

**IN THE HIGH COURT OF MALAYA TEMERLOH  
IN THE STATE OF NEGERI PAHANG DARUL MAKMUR  
COMPANIES WINDING-UP NO. CB-28NCC-8-06/2022**

**In the matter of Sections 464,  
465(1)(e) and 466(1)(A) of the  
Companies Act 2016;**

**And**

**In the matter of MENTAKAB  
SAWMILL SDN BHD (Company  
No. 197001000342 (9597-D))**

**BETWEEN**

**PANG YEON KEON  
(NRIC No: 490410-01-5235)**

**... PETITIONER**

**AND**

**MENTAKAB SAWMILL SDN BHD  
(Company No.: 197001000342 (9597-D))**

**... RESPONDENT**



## ALASAN PENGHAKIMAN

[1] Di dalam kes ini melalui Kertas Mahkamah (KM) 13 pihak Responden memohon supaya petisyen penggulungan syarikat bertarikh 13.06.2022 dibatalkan di bawah A. 18 k. 19 (1) Kaedah-kaedah Mahkamah (KKM) 2012 dan perintah-perintah lanjutan termasuk kos yang perlu dibayar oleh Pempetisyen kepada Responden. Pada 25.08.2022 peguam Pempetisyen telah mengemukakan bantahan awal terhadap permohonan tersebut yang dikatakan telah tidak difailkan melalui prosiding ataupun cara prosiding permulaan yang betul. KM13 tersebut telah ditetapkan untuk perbicaraan pada 26.08.2022. Mahkamah telah mengarahkan supaya pihak-pihak memfailkan hujahan berkenaan dengan permohonan di KM13 tersebut. Pendengaran pada 26.08.2022 telah ditangguhkan ekoran daripada ketidakhadiran pihak peguam Responden yang disebabkan oleh masalah kesihatan.

[2] Pada 02.09.2022 pihak Responden telah memfailkan satu lagi permohonan untuk pembatalan petisyen di bawah A. 18 k 19 KKM 2012 dan terdapat tambahan kepada permohonan tersebut iaitu segala prosiding penggulungan syarikat hendaklah digantung sementara sehingga Mahkamah memutuskan berkenaan dengan pembatalan Petisyen Penggulungan syarikat tersebut. Ini bermakna terdapat dua kertas Mahkamah yang difailkan oleh Responden bagi membatalkan petisyen iaitu KM13 Notis Permohonan dan KM20 Saman Dalam Kamar.



[3] Pertembungan pandangan berkenaan bantahan yang dikemukakan oleh pihak Pempetisyen ialah sama ada permohonan untuk membatalkan prosiding atau petisyen boleh dibuat dengan menggunakan Saman Dalam Kamar seperti di dalam KM13 atau sebaliknya. Pihak Pempetisyen berpegang kepada permohonan di KM13 itu adalah bercanggah dengan Kaedah-kaedah Penggulungan Syarikat 1972 terutamanya kaedah 7. Sementara pihak Responden pula berpandangan bahawa KM13 itu adalah teratur. Walau bagaimanapun beliau telah memfailkan KM20 tersebut. Bagi meleraikan keadaan tersebut Mahkamah perlu melihat kepada kaedah 7 Kaedah-kaedah Penggulungan Syarikat 1972 yang telah menyatakan seperti berikut:

***“7 Motions and summons***

*(1) Every application in Court, other than a petition, shall be made by motion and shall be served on the party effected thereby not less than two days before the day named in the notice for hearing of the motion. An application for leave to serve short notice of motion shall be made ex parte.*

*(2) Every application in Chambers shall be made by summons in Form 1, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require that person or persons to whom the summons is addressed to attend at the time and place named in the summons; and the summons shall be served not less than two days before the day named in the summons, unless in any case it shall be otherwise ordered.”*

[4] Pada masa yang sama Mahkamah juga merujuk kepada takrifan prosiding yang ditakrifkan di bawah peraturan 2 seperti berikut:



*“proceedings” means the proceedings in the winding-up of a company under the Act;”*

[5] Begitu juga Mahkamah merujuk silang kepada peraturan 7 yang menyatakan peraturan 5 dan 6 yang memperuntukkan perkara-perkara yang boleh dibuat di hadapan Mahkamah Terbuka dan Kamar Hakim seperti berikut:

***“5 Matters to be heard in Court and Chambers***

*(1) The following matters and applications in Court shall be heard before the Judge in open Court:*

- (a) petitions;*
- (b) appeals to Court;*
- (c) applications under section 307;*
- (d) applications for the committal of any person to prison for contempt;*
- (e) applications for an order for a public examination;*
- (f) applications to rectify the register;*
- (g) such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.*

