[2021] **JMSC CIV. 5**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

INSOLVENCY DIVISION

CLAIM NO. SU2019IS00016

Re: Vernalyn Elizabeth Barnaby and the Insolvency Act

IN THE MATTER of the bankruptcy estate of **VERNALYN ELIZABETH BARNABY** of 10 Haven Mead, Belgrade Heights, Kingston 19 in the parish of Saint Andrew.

AND

IN THE MATTER of an application for directions in relation to any matter affecting the administration of an estate pursuant to Section 267 of the Insolvency Act, 2014.

IN OPEN COURT

Ms Elece Campbell Attorney-at-Law and Deputy Government Trustee for the Government Trustee; Mr Jihmell King Attorney-at-Law for the Supervisor of Insolvency; Ms Nerine Small and Ms Catherine Williams for the Attorney General (present at the invitation of the Court); Mr Yakum Fitz-Henley instructed by Ramsay Smith, Attorneys-at-law for the Creditor Worldnet Investments Company Limited; Ms Leslie Ann Stewart instructed by Symone Mehew QC of Mayhew Law, Attorneys-at-Law for the Creditor JMMB Bank; Ms Julianne Hewitt instructed by Nelson-Brown, Guy and Francis, Attorneys at -Law for the creditor C&F Financial Limited.

Heard: 8th December 2020 and 14th January 2021

Insolvency – Whether the interest rate to be applied to the debt should be limited to 6 percent per annum where the Insolvency Act is silent whereas the repealed Bankruptcy Act contained such a restriction

Statutory Interpretation- Whether there is a lacuna in the statute and if so whether the Court should seek to remedy it.

LAING, J

The Application

[1] On the 1st day of January 2015, the Insolvency Act, 2014 (the "IA") came into effect. The main objectives of the IA are stated in section 3 thereof, which are to create an environment which aids in the rehabilitation of debtors and to enable the fair allocation of the costs of insolvencies. This new regime has consolidated the legislative provisions regarding both personal insolvency and corporate insolvency which previously had been addressed separately by, the Bankruptcy Act, 1880, which covered personal insolvency and by the Companies Act, 2004, which applied to corporate insolvency.

[2] Section 267 of the IA provides that:

> *(1) A trustee may apply to the Court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the Court shall give in writing such directions, if any, as appears to be proper in the circumstances.*
>
> *(2) Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall report that fact to the Court as soon as practicable thereafter, and the Court shall make such order as it considers fit to expedite the administration of the estate.*

[3] Based largely on this section, by way of Amended Notice of Application for Court Orders filed on the 17th day of November 2020, the Government Trustee sought directions and orders related to the administration of the estate of the Bankrupt Vernalyn Elizabeth Barnaby and specifically the following:

> *i. Directions as to whether the six per cent (6%) per annum interest rate chargeable on dividend payments by the Trustee in Bankruptcy*

(now Government Trustee) under the Bankruptcy Act is still applicable under the Insolvency Act, 2014.

ii. *Subject to paragraph one, directions as to whether the six per cent (6%) per annum interest rate should be charged on dividend payments to Creditors who are exempted under Section 14 of the Money Lending Act but who have failed to produce the relevant Exemption Orders.*

iii. *Subject to paragraph one, directions as to whether the six per cent (6%) per annum interest rate should be charged on dividend payments to Creditors with Exemption Orders by virtue of Section 14 of the Money Lending Act but who has not satisfied the conditions contained in the said Exemption Orders.*

iv. *Directions as to how to treat with the Creditors exempted under Section 13 of the Money Lending Act with interest rates that exceed the Minister's prescribed rate of forty percent (40%).*

v. *Order that the interest rates charged by the Creditors that exceed the Minister's prescribed rate of forty per cent (40%) are excessive and as such the transaction is harsh, unconscionable and is to be reopened and the agreement made in respect of money lent, is to be revised or altered or set aside wholly or in part.*

