

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
IN THE FEDERAL TERRITORY OF KUALA LUMPUR, MALAYSIA  
(COMMERCIAL DIVISION)  
COMPANIES (WINDING-UP) PETITION NO.: WA-28NCC-132-02/2023  
POST WINDING-UP APPLICATION NO.: WA-28PW-408-07/2024**

In the matter of Section 465(1)(e) and  
466(1) of Companies Act 2016

And

In the matter of CT World Construction  
Sdn.Bhd (Company No:  
200801014904/816193-X)

**BETWEEN**

**TAN AIK LING**  
(NRIC NO.: 790208-14-5225)

**...APPLICANT**

**AND**

**CT WORLD CONSTRUCTION SDN.BHD**  
(COMPANY NO: 200801014904 (816193-X))

**...RESPONDENT**



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**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
IN THE FEDERAL TERRITORY OF KUALA LUMPUR, MALAYSIA  
(COMMERCIAL DIVISION)  
COMPANIES (WINDING-UP) PETITION NO.: WA-28NCC-132-02/2023  
POST WINDING-UP APPLICATION NO.: WA-28PW-440-07/2024**

In the matter of Section 471 of the  
Companies Act 2016

And

In the matter of Companies (Winding-  
Up) Rules 1972 and Rules of Court  
2012

And

In the matter of CT World Construction  
Sdn.Bhd (Company No.:  
200801014904 / 816193-X) (in  
Liquidation)

**BETWEEN**

**RHB BANK BERHAD**  
(COMPANY NO.: 196501000373/0006171M)

**...PETITIONER**

**AND**

**CT WORLD CONSTRUCTION SDN.BHD**  
(COMPANY NO: 200801014904 (816193-X)

**...RESPONDENT**

**AND**

**1. SEOW SIEW KIAN**  
(NRIC NO.: 820803-05-5288)

**2. KON YEON GUEN**  
(NRIC NO.: 810715-14-6391)

**...APPLICANTS**



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## GROUNDS OF JUDGMENT

### INTRODUCTION

[1] These Grounds concern 2 interrelated Post Winding Up applications.

### *Background Facts*

[2] Seow Siew Kian [NRIC No.: 820803-05-5288] and Kon Yeon Guen [NRIC No.: 810715-14-6391] ("**Seow & Kon**") are the legal and beneficial owners of a house at Lot PT 86736, No.2 Jalan Jade Hills 11/3, Jade Hills, Pekan Kajang, Daerah Ulu Langat, Selangor Darul Ehsan ("**the Premises**").

[3] CT World Construction Berhad ("**CT World**") is a construction company and Grade 7 contractor registered with the Construction Industry Development Board.

[4] The background facts are as follows.

(a) In or about November 2019, Seow & Kon engaged CT World Construction for the construction and renovation of the Premises. Initially, Seow & Kon paid RM16,000 for architectural services and received from CT World, a preliminary quotation of RM450,000. However, the quotation was revised on several occasions, eventually rising to RM650,128.99 by July 2020.



(b) Seow and Kon terminated the contract alleging that CT World failed to obtain the necessary approvals from Majlis Perbandaran Kajang, coupled with significant cost increase.

(c) Although CT World agreed in principle to the termination, it issued a unilateral termination letter, which Seow & Kon did not accept.

[5] Subsequently, Seow and Kon commenced proceedings against CT World in the Petaling Jaya Sessions Court in Civil Suit No. BB-A52C-1-01/2022 (“**the Sessions Suit**”).

[6] On 20.11.2023, on the Petition of RHB Bank Bhd, CT World was wound up by an Order of the Insolvency Court (“**the Winding Up Order**”) and the Official Receiver (“**the OR**”) was appointed as liquidator. Tan Aik Ling (“**Tan**”), the sole shareholder of CT World, claims that he had no knowledge of the Winding Up Order.

[7] On 21.12.2023, judgment was entered by Seow & Kon in the Sessions Suit (“**the Judgment**”). The Judgment ordered, *inter alia*, that CT World pay Seow & Kon:

(a) a sum of RM136,039.55;

(b) a sum of RM8,000.00 being architect’s fee;

(c) interest at the rate of 5% per annum on the judgment sum of RM136,039.55 and RM8,000.00;



(d) costs of RM8,325.00; and

And further, CT World's counterclaim against the plaintiffs was dismissed with costs of RM5,575.00.