*(2) Subject to the provisions of the Act every other matter or application to the Court under the Act to which these Rules apply may be heard and determined in Chambers.*

***6 Applications in Chambers***

*Subject to the provisions of the Act and these Rules -*



*(a) any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court; and*

*(b) any matter or application may if the Judge or, as the case may be, the Registrar thinks fit be adjourned from Chambers to Court or from Court to Chambers.”*

[6] Merujuk kepada seksyen 469 Akta Syarikat 2016 yang memperihalkan bidang kuasa Mahkamah yang mendengar petisyen penggulungan. Bidang kuasa tersebut adalah seperti berikut:

*“(1) On hearing the petition for winding up, the Court may, by order-*

*(a) dismiss the petition with or without costs;*

*(b) adjourn the hearing conditionally or unconditionally; or*

*(c) make any interim or any other order that the Court thinks fit.*

*(2) The Court shall not refuse to make a winding up order solely on the ground only-*

*(a) that the assets of the company have been mortgaged to an amount equal to or in excess of those assets;*

*(b) that the company has no assets; or*

*(c) in the case of a petition by a contributory, that there will be no assets available for distribution amongst the contributories.*

*(3) The Court may, at the hearing of the petition or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition-*

*(a) direct that any notice be given or any steps is taken before or after the hearing of the petition;*

*(b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;*



*(c) direct that oral evidence be taken on the petition or any matter relating to the petition;*

*(d) direct a speedy hearing or trial of the petition or any issue or matter;*

*(e) allow the petition to be amended or withdrawn; and*

*(f) give such directions as to the proceedings as the Court thinks fit.*

*(4) Where the petition is presented on the ground of default in lodging the statutory report, the Court may instead of making a winding up order, direct that the statutory report shall be lodged and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.”*

[7] Mahkamah juga mempunyai kuasa untuk menggantung prosiding petisyen penggulungan seperti yang dinyatakan di bawah seksyen 470 Akta Syarikat 2016.

***“470 Power of Court to stay or restrain proceedings against company prior to order of winding up***

*(1) At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court for an order to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the action or proceeding accordingly on such terms as it thinks fit.*

*(2) The applicant shall lodge with the Registrar the office copy of the order within fourteen days from the making of such order under subsection (1).”*

[8] Mahkamah juga merujuk kepada Kuasa-kuasa Am Mahkamah di dalam penggulungan syarikat yang dinyatakan di bawah seksyen 492



hingga 506 Akta Syarikat 2016. Ini bermakna tinjauan sepintas lalu Akta Syarikat 2016 dan Kaedah-Kaedah Penggulangan Syarikat 1972 didapati bahawa di dalam kerangka undang-undang syarikat dan peraturan berkaitan dengan penggulangan syarikat tiada peruntukkan secara tersurat tatacara Mahkamah boleh membatalkan petisyen penggulangan syarikat tersebut.

[9] Oleh yang demikian adakah ia membawa maksud bahawa bagi sesuatu petisyen penggulangan ia tidak boleh dibatalkan? Apakah apabila seseorang pempetisyen memfailkan suatu petisyen penggulangan di bawah Akta Syarikat 2016 maka Mahkamah yang mendengar petisyen tersebut perlu menyelesaikan petisyen tersebut dan memberikan perintah-perintah yang diperuntukkan di bawah bidang kuasa seperti di bawah seksyen 469 Akta Syarikat 2016 tersebut? Apakah pihak Responden boleh untuk mengemukakan permohonan pembatalan petisyen penggulangan tersebut di bawah KKM 2012 iaitu A. 18 k 19? Ini adalah penting disebabkan terdapat peruntukan khusus berkenaan dengan penggulangan syarikat di bawah Kaedah-kaedah Penggulangan Syarikat 1972 dan Akta Syarikat 2016.

[10] Oleh yang demikian Mahkamah perlu melihat kepada peruntukan berkenaan dengan permohonan pembatalan di bawah A. 18 k 19 KKM 2012 seperti berikut:

***“19. Pembatalan pliding dan pengendorsan (A. 18 k. 19)***

*(1) Mahkamah boleh pada mana-mana peringkat prosiding memerintahkan supaya dibatalkan atau dipinda mana-mana pliding atau pengendorsan, apa-apa writ dalam tindakan itu, atau apa-apa jua*



*dalam mana-mana pliding atau dalam pengendorsan, atas alasan bahawa-*

*(a) ia mendedahkan kausa tindakan atau pembelaan yang tidak munasabah, mengikut mana-mana yang berkenaan;*