vi. *Adjustments, if any, to the admitted claims in the Estate of Vernalyn Elizabeth Barnaby of 10 Haven Mead, Belgrade Heights, Kingston 19 in the parish of Saint Andrew being Access Financial Limited, First Global Bank, CIBC First Caribbean International Bank, McKayla Financial Services Limited, Worldnet Investment Company Limited, C&F Finance Limited and National Commercial Bank in keeping with the Money Lending Act, 1938.*

vii. *Directions as it relate to the admission of the claims in the Estate of Vernalyn Elizabeth Barnaby of 10 Haven Mead, Belgrade Heights, Kingston 19 in the parish of Saint Andrew being Lasco Microfinance Company Limited, TVM Finance Limited and Janice Wint/Abacus Financial Limited/Wintraders Limited and JMMB Merchant Bank in light of the Money Lending Act, 1938.*

viii. *Directions to expedite the administration of the Estate of Vernalyn Elizabeth Barnaby of 10 Haven Mead, Belgrade Heights, Kingston 19 in the parish of Saint Andrew.*

Whether the six per cent (6%) per annum interest rate applicable to dividend payments by the Trustee in Bankruptcy (now Government Trustee) pursuant to the Bankruptcy Act still applies under the IA, 2014?

[4] Every creditor who wishes to make a claim against the Bankrupt's estate must submit a proof of claim. This is the creditors statement as to the amount and nature of his claim. A creditor who does not prove his claim is not entitled to share in any distribution that may be made. Pursuant to section 185 of IA all debts and liabilities, present or future to which the bankrupt is subject on the day he becomes bankrupt or to which he may become subject as a result of pre-bankruptcy obligations, are provable. This will ordinarily include the amount of agreed interest incurred up to the date of bankruptcy.

[5] The provisions relating to the calculation of interest for the purpose of dividend by the Trustee in Bankruptcy where there was an agreed rate of interest between the bankrupt and the creditor, was expressly provided for in Section 127(1) of the Bankruptcy Act which reads as follows:

> *"Where a debt has been proved and the debt includes interest or any pecuniary consideration in lieu of interest, or in the nature of premiums, fines, bonus or commissions, such interest or consideration shall, for the purpose of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full."*

[6] It appears that it was intended that this section was to be amended by section 11(1) of the Monelending Act ("the MLA") which provides as follows:

> *Where a debt due to a lender in respect of a loan of money made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding six per centum per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.*

> *The provisions of this subsection shall, in relation to such a debt as aforesaid,* ***have effect in substitution for*** *the provisions of section 128 (1) of the Bankruptcy Act. (emphasis supplied)*

[7] Section 128(1) of the Bankruptcy Act addresses the postponement of a husband and wife's claim and the reference to this section appears to be an error. Assuming, (without deciding), that section 11(1) of the MLA by virtue of an application of the mischief rule or other tools of statutory interpretation applies to section 128(1) of the Bankruptcy Act and not to 128(2) as stated, for reasons which I will later address, I am of the view that section 11(1) of the MLA does not affect the IA. I also note in *en passant*, that section 11(1) is not a direct replacement for the provisions of section 128(1) of the Bankruptcy Act, (in the sense that the entire section is to be substituted). It declares itself to operate by amending the Bankruptcy Act as a result of the effect of its provisions.

What is the effect of this purported amendment by the Money Lending Act?

[8] The IA does not have a provision which is similar to section 128(1) of the Bankruptcy Act. What the IA contains instead is section 186 (2) which provides that:

> *Where interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum or such rate as the Minister may, by order subject to affirmative resolution, determine, to the date of bankruptcy from the time the debt or sum was payable, if evidenced by a written instrument, or, if not so evidenced, from the time notice has been given to the debtor of the interest of the claimed*

Section 186 therefore specifically addresses only the situation where there was no agreement between the bankrupt and the creditor as to the rate of interest which would be chargeable on the debt.

