creditors to the petition, the court must dismiss or stay the winding-up petition. 37. It does not seem to me to be right that once there is an arbitration clause in the agreement which gave rise to the petitioning debt, the Companies Court should invariably refuse to consider the merit of the defence raised by the company and require the parties to litigate their dispute in arbitration. There is no reason why the Companies Court should adopt such a mechanistic approach or fetter the exercise of its discretion in this way. In my view, where, as here, the company raises a substantive defence to the petitioning debt, the court should consider whether the defence is one which can readily be shown to be wholly without merit. If the court is able to come to that view without considering any detailed arguments or disputed evidence, it would have no difficulty in concluding that the defence is one which borders on the frivolous or abuse of process even if *Guy Lam* approach applies. There is no proper basis to require the parties to refer their dispute to arbitration in the absence of any genuine dispute in respect of the debt. (emphasis added) Linda Chan J s

judgment in *Re Simplicity & Vogue Retailing (HK) Co Ltd* (supra) was affirmed by the Court of Appeal: see [2024] HKCA 299. At paras 38 to 39 of the Court of Appeal's judgment, Kwan VP stated: -

38. Following the approach in *Guy Lam CFA*, the threshold character of a dispute about indebtedness leaves room for the exercise of a discretion by the court to decline to exercise the jurisdiction to determine that question, leaving the dispute to be resolved by arbitration as agreed and with regard to the public policy in holding the parties to their agreement. The court is alive that such public policy consideration is not the only consideration and it may exist in an attenuated form, as when a wholly frivolous defence is mounted that would constitute an abuse of process.
39. The emphasis here is that the court is concerned with an exercise of discretion, whether it be the exercise of its jurisdiction to make a bankruptcy or winding-up order upon being satisfied with the proof of the petitioning debt, or in making a determination whether there is a bona fide dispute of the debt on substantial grounds, or in ordering the petition to be dismissed or stayed. As explained in the passages quoted, the approach of the court in exercising its discretion is multi-factorial. The public policy of the legislative scheme for the court's insolvency jurisdiction may be prominent where the grounds for disputing the debt are obviously insubstantial. The significance of this public policy may be much diminished where there is no supporting creditor and no evidence of a creditor community at risk. The strong reasons or wholly exceptional circumstances test should not obscure the range of considerations relevant to the court's discretion. The countervailing factors mentioned being the risk of insolvency affecting third parties and a dispute that borders on the frivolous or abuse of process are just instances where the court may exercise its discretion not to hold the parties to the agreed dispute resolution mechanism. By this approach, the court retains flexibility to deal with the case as the circumstances require. (emphasis added) I applied the aforesaid approach. The only substantive defence relied on by the Debtor is that the Facility allegedly contravenes the provisions of the Money Lenders Ordinance. As mentioned above, this substantive defence is utterly unarguable and unmeritorious. In my view, it can be said that the Debtor's only substantive defence is frivolous and constitutes an abuse of process. Further, bearing in mind that the Debtor is plainly unable to pay his debt, there is also a risk of insolvency affecting third parties. In the circumstances, it appears to me that this is an appropriate case where the court should exercise its discretion not to hold the parties to the agreed dispute. In the absence of any genuine dispute in respect of the indebtedness under the Guarantee, there is no proper basis to require the parties to litigate in England & Wales. For all the above reasons, I granted the usual bankruptcy order against the Debtor. I also ordered that the Petitioner's costs in these proceedings (which are to be taxed if not agreed) be paid out of the estate of the Debtor. I thank Mr Toby Brown for his assistance. (Alan Kwong) Deputy High Court Judge Mr Toby Brown, instructed by M/s CMS Hong Kong LLP, for the Petitioner Ms Janet Cheng, of Chow de Bedin LLP, for the Debtor Mr Jacky Chan, of Official Receiver's Office, for the Official Receiver The Petitioner also took out a bankruptcy petition against Madam Ng under HCB 6449/2025, which was heard together

with the present petition. At the hearing on 13 April 2026, Madam Ng fairly indicated that she was agreeable that a bankruptcy order be made against her. In the premises, I made the usual bankruptcy order against Madam Ng.

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