*(b) ia mengaibkan, remeh atau menyusahkan;*

*(c) ia boleh menjejaskan, menghalang atau melengahkan perbicaraan tindakan itu dengan adil; atau*

*(d) ia selainnya adalah suatu penyalahgunaan proses Mahkamah, dan boleh memerintahkan tindakan itu digantung atau ditolak atau penghakiman dicatatkan dengan sewajarnya, mengikut mana-mana yang berkenaan.*

*(2) Tiada keterangan boleh diterima atas suatu permohonan di bawah subperenggan (1)(a).*

*(3) Kaedah ini hendaklah, setakat mana yang boleh dipakai, terpakai bagi **suatu saman pemula seolah-olah saman itu adalah suatu pliding.***

[11] Jika dirujuk kepada A. 5 k 1 KKM 2012 menunjukkan bahawa satu prosiding di Mahkamah di bawah KKM 2012 adalah hendaklah dimulakan melalui saman pemula ataupun writ seperti berikut:

***“1. Cara memulakan prosiding sivil (A. 5 k. 1)***

*Kecuali sebagaimana yang diperuntukkan dalam Kaedah-Kaedah ini dan tertakluk kepada Aturan 94, kaedah 2, prosiding hendaklah dimulakan sama ada melalui saman pemula atau melalui writ.”*

[12] Aturan 5 itu juga memperihalkan perkara-perkara yang boleh dimulakan melalui saman pemula seperti di bawah A. 5 k 3 KKM 2012.

[13] Oleh yang demikian jika dilihat kepada A. 18 k 19 KKM 2012 itu perkataan yang digunakan ialah writ saman dan pliding ataupun





endorsement yang boleh dibatalkan di bawah aturan tersebut tiada perkataan petisyen digunakan di situ. Adakah A. 18 k 19 KKM 2012 boleh digunakan bagi membatalkan suatu petisyen? Bagi menjawab persoalan ini Mahkamah juga perlu melihat kepada A. 94 k 2 KKM 2012 iaitu pengecualian yang diberikan kepada prosiding yang tidak terikat kepada A. 5 k 1 KKM 2012. Aturan 94 k 2 KKM 2012 menyatakan seperti berikut:

**“2. Pengecualian (A. 94 k. 2)**

*(1) Aturan 5, kaedah 1 adalah tidak terpakai bagi prosiding di bawah undang-undang bertulis yang disenaraikan dalam Lampiran C, kecuali sebagaimana yang diperuntukkan di bawah Kaedah-Kaedah ini.*

*(2) Sekiranya terdapat percanggahan, kaedah di bawah undang-undang bertulis dalam Lampiran C hendaklah terpakai mengatasi Kaedah-Kaedah ini.*

*(3) Apa-apa permohonan yang dimulakan di bawah mana-mana undang-undang bertulis, selain yang disenaraikan dalam Lampiran C, yang adalah melalui suatu cara selain saman pemula atau writ, hendaklah disifatkan sebagai telah dimulakan melalui saman pemula dan hendaklah dikendalikan dengan sewajarnya mengikut Kaedah-Kaedah ini.”*

[14] Lampiran C KKM 2012 telah menggariskan prosiding berhubung dengan penggulungan syarikat adalah termasuk dalam senarai yang dikecualikan pemakaian A. 5 k 1 KKM 2012 bagi permulaan prosiding di Mahkamah. Lampiran C KKM 2012 adalah seperti berikut:

(1) No.	(2) Prosiding	(3) Undang-Undang bertulis
1.	Prosiding kebangkrapan	Akta Insolvensi 1967 [Akta 360]