[9] Another potentially relevant section of the IA is Section 209 which provides that:

> *Where there is a surplus after payment of the claims as provided in sections 202 to 208, it shall be applied in payment of interest from*

> *the date of bankruptcy at the rate of six per cent per annum on all claims proved in the bankruptcy and according to their priority.*

It should be observed that sections 202 to 208 addresses issues such as the ranking of claims and the payment of dividends *pro rata*. Section 209 therefore addresses the situation where there is a surplus after the payment of these types of claims and does not assist in determining the general principle to be applied where the bankrupt and the creditor had agreed to a rate of interest (and in particular an interest rate in excess of six percent) and which would have been applicable to the debt prior to bankruptcy.

[10] Section 310 of the IA expressly repeals the Bankruptcy Act. This is consistent with the stated objective of the IA, the long title of which reads as follows:

> *"AN ACT to Repeal the Bankruptcy Act and make new provisions for the regulation of insolvency; to make provisions for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor; to create the office of Supervisor of Insolvency; and for connected matters."*

[11] It is of particular significance that that the IA does not contain a savings clause. Consequently, at first blush it appears and it has been submitted on behalf of the Government Trustee and the Supervisor of Insolvency, that there is a legislative gap as it relates to the situation where the bankrupt and the creditor have agreed to an interest rate that is to be applied to the debt.

[12] Mr Jimhell King submitted that Justice David Fraser in the case of **DPP v Whyte, Foster, White and Bardowell** [2017] JMSC Civ 197, at paragraph 14 of the judgment, in considering section 25 of the Interpretation Act, opined that the section operates as a savings clause. Mr King therefore argued that in eliminating what he submitted is a legislative gap, recourse could be had to that section which provides as follows:

> *(1) Where any Act repeals and re-enacts, with or without modification, any provision of any Act in force, references in any other Act to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.*

> *(2) Where any Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not-*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or*
>
> *(c) affect any right, privilege, obligation, or liability, acquired, accrued, or incurred, under any enactment so repealed; or*
>
> *(d) affect any penalty, fine, forfeiture, or punishment, incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceedings, or remedy, in respect of any such right, privilege, obligation, liability, penalty, fine, forfeiture, or punishment, as aforesaid,*
>
> *and any such investigation, legal proceeding, or remedy, may be instituted, continued, or enforced, and any such penalty, fine, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.*

[13] Mr King submitted that the effect of section 25(1) of the Interpretation Act is that the reference to the Bankruptcy Act in section 11(1) of the MLA is to be construed as a reference to the IA which has replaced the Bankruptcy Act. Accordingly, the instructions in the MLA with respect to the six percent rate of interest is applicable to the IA in the same way as it was applicable to the Bankruptcy Act. He further submitted that when the Bankruptcy Act was repealed the effect of the repeal did not operate to invalidate rights, liabilities and obligations flowing from conduct that occurred at a time when the legislation was in force unless a contrary intention appears in the IA, and no such contrary intention is evident.

[14] However, Ms Campbell disagreed with this argument on the basis that the IA did not "repeal and re-enact" the Bankruptcy Act and as a consequence section 25 (1) is inapplicable.

[15] If one considers the approach adopted in other jurisdictions, it is evident that the Insolvency (England and Wales) Rules, 2016 expressly addresses the applicable

interest rate that is applicable in the circumstances with which we are concerned. Rule 14.23(3) provides that:

> *"If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date" and Rule 14.23(6) reads that "The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date".*

[16] Ms Campbell submitted that the absence of a similar provision to section 127 of the Bankruptcy Act is not unusual because the Canadian Bankruptcy Act is the primary piece of legislation on which the Jamaican Insolvency Act is modelled similarly does not contain an equivalent provision. The Court also notes that Barbados, another jurisdiction which may have influenced our IA, does not have an equivalent provision. I therefore conclude that Jamaica is therefore not an outlier in this regard. This serves to support the reasonable inference that there is not a "legislative gap" which may be as a result of our legislators unintentionally failing to consider the issue of interest provided for by section 128 of the Bankruptcy Act.