[8] CT World filed a Notice of Appeal on 2.1.2024 ("**the Notice of Appeal**").

[9] What is important is that the Judgment was obtained by Seow & Kon after the Winding up Order was granted and as such, the entry of the Judgment violated section 471(1) of the Companies Act 2016 ("**CA 2016**"). The validity of the Judgment is in question. Similarly, as the Notice of Appeal was filed by CT World after Winding Up Order, its validity is also questionable given that it was not filed by the Liquidator, the OR.

[10] On 31.7.2024, Seow & Kon were informed by the Director General of Insolvency ("**DGI**") that an Order dated 30.7.2024 was granted on an application filed by Tan in Case No. WA-28PW-366-06/2024, terminating the Winding Up ("**Termination Order**"). The termination was moved under sections 493 and 494(2) and (3) of CA 2016.

## **THE CROSS APPLICATIONS**

[11] There are 2 cross post winding up applications before me.

[12] First, Tan filed WA-28PW-408-07/2024 ("**PW408**") under section 471(1) of CA 2016 for retrospective leave to regularise the filing of



the Notice of Appeal and to proceed with the Appeal under section 486 (“**the Leave NoA**”). The Leave NoA is for orders, in effect, that:

- (a) leave be granted retrospectively to CT World to file and proceed with the Appeal;
- (b) the Notice of Appeal dated 02.01.2024 be deemed to have been filed regularly;
- (c) Messrs G. Sandhu, Kabina & Associates be allowed to represent and/or continue representing CT World in the Appeal; and
- (d) the costs of Leave NoA be borne by Tan.

**[13]** In substance, although not expressly stated, Tan wants conduct of the Appeal. He prays that his solicitors represent CT World in the Appeal. The Leave NoA is supported by Tan’s affidavit affirmed on 1.7.2024 (“**Enclosure 2**”).

**[14]** Secondly, Seow & Kon filed WA-28PW-440-07/2024 (“**PW440**”). It is remembered that the Judgment was entered in violation of section 471(1) as it was entered on 21.12.2023. At this this time, CT World was still in liquidation (i.e., post the winding-up on 20.11.2023 and pre the termination of the winding-up order on 30.7.2023). Thus, PW440 was filed under section 471(1) to regularize the entry of the Judgment.



[15] These cross applications illustrate the effect of liquidation on legal proceedings.

### ***The Impact of Liquidation***

[16] There are two (2) types of proceedings that are affected by liquidations. The Federal Court drew the distinction in *Lai King Lung (practising as advocate and solicitor under the name and style of Messrs Chris Lai, Yap & Partners, advocates and solicitors) & Anor v. Merais Sdn Bhd* [2020] 5 MLJ 614 at para [21]:

*“[21] At the outset, it is important to appreciate that there are two different and distinct fact situations under which leave of the court or sanction of the liquidator is required. The first is in respect of action or proceedings **against** a wound up company. This situation is governed by s. 226(3) of the 1965 Act / s 471(1) of the 2016 Act which provides that leave of court is necessary in order for any action or proceeding proceeded with or commenced against a wound-up company.*

*The second scenario is where action or proceeding is taken **by** a wound-up company: s 236(2)(a) and (3) of the 1965 Act / s 486 of the 2016 Act read together with Part 1 of the Twelfth Schedule which requires the sanction of the liquidator to be obtained.” Per Vernon Ong FCJ.*

[Emphasis mine]

[17] The differences are profound.

[18] For proceedings against the company, the objective is to reduce the costs incurred in defending these claims. So, generally, these claims should be dealt with summarily and cheaply within the liquidation process, being the proof of debts process. There are exceptions, but the objective is nevertheless the preservation of



the assets of the company for distribution to the stakeholders in the liquidation.

**[19]** For proceedings by the company, the power to control such proceedings are vested solely in the liquidator. However, if he refuses to commence or proceed with litigation, conduct of such proceeding may, by an order of Court, be vested in a contributory or creditor. But the litigation proceeded with must be for the benefit of the company before an order will be made. There should also be an indemnity so that in the event the proceeding is unsuccessful and an adverse costs or other orders are made, the assets of the wound up company will be preserved.

**[20]** I will deal with the cross applications, PW 408 and PW 440, in turn.

### **PW408**

**[21]** PW408 was filed for validation of the Notice of Appeal under both section 471(1) and section 486(2). I will deal with each ground in turn.