2.	<b>Prosiding yang berhubungan dengan penggulungan syarikat dan pengurangan modal</b>	<b>Akta Syarikat 2016 [Akta 777]</b>
3.	Prosiding jenayah	Kanun Tatacara Jenayah [Akta 593]
4.	Prosiding di bawah Akta Kesalahan Pilihan Raya 1954	Akta Kesalahan Pilihan Raya 1954 [Akta 5]
5.	Prosiding hal ehwal suami isteri	Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 [Akta 164]
6.	Rujukan tanah	Akta Pengambilan Tanah 1960 [Akta 486]
7.	Penerimaan masuk ke <i>Bar</i>	Akta Profesion Undang-Undang 1976 [Akta 166] Ordinan Peguam Bela Sabah [Sabah Bab. 2] Ordinan Peguam Bela Sarawak [Sarawak Bab. 110]
8.	Prosiding di bawah Akta Cukai Pendapatan 1967	Akta Cukai Pendapatan 1967 [Akta 53]
9.	Prosiding di bawah Ordinan Pemegang Amanah (Perbadanan) 1951 Sabah	Ordinan Pemegang Amanah (Perbadanan) 1951 Sabah [Bab. 148]
10.	Prosiding di bawah Ordinan Probet dan Pentadbiran 1947 Sabah	Ordinan Probet dan Pentadbiran 1947 Sabah [Bab. 109]
11.	Prosiding di bawah Akta Cukai Keuntungan Harta Tanah 1976	Akta Cukai Keuntungan Harta Tanah 1976 [Akta 169]
12.	Prosiding di bawah Akta Petroleum (Cukai Pendapatan) 1967	Akta Petroleum (Cukai Pendapatan) 1967 [Akta 543]
13.	Prosiding di bawah Akta Institusi Kewangan Pembangunan 2002	Akta Institusi Kewangan Pembangunan 2002 [Akta 618]
14.	Prosiding di bawah Akta Syarikat Amanah 1949	Akta Syarikat Amanah 1949 [Akta 100]
15.	Prosiding di bawah Akta (Larangan) Kumpulan Wang Kutu 1971	Akta (Larangan) Kumpulan Wang Kutu 1971 [Akta 28]



[15] Secara perbandingan jika dirujuk kepada A. 18 k 19 Kaedah-kaedah Mahkamah Tinggi 1980 menunjukkan adanya perkataan petisyen seperti berikut:

***“Rule 19. Striking out pleadings and indorsements. (O. 18 r. 19)***

*(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-*

*(a) it discloses no reasonable causes of action or defence, as the case may be; or*

*(b) it is scandalous, frivolous or vexatious; or*

*(c) it may prejudice, embarrass or delay the fair trial of the action; or*

*(d) it is otherwise an abuse of the process of the Court;*

*and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.*

*(2) No evidence shall be admissible on an application under paragraph (1)(a).*

*(3) This rule shall, so far as applicable, apply to an originating summons and a **petition as if the summons or petition, as the case may be, were a pleading.***”

[16] Ini adalah dapat difahami sedemikian kerana di bawah Kaedah-kaedah Mahkamah Tinggi 1980 terdapat aturan yang berkaitan dengan petisyen iaitu di Aturan 9 seperti berikut:

***“Rule 1. Application. (O. 9 r. 1)***

*Rules 2 and 3 apply to petitions by which civil proceedings in the High Court are begun, subject, in the case of petitions of any particular class, to any special provision relating to petitions of that class made by these rules or by or under any written law.*



**Rule 2. Contents of petition. (O. 9 r. 2)**

*(1) Every petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby.*

*(1a) Order 7, rule 2(1a) , shall apply in relation to a petition as it applies in relation to an originating summons.*

*(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.*

*(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.*

**Rule 3. Fixing time for hearing petition. (O. 9 r. 3)**

*(1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.*

*(1a) So far as may be practicable, the Court shall fix the date of hearing of a petition not later than 3 months from the issue of the petition.*

*(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.*

**Rule 4. Certain applications not to be made by petition. (O. 9 r. 4)**

*No application in any cause or matter may be made by petition.”*

[17] Ia telah dimansuhkan melalui KKM 2012. Kini tiada lagi peruntukan berkenaan dengan petisyen. Oleh yang demikian maka di bawah Kaedah-kaedah Mahkamah Tinggi 1980 di dalam A. 18 k 19 (3) perkataan petisyen tertera di situ bagi membolehkan pada masa itu permohonan dibuat untuk pembatalan di bawah A. 18 k 19 Kaedah-kaedah Mahkamah Tinggi 1980. Pindaan kepada A. 18 k 19 di KKM



2012 yang tidak memasukkan petisyen di A. 18 k 19 (3) bagi menyelaraskan dengan ketiadaan A. 9 di dalam KKM 2012.

[18] Mahkamah juga mendapati bahawa terdapat A. 88 di bawah Kaedah-Kaedah Mahkamah Tinggi 1980 yang memperihalkan prosedur berkenaan dengan tindakan yang melibatkan Akta Syarikat 1965 seperti berikut:

***“Rule 1. Interpretation. (O. 88 r. 1)***

*In this Order "Act" means the Companies Act 1965 (Act 125).*

***Rule 2. Applications to be made by originating summons. (O. 88 r. 2)***

*(1) Unless otherwise provided in the Act, and except in the case of the applications mentioned in rules 3, 4 and 5, every application under the Act must, in accordance with Order 5, rule 3, be made by originating summons.*

*(2) No appearance need be entered to an originating summons under this rule unless the application made by the summons is-*