[17] The legislators appear to have been attracted to the school of thought which favours the continuation of the application of interest on debts up to the date of bankruptcy, in accordance with the parties contractually agreed terms without any limitation (save of course for any defences which may be applicable as a result of such rates being improper as a result of any legislation or equitable intervention). Accordingly, I do not find that section 25 of the Interpretation Act covers the circumstances such as those with which we grapple in this case and it cannot be used to imply a six percent ceiling into the IA as section 127 of the Bankruptcy Act did. The deliberate omission of provision similar to section 127 of the Bankruptcy Act when viewed in the context of the wholesale repeal of that Act is sufficient evidence of an intention by the legislature that it did not intend for section 11(1) of the MLA to provide the equivalent statutory effect as section 127 of the Bankruptcy Act.

[18] It is important to appreciate that section 128 of the Bankruptcy Act does not give a creditor the right to charge interest on the debt. What it does is to restrict the rate chargeable to a maximum of six percent per annum even where the parties have contractually agreed (legally) to a higher rate of interest. In the absence of any limitation then the contractually agreed interest rate applies, subject to any limitation imposed by any other enactment or equitable principle. This is one of the possible approaches to the issue and appears to be the one which was deliberately adopted by the legislators to be applicable in this jurisdiction.

[19] As Ms Campbell quite eloquently expressed in her written submissions:

> *a review of the Bankruptcy Act and Insolvency Act reveals that the latter legislation represents a comprehensive overhaul of the insolvency regime with its primary objectives being the rehabilitation of debtors where it is possible, maximizing payments to creditors, distribution of assets fairly and equitably. That* ***the Insolvency Act added new procedures and new rules and replacing many of the established procedures and rules; the Insolvency Act expressly re-shaped the insolvency regime in Jamaica.*** *(emphasis supplied)*

Nevertheless, and rather curiously, Ms Campbell also posited that:

> *"…this issue of whether the six per cent (6%) per annum interest rate chargeable on dividend by the Trustee under the Bankruptcy Act is still applicable under the Insolvency Act lays entirely within the jurisdiction of the Court as the Insolvency Act is silent on same."*

[20] I respectfully disagree with Counsel as it relates to this assertion of the ambit of the Court's jurisdiction. For the reason stated in the preceding paragraph I have concluded that the silence of the IA on this issue is intentional. In my opinion it is a part of the reshaping of the insolvency regime in Jamaica to which Ms Campbell referred. Accordingly, it does not permit this Court any discretion in declaring the applicability of the six percent interest rate, or any other rate for that matter. The IA in its current form does not create any need for the Court's intervention or for any special rules of construction to be applied in its interpretation.

[21] In **Thompson v Goold & Co** [1910] AC 409 at 420, Lord Mercey stated that, "*It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do".* That guidance is apposite in this case. There is also absolutely no discretion for this Court to exercise in this regard. However, the Court's discretion may have to be deployed where the interest rate being claimed cannot be justified and in the case where it is in breach of the MLA.

Whether the interest rates charged by the Creditors (including those exempted from the Money Lending Act) exceeding the Minister's prescribed rate of forty percent (40%) are excessive and as such the transaction is harsh, unconscionable and is to be reopened and the agreement made in respect of money lent, is to be revised or altered or set aside wholly or in part.

[22] Section 2(1) of the MLA provides that if the interest rate charged on a sum lent is excessive or the transaction is harsh or unconscionable, the Court may re-open the transaction. The relevant portion thereof is in the following terms:

> *"Where proceedings are taken in any court by any person for the recovery of any money lent either before or after the commencement of this Act, or the enforcement of any agreement or security made or taken in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, enquiries, fines, bonuses, premiums, renewals or any other charges, are excessive, or that, in any case, the transaction is harsh or unconscionable, the court may reopen the transaction, and take an account between the parties…"*

In the case of **Estate of Palmer (deceased) Cornerstone Investments & Finance Company Limited (Jamaica)** [2007] UKPC 49, the Court found that this section was inapplicable because the creditor had not yet brought proceedings. A similar situation obtains in this case. However, the Court found that section 2(2) enabled a court in which the proceedings referred to in subsection (1) might be taken, to exercise the like powers at the instance of a borrower or surety.