### *Section 471(1) of CA 2016*

**[22]** Section 471(1) provides:

*“471(1) When a winding up order has been made or an interim liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and in accordance with such terms as the Court imposes.*”





(2) *The application for leave under subsection (1) shall be made in the Court granting the winding up order and shall be served on the liquidator.*”

- [23] Counsel for the Applicant now concedes that section 471(1) cannot be relied on to regularise the Notice of Appeal. This is because section 471(1) only applies to an action or proceeding “*against the company*”. But the Notice of Appeal was only filed *by the company* and not *against the company* within section 471(1). As such, section 471(1) cannot be applied to regularise the Notice of Appeal.
- [24] In *CGU Insurance Bhd v Aseam Security Paper Mills Sdn Bhd and Other Appeals* [2002] 2 MLJ 1, the Federal Court held that to fall within section 226(3) (now section 471(1)), the ‘proceeding against the company’ must intend to fasten liability on the company in liquidation or its assets, see also the Court of Appeal in *Wong Kien Yip & Anor v Byard Spiral Mill Sdn Bhd and another appeal* [2022] MLJU 244 at [53].
- [25] The Notice of Appeal intends no such objective.
- [26] The issue is put beyond doubt by the Federal Court in *Lai King Lung* (supra) at para [21], which held that section 471(1) only applies to proceedings against the company, see para [16] above.
- [27] Proceedings by the company do not fall within section 471(1). In the circumstances, the remedies sought under the Leave NoA are not “against the company” and therefore, cannot be rectified under section 471(1).



Section 486(2) of CA 2006

[28] However, Tan also relies on section 486(2). *Ex facie*, the section can apply as the Notice of Appeal and the conduct of the appeal are proceedings by the company within section 486(2) as per *Lai King Lung* (supra) at [16] above.

[29] Section 486 provides:

***“Powers of liquidator in winding up by Court***

**486.** (1) *Where a company is being wound up by the Court, the liquidator may—*

*(a) without the authority under paragraph (b), exercise any of the general powers specified in Part I of the Twelfth Schedule; and*

*(b) with the authority of the Court or the committee of inspection, exercise any of the powers specified in Part II of the Twelfth Schedule.*

*(2) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section is subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.”*

[30] Part 1 of the Twelfth Schedule provides:

*“Twelfth Schedule  
POWERS OF LIQUIDATOR IN WINDING UP BY COURT  
Part I  
[Section 472]  
Powers exercisable without authority*



*The liquidator may -*

*(a) bring or defend any action or other legal proceedings in the name and on behalf of the company;”*

**[31]** It is clear that on the compulsory winding of a company, the liquidator is vested with the power over all legal proceedings in the name of the company. It is an exclusive power. However, by section 486(2), the exercise of power over legal proceedings by the liquidator in the name of the company is subject to control of the Court.

**[32]** What Tan seeks under section 486(2) is for an order for retrospective regularisation of the filing of the Notice of Appeal and for leave to conduct the Appeal. The issue that arises is under what circumstances may section 486(2) be invoked.

**[33]** In determining this issue, the starting point is to accept that on the winding up of a company, the powers of directors in relation to the conduct of legal proceedings in the name of the company, vest in the liquidator, see the Federal Court in *Lai King Lung* (supra) at [25].

**[34]** In *Small Medium Enterprise Development Bank Malaysia Bhd v Blackrock Corp Sdn Bhd & Ors* [2017] 6 MLJ 116, the Court of Appeal held:

*“[30] ... However, as the first plaintiff had been wound up, the second to fourth plaintiffs being directors have limited residual powers. The powers to conduct the affairs of the wound up company, including the power to institute legal proceedings is vested in the liquidator. Zaitun Marketing Sdn Bhd v Boustead Eldred Sdn Bhd (formerly known as Boustead Trading (1985) Sdn Bhd) [2010] 2 MLJ 749; [2010] 3 CLJ 785 clearly*



*outlined the fundamental principle that once a company is in liquidation its assets and liabilities vest in the liquidator. It is left to the liquidator as to how to proceed with any legal proceedings (s 233 of the Companies Act 1965 refers)."*

**[35]** In *Zaitun Marketing Sdn Bhd v Boustead Eldred Sdn Bhd (formerly known as Bousted Trading (1985) Sdn Bhd)* [2010] 2 MLJ 749 (FC), Gopal Sri Ram FCJ held:

*"What appears to have been overlooked all round is the fundamental principle that once a limited company is wound up, its assets and liabilities vest in the liquidator. It is up to him to decide whether to institute, continue the prosecution of or defend legal proceedings. However, there is jurisdiction in the court to authorise other persons to conduct litigation in the name of the company.*

*In Russell v Westpac Banking 13 ACSR 5, King CJ when delivering the judgment of the Full Court of South Australia said:*

*When the company is in liquidation, the person in whom is vested the authority to institute proceedings, is the liquidator: Scarel Pty Ltd v City Loan & Credit Corporation Pty Ltd (1988) 12 ACLR 730. There is power, however, in the court to authorise other persons to conduct litigation in the name of the company: Cape Breton Company v Fenn (1881) 17 Ch D 198; Aliprandi v Griffith Ventures Pty Ltd (1991) 6 ACSR 250.*

*Of course, resort to the court's power to authorise someone other than the liquidator to institute, continue or defend proceedings only arises where the liquidator refuses to do so and declines authority. But where, as here, the liquidator grants authorisation, there is no necessity to move the court. Once authority is given either by the liquidator or by the court, the person authorised may appoint counsel of his or her choice to prosecute the proceedings in question."*

**[36]** I only cite the second part of the last paragraph out of completeness and to note that the apparent power of the liquidator to grant 'sanction' for another to have conduct over proceedings in the name of the company, is subject to some controversy, see



*Small Medium Enterprise Development Bank Malaysia Bhd v Oren Venture Sdn Bhd & Ors and another case* [2022] 12 MLJ 247 at [41], followed in *KL Landmark Development Sdn Bhd v Jalex Sdn Bhd* [2022] MLJU 2449 at [52]; but cf *United 1Borneo Hypermall Sdn Bhd v See Hong Cheen @ See Hong Chen* [2022] MLJU 3515 at [19]. That issue does not arise here.

[37] In following *Zaitun Marketing (supra)*, the Court of Appeal in *Tee Hock Seng & Ors v Lee Kin Tong @ Lee King Hoon & Ors* [2017] MLJU 1116 at [40] held at [42]:

*“[42] In the instant case, the liquidators of the 1<sup>st</sup> defendant have decided not to continue with the action commenced by the plaintiffs to avoid the 1<sup>st</sup> defendant from being embroiled in wasteful litigation. Pursuant to section 236(3) of the Companies Act 1965 [now s. 486(2) of CA 2006], any creditor or contributory who disagrees with the exercise of powers by the liquidators may apply to the court with respect to any exercise or proposed exercise of any of those powers. This would include an application to continue with the action in the name of the company. However, no such application has ever been made by the plaintiffs.”*

[38] It becomes clear from *Zaitun* and *Tee Hock Seng* that section 486(2) may only be invoked by the Court to grant leave to a third party to have conduct of proceedings, when there is a disagreement with or a complaint against the liquidator on the exercise of his power over legal proceedings. This is evident as section 486(2) is designed to allow the Court control liquidators. In *Small Medium Enterprise Development Bank Malaysia Bhd v Oren Venture Sdn Bhd & Ors and another case* [2022] 12 MLJ 247, Azlan Sulaiman JC (as he then was) held:



*“[35] Thus, under the Act, the scheme for a wound up company bringing, continuing with or defending an action is very straightforward and simple. Firstly, only the liquidator has the power to do so. It is only when he refuses to, or is unable to, or is advised not to, or has no funds to (and I stress that those grounds are not exhaustive), can a creditor or contributory apply to the winding up court for one of two orders: either to compel the liquidator to bring, continue with or defend that action, or alternatively for an order that they be given the sanction by the court to bring, continue with or defend that action. In their application, they would have to satisfy the court that doing so would be in the interests of the company. And, in giving that sanction, the court can impose terms and conditions, including requiring security and indemnity. But the liquidator does not have that power. ...*

*[39] Fourthly, as the court’s power to sanction a creditor or contributory to bring, continue with or defend and action is derived from s 486(2) of the Act by which it controls the exercise of the powers by the liquidator, ...”*

**[39]** Without any action or deliberate omission with respect to the proceeding, section 486(2) cannot be invoked. During the hearing of the Leave NoA, I asked Counsel whether the Applicant had requested the Liquidator to proceed with the Notice of Appeal and the Appeal itself, Counsel answered in the negative. *Ex facie*, therefore, there was no such overt act or deliberate omission which would allow the Court step in under section 486(2). As such, I was in real doubt as to whether section 486(2) could be invoked at all.