*(a) an application under section 173 of the Act for an order to make provision for all or any of the matters mentioned in subsection (1) of that section where an order approving the compromise or arrangement to which the application relates has previously been made; or*

*(b) an application under section 192 of the Act for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section; or*

*(c) an application under section 12 of the Act for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.*

*(3) An application under section 357 of the Act may be made by ex parte originating summons.*



**Rule 3. Application to be made by originating summons or motion. (O. 88 r. 3)**

*(1) An application under section 162 of the Act for rectification of the register of members of a company may be made by originating summons or originating motion.*

*(2) No appearance need be entered to an originating summons under this rule.*

**Rule 4. Applications to be made by originating motion. (O. 88 r. 4)**

*The following applications under the Act must be made by originating motion, namely, applications-*

*(a) under section 27 of the Act for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;*

*(b) under section 63 of the Act for an order validating the issue or allotment of shares improperly issued or confirming the terms of issue or allotment thereof;*

*(c) under section 88(5) of the Act for an order to confirm, set aside or vary a direction of the holders of the interests;*

*(d) under section 95(4) of the Act for an order to confirm a winding up resolution;*

*(e) under section 200(5) of the Act for an inquiry into any such case as is mentioned therein;*

*(f) under section 307 of the Act for an order declaring a dissolution of a company which has not been wound up to have been void.*

**Rule 5. Applications to be made by petition. (O. 88 r. 5)**

*The following applications under the Act must be made by petition, namely, applications-*

*(a) under section 28 of the Act to cancel the alteration of a company's objects;*

*(b) under section 59 of the Act to confirm the issue by a company of shares at a discount;*



*(c) under section 60 of the Act to confirm a reduction of the share premium account of a company;*

*(d) under section 61 of the Act to confirm a reduction of the capital redemption reserve fund of a company;*

*(e) under section 64 of the Act to confirm a reduction of the share capital of a company;*

*(f) under section 65 of the Act to cancel any variation or abrogation of the rights attached to any class of shares in a company;*

*(g) under section 176 of the Act to approve a compromise or arrangement between a company and its members or any class of them;*

*(h) under section 181 of the Act for relief in cases of oppression;*

*(i) under section 308(5) of the Act for an order restoring the name of a company to the Register;*

*(j) under section 354 of the Act for relief from liability of an officer of a company or any other person to whom this section applies.*

**Rule 6. Entitlement of proceedings. (O. 88 r. 6)**

*(1) Every originating summons, notice of originating motion and petition to which this Order relates and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Act.*

*(2) The originating summons by which an application for leave under section 130(1) of the Act is made must be entitled in the matter of the company (if any) in relation to which the applicant was convicted and in the matter of the Act.*

**Rule 7. Summons for directions. (O. 88 r. 7)**

*(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.*

*(2) The application referred to in paragraph (1) are-*



*(a) an application under section 59 of the Act to confirm the issue by a company of shares at a discount;*

*(b) an application under section 176 of the Act to approve a compromise or arrangement unless there is included in the petition for such approval an application for an order under section 178 of the Act; and*

*(c) an application under section 308(5) of the Act for an order restoring the name of a company to the register.*

*(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including in particular, directions for the publication of notices and the making of any inquiry.*

*(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions-*

*(a) for an inquiry to be made as to the debts of, and claims against the company or as to any class or classes of such debts or claims;*

*(b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;*

*and the power of the Court under section 64(3) of the Act to direct that section 64(2) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.*

*(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.*

*...”*

[19] Kini peruntukan di bawah A. 88 itu telah diubah suai dengan pengenalan KKM 2012 seperti berikut:

***“1. Tafsiran (A. 88 k. 1)***

*Dalam Aturan ini, "Akta" ertinya Akta Syarikat 1965 [Akta 125].*





**2. Prosiding (A. 88 k. 2)**

*Kecuali bagi prosiding yang dinyatakan dalam Lampiran C berhubung dengan penggulungan syarikat dan pengurangan modal di bawah Akta, prosiding di bawah Akta hendaklah dimulakan dengan saman pemula.*

**3. Permohonan kena dibuat melalui saman pemula atau usul pemula (A. 88 k. 3)**

*(Tiada kaedah 3)*

**4. Permohonan hendaklah dibuat melalui usul (A. 88 k. 4)**

*(Tiada kaedah 4)*

**5. Permohonan kena dibuat melalui petisyen (A. 88 k. 5)**

*(Tiada kaedah 5)*

**6. Tajuk prosiding (A. 88 k. 6)**

*(Tiada kaedah 6)*

**7. Saman minta arahan (A. 88 k. 7)**

*(1) (Tiada perenggan (1))*

*(2) (Tiada perenggan (2))*

*(3) (Tiada perenggan (3))*

*(4) Jika suatu permohonan ialah untuk mengesahkan pengurangan modal syer, akaun premium syer, atau kumpulan wang rizab penebusan modal, sesuatu syarikat, Mahkamah boleh memberikan arahan-*