[23] Section 2(2) to 2(5) of the MLA provide as follows:

> *(2) Any court in which proceedings might be taken for the recovery of money lent, shall have, and may at the instance of the borrower, or surety, or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this act by the borrower, or surety, or other person liable, notwithstanding that the time for the repayment of the loan, or in instalments thereof, may not have arrived:*
>
> *Provided that in the event of the bankruptcy of the borrower the powers of a court under this subsection may be exercised at the instance of the Trustee in Bankruptcy notwithstanding that he may not be a person liable in respect of the transaction.*
>
> (1) *On any application relating to the admission or amount of a proof in any bankruptcy proceedings in respect of any loan, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.*
>
> (2) *The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of moneylending.*
>
> (3) *Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.*

There are two elements of subsection 2 above that should be noted. The first, is that the Trustee in Bankruptcy is given the power of the court to reopen a transaction in respect of money lent where there is evidence that the interest charge is excessive or that in any case, the transaction is harsh or unconscionable. The second, is that section 2(3) appears to contemplate that if the Trustee in Bankruptcy makes a decision to reopen a transaction during the process of analysing the proof of claim submitted to him, an aggrieved party may choose to challenge the decision of the Trustee in Bankruptcy and the issue will fall to the court for a final determination.

[24] Although the reference is to the Trustee in Bankruptcy, this can be interpreted to apply to the Government Trustee who is the person duly appointed pursuant to

section 227 of the IA to administer the estate of debtors. Section 3 of the MLA prescribes that if it is found that the interest charged exceeds the prescribed rate per annum, then unless the contrary is proved, the Court shall presume that the interest charged is excessive and that the transaction is harsh and unconscionable. The Section reads as follows:

> *3(1) Where, in any proceedings in respect of any money lent after the commencement of this Act or in respect interest of any agreement or security made or taken after the commencement of this Act in respect of money lent either per before or after the commencement of this Act, it is found that the interest charged exceeds the prescribed rate per annum, the court shall, unless the contrary is proved, presume for the purposes of section 2 that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding the prescribed rate per annum, is excessive.*
>
> *(2) In this section "prescribed rate" means such rate as the Minister may from time to time, by order, prescribe.*

[25] The MLA at section 13 provides exceptions for certain categories of transactions, persons and institutions. The Government Trustee asserts that the creditors, First Global Bank, CIBC First Caribbean International Bank and National Commercial Bank are all licensed under the Banking Act, 1992, and as such fall squarely within the exemptions laid down in section 13.

[26] For the reasons I have earlier advanced, there currently being no limitation restricting the interest rate to six percent as was the situation under the Bankruptcy Act, these institutions are entitled to the contractually agreed interest rates which they have agreed with the Bankrupt. That maximum interest rate pursuant to Section 3 of the Money Lending (prescribed Rates of Interest) Order, 1997 is set at forty percent (40%) per annum as published in a Gazette Notice dated the 27th August, 1997.

[27] Pursuant to section 14 of the MLA, the Minister may grant exemptions from the provisions of the Act. The section reads as follows:

> *(1) Where the Minister is satisfied that it is in the public interest so to do, he may by order declare —*
>
> > *(a) any loan or contract or security for the repayment of a loan specified in that order; or*
> >
> > *(b) any loan made, or any contract entered into, or any security for the repayment of a loan given by any person specified in that order, to be exempt from the provisions of this Act, subject to such terms and conditions as may be specified in the order.*
>
> *(2) Where there has been a breach of any term or condition specified in an order under subsection (1), or any fraudulent act in respect of the exemption obtained thereby, or where such order has been obtained by misrepresentation, whether innocent or otherwise, the Minister may by order revoke that exemption but without prejudice to the rights of any innocent third parties.*

The Government Trustee has submitted that, the Creditors, McKayla Financial Services Limited and Worldnet Investment Company Limited on the face of it are exempted from the provisions of MLA pursuant to Section 14 as they hold exemption orders signed by the Minister. The complaint is that their interest rates of 84% per annum and 54.75% per annum far exceed the Minister's prescribed rate of 52% as contained in their said exemption orders.