**[40]** However, it was pointed out by Cik. Norizan Omar of the OR, that the OR had no objections to the Leave NoA and confirmed that the OR would not proceed with the Appeal in any event. In the circumstances, I am prepared to accept that based on the representations of the OR, the liquidator has taken a sufficiently negative stand on proceeding with the Notice of Appeal and the Appeal, that will allow the Applicant to invoke section 486(2).



[41] On the merits of the application under section 486(2), I think it obvious that the prosecution of the Appeal would be in the interests of CT World within the test in *Small Medium Enterprise Development Bank Malaysia Bhd v. Oren Venture Sdn. Bhd. & Ors* [2022] 6 CLJ 148. This is because the Appeal seeks to reverse the Judgment against CT World and thereby, to increase the assets of CT World for the benefit of its creditors.

[42] I therefore granted Enclosure 1. I note that no indemnities were requested by the OR as a condition of the grant of sanction or leave to proceed with the Appeal.

#### PW440

[43] PW440 was filed by Seow & Kon under section 471(1) to validate and regularise the entry of the Judgment in the Sessions Suit. Enclosure 1 of PW440 was filed for the following orders:

“1. *That:*

(a) *The decision delivered on 21.12.2023 be deemed as regular and effective and that the draft order dated 21.12.2023 (annexed hereto as Appendix A) be accepted for filing for approval and subsequent sealing by the Petaling Jaya Sessions Court;*

*or*

(c) *As an alternative to prayer (a) above, that the Applicant be given leave to continue its application and/or proceedings against the Respondent in the Petaling Jaya Sessions Court Civil Suit No. BB-A52C-1-01/2022 and all related proceedings related thereto, including any appeals(s) to deliver its decision on a date fixed by the Sessions Court Judge and the respective judgment / orders be allowed to be filed in respect of such decisions;”*



[44] The underlying and undeniable rationale of section 471(1) (previously, section 223 of the Companies Act, 1965) is as stated in *Mosbert Berhad (in liq.) v. Stella D'Çruz* [1985] 2 MLJ 446, where the Supreme Court held:

*“... it cannot be disputed that the primary object of winding up is the collection and distribution of the assets of the company pari passu amongst unsecured creditors after payment of preferential debts. And the purpose of the statutory provision is to ensure that all claims against the company in liquidation which can be determined by cheap and summary procedure available in a winding up are not made the subject of expensive litigation. The provision is designed to prevent unnecessary multiplicity of suits which may result in dissipating the assets of the company.”*

[45] I have considered the application of *Mosbert* by the higher Courts in Malaysia in *Syed Gamal bin Syed Kechik Albukhary v. Ace Credit (M) Sdn Bhd.* (Post Winding Up WA-28 PW-179-04.2024) and I will not repeat the same in these Grounds.

[46] The principles as to when leave will actually be granted were considered in detail in *Mesuntung Property Sdn Bhd v Kimlin Housing Development Sdn Bhd* [2014] 4 MLJ 886. The Court of Appeal, after reviewing a host of authorities, held:

*“From the above authorities, the appellant has the burden of satisfying the court of two criteria:*

- (a) the appellant’s claim cannot be adequately dealt with by the winding up court; and*
- (b) the appellant has a prima facie case against the respondent.”*

[47] However, these 2 criteria are not the only criteria that govern the grant of leave. They may be primary, but they are not exclusive. In *Mesuntung* itself, the Court of Appeal adopted *Bruno Phillipe*





*Fehrenbach v Pegawai Penerima, Malaysia (selaku pelikuidasi Han Pacific Sdn Bhd)* [1999] 5 MLJ 321, which sets out various other factors that may be considered in an application under section 471(1). These included the balance of convenience, the stage at which the proceedings were at and whether the applicant under section 471(1) will obtain an advantage over the other creditors of the wound up company.

**[48]** All these considerations are aimed at the preservation of the assets of the wound up company for distribution to the stakeholders, ordinarily, the creditors. As such, where the claims can be dealt with in the winding up. i.e., in a cheaper, summary and expedient manner through the proof of debt process (per *Mosbert (supra)*), then leave will be refused. This is typically the case where the claim is a pure monetary claim, see *Industrial Property Management Sdn. Bhd. v. Biaxis (M) Sdn. Bhd.* [2023] MLJU 200 at [41] to [42] and 51] to [52] and *Efra Marketing Sdn. Bhd. v ZN Solution Builders Sdn. Bhd. (KJC Engineering Sdn. Bhd., proposed intervener)* [2023] MLJU 2552 at [33].