*(a) bagi siasatan dibuat tentang hutang, dan tuntutan terhadap, syarikat itu atau tentang mana-mana kelas atau kelas-kelas hutang atau tuntutan sedemikian;*

*(b) tentang prosiding yang hendak diambil untuk menetapkan senarai pemiutang yang berhak membantah pengurangan itu dan menetapkan tarikh yang merujuk kepadanya senarai itu hendaklah dibuat,*

*dan kuasa Mahkamah di bawah subseksyen 64(3) Akta untuk mengarahkan bahawa subseksyen 64(2) Akta tidaklah terpakai*



*berkenaan dengan mana-mana kelas pemiutang bolehlah dijalankan semasa mana-mana pendengaran permohonan itu.*

*(5) Kaedah 8 hingga 13 hendaklah berkuat kuasa tertakluk kepada apa-apa arahan yang diberikan oleh Mahkamah di bawah kaedah ini.*

*....”*

[20] Penelitian yang tuntas kepada KKM 2012, Kaedah-kaedah Mahkamah Tinggi 1980, Kaedah-kaedah Penggulangan Syarikat 1972, Akta Syarikat 2016 dan Akta Syarikat 1965 dapat membantu mahkamah memahami kedudukan permohonan untuk pembatalan petisyen penggulangan.

[21] Pada masa yang sama mahkamah juga mengambil maklum bahawa terdapat keputusan mahkamah yang mempertimbangkan permohonan pembatalan petisyen penggulangan di bawah A. 18 k 19 KKM 2012 misalnya dalam kes **Majupadu Construction Sdn Bhd v. YT Reco Sdn Bhd [2022] 1 LNS 613** apabila dinyatakan seperti berikut:

***“THE LAW GOVERNING THE APPLICATION TO STRIKE OUT A WINDING-UP PETITION***

***[5] The now trite locus classicus governing an application to strike as set out by the Supreme Court in Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7; [1993] 3 MLJ is as follows:***

*“(1) The principles upon which the court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.”*



**[6]** In *Blue Valley Plantation v. Periasamy a/l Kuppannan & Ors* [2011] 5 CLJ 481; [2011] 5 MLJ 521, the Federal Court had occasion to deal with an application to strike out a petition to wind-up a company. In *Blue Valley Plantation*, the Federal Court had opined that the court should only allow application to strike out a winding-up petition where the petition itself was obviously unsustainable for want of cause of action or it being vexatious, frivolous or an abuse of process. The Federal Court cited with approval the dicta by the Court of Appeal in *Tan Kim Hor & Ors v. Tan Heng Chew & Ors* [2003] 1 CLJ 634; [2003] 1 MLJ 492:

*"We find the philosophy implicit in the above statements convincing and adopt it in affirming the view that an application made pursuant to O. 18 r. 19 of the RHC to strike out a petition presented under s. 218 of the Act is undesirable and should be discouraged. In our view, the use of that procedure in such winding up proceeding produces only delay in the adjudication of the matter. Of course, we are not saying that it is totally inapplicable. There maybe an instance where such a petition is obviously unsustainable for want of cause of action or that it is plainly vexatious or frivolous or even an abuse of process. In such a case, O. 18 r. 19 could be resorted to."*

[22] Jika diteliti kepada keputusan Mahkamah Persekutuan dalam kes **Blue Valley Plantation Bhd v. Periasamy Kuppannan & Ors [2011] 5 CLJ 481** telah dinyatakan bahawa penggunaan A. 18 k 19 Kaedah-kaedah Mahkamah Tinggi 1980 adalah boleh digunakan bagi permohonan untuk pembatalan petisyen penggulungan syarikat. Ini dinyatakan di halaman 487 seperti berikut:

*"[1] This appeal basically deals with the issue of whether the petition to wind up the appellant should be struck out under O. 18 r. 19 of the Rules of High Court (RHC) 1980. That rule provides for striking off on any pleading on grounds that it is frivolous, vexatious or an abuse of the process of the court<sup>[1]</sup>. That O. 18 r. 19 applies to striking out a petition to wind up a company is well established<sup>[2]</sup>."*

[23] Di dalam kes **NKM Development Sdn Bhd v. Irex Sdn Bhd [1988] 2 CLJ Rep 56** di mana Mahkamah Tinggi Malaya Kuala Lumpur



melalui penghakiman Hakim V.C George telah membenarkan permohonan untuk pembatalan petisyen penggulungan di bawah A. 18 k 19 (1) (d) Kaedah-kaedah Mahkamah Tinggi 1980.