[28] Pursuant to section 14(2), where there has been a breach of any term or condition specified in the Order the Minister may by order revoke that exemption but without prejudice to the rights of any innocent third parties. However, I have not been presented with any evidence that any of the relevant orders have been revoked and that McKayla Financial Services Limited and Worldnet Investment Company Limited are now without the necessary exemptions from the Minister.

[29] The Government Trustee also complains that the rates of interest per annum charged by the Creditors, C & F Finance Limited and TVM Finance Limited (not exempted from the MLA by virtue of Sections 13 or 14) are 96% and 104% per annum, and as such, are in excess of the Minister's prescribed rate of 40% per annum.

[30] The Government Trustee has very helpfully provided a number of authorities on which she relies in support of the Court's power to set aside transactions as being unenforceable where the interest rate charged was excessive. These include the Privy Council case of **Estate of Palmer (deceased) v Cornerstone Investments & Finance Company Ltd. (Jamaica)** (2007) UK PC49 (16 July 2007) and **North American Holdings Company Limited v Howard Webber and Devon Evans** [2013] JMSC Civil 156.

[31] In her written submissions Ms Campbell asserted the following:

> *It is submitted that the MLA is clear in that where there is evidence that satisfies the Court that the interest charged in respect of the sum lent is excessive or that the transaction is harsh or unconscionable, the court may reopen the transaction. Accordingly, the Court should declare that the interest rates of the Creditors, McKayla Financial Services Limited, Worldnet Investment Company Limited, C & F Finance Limited and TVM Finance Limited are excessive, harsh and unconscionable and thus should be reopened and the interest rate adjusted in keeping with Minister's prescribed rate of forty percent (40%).*

It is necessary to appreciate that in the ordinary course of events outside of bankruptcy proceedings, these creditors would have initiated proceedings in the Court and the debtor Ms Vernalyn Barnaby would in all likelihood have sought to deploy the protections afforded to her pursuant to section 2(1) of the MLA. Alternatively, the debtor would have initiated a claim seeking to have the protections under the MLA and as the Privy Council found in **Cornerstone Investments** (supra) the Court would have jurisdiction to grant her such protections pursuant to section 2 (2).

[32] The situation is different in the context of bankruptcy proceedings. It is trite law that on the making of a bankruptcy order the bankrupt's estate automatically vests in the government trustee or any other trustee as soon as he becomes the trustee of the bankrupt's estate. This includes all claims save an except for rights of actions which are personal to the bankrupt rather than relating to his property. However, where the creditors have submitted claims in the bankruptcy, it is my view that the

Government Trustee is entitled to utilize the power conferred on her pursuant to section 2(2) of the MLA to grant to the bankrupt the same protections to which she would have been entitled in the context of court proceedings.

[33] Even in the absence of the expressly conferred power pursuant to section 2 (2) of the MLA, the Government Trustee in considering proofs of claims is entitled to determine whether there are any limits placed on the interest rate to be applied to any debt being claimed by a creditor. Therefore, in any event, the Government Trustee has the power by virtue of the ordinary mechanism to be employed in considering a proof of claim, to apply the provisions of the MLA.

[34] A creditor who forms the view that the Government Trustee has improperly applied the provisions of the MLA when considering his proof of claim and in so doing has deprived him of a higher interest rate than he was contractually due, may then seek recourse to Section 270 of the IA which provides as follows:

> *Where the bankrupt or any of the creditors or any other person is aggrieved by an act or decision of the trustee, the aggrieved person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such other order as it thinks just.*

This is the procedure which it appears was contemplated by section 2(3) of the MLA as being the trigger which would enable the Court to consider the applicable limits on interest rates to be applied to proof of claims.

[35] Section 270 of the IA is also bolstered by section 277 which provides for the overarching powers of the Court as follows.