**[49]** The approach is therefore fundamentally one of convenience and expedience. The question is reduced largely to one of choosing between alternative forms of procedure (the 'balance of convenience'), i.e., whether the claims in the Action should be adjudicated in the cheaper and more expedient POD process or whether such claims should only be dealt with in a civil Court.

**[50]** It is important to note that the Federal Court in *Lai King Lung (supra)* explained the nature of retrospective leave or leave *nunc pro tunc*



and the need to show hardship before such leave will be granted. The Federal Court held at [23]:

*“The court will in certain cases allow a proceeding to be treated as being taken on a particular date, although as a matter of fact not completed until afterwards: Where this is done the proceeding is said to be taken nunc pro tunc. The applicability of the rule of nunc pro tunc which is really based on the maxim actus curiae neminem gravabit is confined to those cases only in which some hardship would be visited upon a party, without any fault of his unless he were relieved from it by allowing a proceeding as to be taken now for then.”*

[Emphasis mine].

**[51]** A factor that is particularly important in this case is the stage of the proceedings sought to be regularised, see the summary in *Bruno Phillipe Fehrenbach* as adopted in *Mesuntung Property* at para 40 (above).

**[52]** This consideration was nicely explained in *Ronelp Marine Ltd and other companies v STX Offshore & Shipbuilding Co Ltd* [2016] EWHC 2228 (Ch), it was held at [39]:

*“39. Second, it is in my judgment a factor of significant weight that there are already proceedings before the Commercial Court which are reasonably well advanced and on which the Buyers and STX have each expended considerable sums in preparation for trial in December 2016. Plainly the mere existence of proceedings is not of itself sufficient, for the automatic stay (modified to accord with paragraph 43) applies to existing proceedings. But the fact that proceedings have been commenced is a factor to be taken into account, and the nearer the outcome of the proceedings the greater the weight to be attached to that factor: ...”.*

[Emphasis mine].



## ***The Judgment***

**[53]** The Sessions Suit was commenced in January 2022 until September 2023, when the Sessions Court Judge allowed Seow & Kon's claims. Counsel for Seow & Kon stated that the Judgment was entered after examining the pleadings, hearing the testimony of witnesses and after arguments. The stage of the Sessions Suit is that the adjudication of the disputes is at end (certainly at the first instance).

**[54]** As the disputes have been fully adjudicated culminating in the Judgment by a Sessions Court Judge, the completion of the adjudication renders the re-adjudication of the claims by the Liquidator unnecessary.

**[55]** To refuse leave under the NoA would mean that the Judgment would be set aside having been entered without leave and in breach of section 471(1). Seow & Kon's claims would then have to be re-adjudicated within the Proof of Debt process. Even factoring the costs of the appeal, this is not an overwhelming consideration as an appeal would similarly lie on the adjudicating of the POD by a liquidator under section 517 of CA 2016.

**[56]** Further, the costs and expenses incurred Seow & Kon in preparing the Sessions Suit for trial would have been wasted if leave is not granted. This would constitute sufficient hardship for Seow & Kon (within *Lai King Lung* (at para 44 above) to be granted leave under section 486(2) *nunc pro tunc* within *Lai's case*. And without leave, Seow & Kon and would have to commit more funds prepare for the



adjudication a fresh Proof of Debt, which would be adding insult to injury. Further, the Official Receiver, the liquidator of CT World, would also have to commit resources to adjudicate the dispute afresh.

[57] In short, it would not make commercial sense to adjudicate the disputes afresh in the Proof of Debt process when the claims have been fully adjudicated by the Sessions Court.

[58] In my mind, the balance of convenience tilts in favour of granting leave. This is primarily because the primary purpose of the stay in section 471(1) to avoid the payment of expensive and time-consuming curial proceedings, does not bite.

[59] Further, Seow & Kon submit that that they have fulfilled the criteria required for the exercise of my discretion under section 471(1).

[60] I agree.

[61] In this context, Seow & Kon plainly have a 'prima facie case' against the CP World given that the Judgment was granted in their favour after a full trial in the Sessions Court, showing a serious dispute within *Mesuntung* (supra).