[24] Sementara itu dalam kes **Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd [1989] 2 MLJ 423** Mahkamah Tinggi telah berpandangan bahawa A. 18 k 19 (3) boleh digunakan untuk membatalkan petisyen penggulungan. YA Hakim LC Vohrah menyatakan seperti berikut:

*“Order 18 r 19(3) specifically provides that the rule applies to a petition which must include a winding-up petition (see NKM Development Sdn Bhd v Irex Sdn Bhd [1988] 1 CLJ 65 at p 66). I did not see the relevance of s 221 as what was seised of by the court on the day of the hearing was not the winding-up petition but the application to strike out the petition under O 18 r 19.”*

[25] Di dalam kes **Filotech Trading Sdn Bhd v Buildco-Cimano Concrete Sdn Bhd [1999] 4 MLJ 268** Hakim Abdul Hamid Mohamad telah meneliti kes-kes **NKM Development Sdn Bhd v. Irex Sdn Bhd** (supra) dan **Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd** (supra) telah menyatakan seperti berikut:

*“Do all the provisions of the RHC 1980 apply in a winding-up petition? The answer is clearly 'no'. First, to hold otherwise would render not only the provisions of O 1 r 2(2) of the RHC 1980, but also the Companies (Winding-up) Rules 1972 nugatory. I do not think I need to say more.*

*The only ground so far advanced to support the applicability of the provisions of O 18 r 19 of the RHC 1980 is that r 19(3) mentions 'petition' as well — see NKM Development Sdn Bhd v Irex Sdn Bhd and Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd both High Court decisions. But the learned judge who decided NKM Development Sdn Bhd v Irex Sdn Bhd has since changed his mind — see Re Lo Siang Fong.*



*With respect, this reasoning is not plausible. The word 'petition' in O 18 r 19(3) of the RHC 1980 must have been inserted to refer to petitions provided under the RHC 1980 itself, eg petition for letters of administration in non-contentious probate proceedings (O 71) and petitions under the Companies Act 1965 (O 88 r 5).*

*That leaves us with the other choice ie that the provision of the RHC 1980 is applicable where the Companies (Winding-up) Rules 1972 are silent on a matter — see Fairview Schools Bhd v Indrani a/p Rajaretnam & Ors (No 1).*

*That view does make sense. For example r 26 of the Companies (Winding-up) Rules 1972 requires an affidavit verifying petition in Form 7 to be filed. Form 7 is very brief. It only states the essential. If for example, the deponent of the affidavit does not understand Malay or English language, would not a jurat be required? Certainly that is required. Where does one look to if not to O 41 r 3 of the RHC 1980? But, the difficulty is to determine which provisions of the RHC 1980 are applicable and which are not.*

*Now, coming back to the present case. I have held that as the authorities now stand, the weight appears to be in favour of the view that O 18 r 19 of the RHC 1980 are applicable in a s 218 winding-up petition, even though my personal view is that it should not apply.”*

Kini A. 18 k 19 (3) KKM 2012 tidak lagi sama dengan peruntukan A. 18 k 19 (3) Kaedah-kaedah Mahkamah Tinggi 1980 yang menjadi asas kepada keputusan dalam kes **NKM Development Sdn Bhd v. Irex Sdn Bhd** (supra) di atas. Oleh itu kedudukan undang-undangnya pada hemat mahkamah adalah sudah berbeza.

[26] Penelitian kepada kes-kes di atas menunjukkan bahawa ianya dibuat dalam konteks A. 18 k 19 Kaedah-kaedah Mahkamah Tinggi 1980 yang mempunyai A. 18 k 19 (3) yang terdapat perkataan petisyen di situ. Sebaliknya peruntukan A. 18 k 19 (3) di bawah KKM 2012 perkataan petisyen sudah tiada. Ia mencadangkan bahawa tindakan



pembatalan di bawah A. 18 k 19 tidak berkaitan dengan petisyen termasuklah petisyen penggulungan syarikat. Ini sudah terang lagi bersuluh dengan dikeluarkan perkataan petisyen daripada A. 18 k 19 (3) KKM 2012 yang boleh difahami Jawatankuasa Kaedah Mahkamah yang berhasrat tidak mahu menjadikan petisyen sebagai salah satu perkara yang boleh digunakan untuk pembatalan tindakan di bawah A. 18 k 19. Jika petisyen termasuk petisyen penggulungan ingin dijadikan sebagai salah satu perkara yang boleh dilakukan di bawah A. 18 k 19 KKM 2012, Jawatankuasa Kaedah Mahkamah pada hemat mahkamah akan mengekalkan perkataan petisyen di dalam A. 18 k 19 (3) KKM 2012.