> *Subject to this Act, the Court shall have full power to decide all questions of priorities in accordance with applicable law and all other questions whatsoever, whether of law or fact, that may arise in any case involving insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide in furtherance of the objects of this Act.*

The Insolvency (England and Wales) Rules 2016 (SI 2016/1024)/Part 14 Claims by and Distributions to Creditors in Administration, Winding up and Bankruptcy/14.8 Appeal against decision on proof, provides a very detailed procedure as follows:

> *(1) If a creditor is dissatisfied with the office-holder's decision under rule 14.7 in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.*
>
> *(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 14.7(2).*
>
> *(3) A member, a contributory, any other creditor or, in a bankruptcy, the bankrupt, if dissatisfied with the office-holder's decision admitting, or rejecting the whole or any part of, a proof or agreeing to revalue a creditor's security under rule 14.15, may make such an application within 21 days of becoming aware of the office-holder's decision.*
>
> *(4) The court must fix a venue for the application to be heard.*
>
> *(5) The applicant must deliver notice of the venue to the creditor who delivered the proof in question (unless it is the applicant's own proof) and the office-holder.*
>
> *(6) The office-holder must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under rule 14.7(2).*
>
> *(7) After the application has been heard and determined, a proof which was submitted by the creditor in hard copy form must be returned by the court to the office-holder.*

Whereas our rules are not similarly detailed, the Court will be able to make appropriate directions in each case in order to satisfy the interests of justice.

[36] In the case of **Re T & D Automotive Ltd (in administration)** [2000] 1 WLR 646 at 657 Neuberger J commented that:

> *'… a person appointed to act as an administrator may be called upon to make important and urgent decisions. He has a responsible and potentially demanding role. Commercial and administrative decisions*

> *are for him, and the court is not there to act as a sort of bomb shelter for him.'*

However, the Courts have acknowledged that administrators may be given directions by the Court in complex matters involving difficult legal questions where there are particular reasons to do so. There is no distinction of substance to be made between an administrator seeking directions under the Insolvency Act of England and Wales and the Government Trustee seeking directions under our IA.

[37] In this case, the directions sought have their foundation in a question of law which has been raised. The Court will therefore grant appropriate directions to the Government Trustee because the Court is concerned to ensure that the proposed exercise of the Government Trustee's powers is lawful and does not infringe the right of the creditors to have their proof of claims properly considered. However, some of the directions sought are in respect of decisions which I find that the Government Trustee will be able to make without the assistance of any specific declaration by this Court. I am particularly reluctant to make those declarations in respect of specific proof of claims in the form that they have been requested because, whether on the ground of *res judicata* or otherwise, such declarations may potentially prevent a creditor who feels aggrieved by the Government Trustee's decision from making an application pursuant to section 270 of the IA. I appreciate that in the instant application the creditors were served and were given the opportunity to make representations and submissions to the Court. However, but this opportunity which was seized by some creditors is arguably more limited in scope than an IA section 270 application. I will take the opportunity to express my gratitude to all Counsel who made submissions for their contribution. The fact that I have not rehearsed the positions of the creditors who made submissions and Counsel representing the Attorney General is purely a function of my attempt at brevity, having regard to the identification of the issues by Counsel representing the Government Trustee and the Supervisor or Insolvency.

[38] For the reasons stated herein I find that the following are appropriate directions and orders in the circumstances:

1. The limit of six per cent (6%) per annum interest rate chargeable on dividend payments by the Trustee in Bankruptcy (now Government Trustee) under the Bankruptcy Act is not applicable under the Insolvency Act, 2014.

2. The proof of claims of creditors exempted under section 13 of the Moneylending Act are subject to the maximum interest rate pursuant to Section 3 of the Moneylending (prescribed Rates of Interest) Order, or any other maximum interest rate which may from time to time be applicable by operation of law.

3. The Government Trustee is entitled to utilize the power conferred on her, pursuant to section 2(2) of the MLA, to grant to the Bankrupt the same protections to which she would have been entitled in the context of Court proceedings.

4. The Government Trustee may make appropriate adjustments, if necessary, to the admitted claims in bankruptcy to ensure that they comply with the aforementioned directions.