[62] There is no prejudice to the creditors, as Seow & Kon will have to participate *pari passu* in the assets of CT World as no leave was granted to execute the Judgment without leave of the Winding Up Court. In the abundance of caution, to ensure an orderly *pari passu*



distribution of CT World's assets amongst its creditors, I ordered that no execution on the Judgment shall be commenced by Seow & Kon against the assets of CT World without leave of this Court.

**[63]** As such, I exercised my discretion and granted leave *nunc pro tunc* under section 471(1) in relation to the Session Suit, and prayer 1(a) of Enclosure 1 thus validating the Judgment.

**Dated 23<sup>rd</sup> September 2024**

.....t.t.....

**YA Tuan Saheran Suhendran  
Judicial Commissioner  
High Court of Malaya  
Kuala Lumpur**

- **COUNSEL FOR THE APPLICANT IN PW408: KABINA LEVAN**

**SOLICITORS FOR THE APPLICANT: TETUAN G. SANDHU,  
KABINA & ASSOCIATES**

- **COUNSEL FOR THE APPLICANTS IN PW440: KOO YIN SOON**

**SOLICITORS FOR THE APPLICANT: TETUAN SHEARN  
DELAMORE & CO. (KUALA LUMPUR)**

- **COUNSEL FOR THE RESPONDENT: NORIZAN BINTI OMAR  
(FOR THE OFFICIAL RECEIVER)**

**SOLICITORS FOR RESPONDENT: JABATAN INSOLVENSII  
MALAYSIA, WILAYAH PERSEKUTUAN KUALA LUMPUR**



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## Cases Referred to:

- *Lai King Lung (practising as advocate and solicitor under the name and style of Messrs Chris Lai, Yap & Partners, advocates and solicitors) & Anor v. Merais Sdn Bhd* [2020] 5 MLJ 614
- *CGU Insurance Bhd v Aseam Security Paper Mills Sdn Bhd and Other Appeals* [2002] 2 MLJ 1
- *Wong Kien Yip & Anor v Byard Spiral Mill Sdn Bhd and another appeal* [2022] MLJU 244
- *Lai King Lung* (supra)
- *Small Medium Enterprise Development Bank Malaysia Bhd v Blackrock Corp Sdn Bhd & Ors* [2017] 6 MLJ 116
- *Zaitun Marketing Sdn Bhd v Boustead Eldred Sdn Bhd (formerly known as Bousted Trading (1985) Sdn Bhd)* [2010] 2 MLJ 749 (FC)
- *Small Medium Enterprise Development Bank Malaysia Bhd v Oren Venture Sdn Bhd & Ors and another case* [2022] 12 MLJ 247
- *KL Landmark Development Sdn Bhd v Jalex Sdn Bhd* [2022] MLJU 2449
- *United 1Borneo Hypermall Sdn Bhd v See Hong Cheen @ See Hong Chen* [2022] MLJU 3515
- *Tee Hock Seng & Ors v Lee Kin Tong @ Lee King Hoon & Ors* [2017] MLJU 1116
- *Small Medium Enterprise Development Bank Malaysia Bhd v. Oren Venture Sdn. Bhd. & Ors* [2022] 6 CLJ 148.
- *Mosbert Berhad (in liq.) v. Stella D'Çruz* [1985] 2 MLJ 446
- *Syed Gamal bin Syed Kechik Albukhary v. Ace Credit (M) Sdn Bhd*
- *Mesuntung Property Sdn Bhd v Kimlin Housing Development Sdn Bhd* [2014] 4 MLJ 886.
- *Bruno Phillipe Fehrenbach v Pegawai Penerima, Malaysia (selaku pelikuidasi Han Pacific Sdn Bhd)* [1999] 5 MLJ 321
- *Industrial Property Management Sdn. Bhd. v. Biaxis (M) Sdn. Bhd.* [2023] MLJU 200
- *Efra Marketing Sdn. Bhd. v ZN Solution Builders Sdn. Bhd. (KJC Engineering Sdn. Bhd., proposed intervener)* [2023] MLJU 2552
- *Bruno Phillipe Fehrenbach* as adopted in *Mesuntung Property*
- *Ronelp Marine Ltd and other companies v STX Offshore & Shipbuilding Co Ltd* [2016] EWHC 2228



**Legislation referred to:**

- Companies Act 2016 (“CA 2016”)
- Companies Act, 1965

**Decision date:**

- **WA-28PW-408-07/2024** = 18 September 2024
- **WA-28PW-440-07/2024** = 09 September 2024



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