[27] Penelitian kepada A. 18 k 19 KKM 2012 membawa kepada satu kesimpulan bahawa pembatalan petisyen penggulungan adalah tidak wajar dilakukan di bawah A. 18 k 19 KKM 2012. Ini adalah sejajar dengan peruntukan yang tersurat di bawah A. 18 k 19 KKM 2012 tersebut.

[28] Oleh itu satu lagi pertimbangan yang boleh dibuat oleh mahkamah ialah seperti yang dinyatakan dalam notis permohonan di KM13 iaitu penggunaan A. 92 k 4 KKM 2012 yang memperuntukan seperti berikut:

***“4. Kuasa sedia ada Mahkamah (A. 92 k. 4)***

*Bagi menghapuskan keraguan dengan ini diisytiharkan bahawa tiada apa-apa jua dalam Kaedah-Kaedah ini boleh disifatkan sebagai mengehadkan atau menjejaskan kuasa sedia ada Mahkamah untuk membuat apa-apa perintah sebagaimana yang perlu untuk mencegah ketidakadilan atau untuk mencegah suatu penyalahgunaan proses Mahkamah.”*



[29] Tujuan A. 92 k 4 KKM 2012 ini telah dinyatakan oleh mahkamah dalam kes **The Motor Emporium v V Arumugam [1933] 2 MLJ 276** seperti berikut:

*“It is said that the English rules of equity, as administered by the Court of Chancery, have no application in the Federated Malay States, as the Court has not been given the jurisdiction of the Court of Chancery, nor is there any Civil Law Enactment incorporating into the law of the Federated Malay States the equitable principles applied in England. This is perfectly true so far as it goes, but under section 49 (i) of the Courts Enactment, the Supreme Court has the widest possible jurisdiction in all suits, matters and questions of a civil nature, and although the legislature has given no indication on what principles such jurisdiction should be exercised, every Court must have inherent jurisdiction to do justice between the parties, and apply such principles as are necessary or desirable for attaining such object, and for giving decisions which are in conformity with the requirements of the social conditions of the community where the law is administered.”*

[30] Di dalam kes **Tan Lay Soon v Kam Mah Theatre Sdn Bhd (Malayan United Finance Bhd, Intervener) [1992] 2 MLJ 434** dinyatakan seperti berikut:

*“In so holding, the Court of Appeal had followed Smith v Peters 20 in which it was held that the court has jurisdiction to make any interlocutory order which is reasonably asked as ancillary to the administration of justice at the hearing of the cause.*

*The cases of Astro 19 and Smith v Peters, 20 were cited with approval by the Federal Court in TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd 21 wherein reference was also made to the provisions of O 92 r 4 which reminds the High Court of its inherent powers to make any orders as may be necessary to prevent injustice or to prevent an abuse of the process of the court.”*

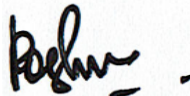
[31] Di dalam kes ini mahkamah berpendapat berdasarkan kepada affidavit-affidavit yang difailkan dah hujahan oleh kedua-dua pihak, ia



bukan keadaan yang sesuai untuk menggunakan bidang kuasa sedia ada bagi membatalkan petisyen penggulungan syarikat. Mahkamah berpendapat tiada pada mana-mana affidavit-affidavit tersebut bahawa terdapatnya satu penyalahgunaan proses mahkamah.

[32] Oleh itu KM13 adalah ditolak dengan kos dan KM20 dibatalkan disebabkan ianya tidak lagi perlu diputuskan oleh mahkamah setelah mahkamah memutuskan KM13.

Bertarikh: 21hb. Oktober 2022



(ROSLAN MAT NOR)

PESURUHJAYA KEHAKIMAN

MAHKAMAH TINGGI MALAYA

TEMERLOH, PAHANG DARUL MAKMUR

**PIHAK-PIHAK:**

Bagi pihak Pempetisyen

Soh Gee Kian

Tetuan GK Soh & Partners

Kemaman, Terengganu Darul Iman





Bagi Pihak Responden

Muzamil Alif Mohamad

Tetuan Hazrin & Muzamil

Kuantan, Pahang Darul Makmur



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