

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)**

POST WINDING-UP NO. WA-28PW-30-01/2020

**RE: RENTAK ARENA DEVELOPMENT SDN BHD
(IN LIQUIDATION)
(Company No. 702453-X)**

APPLICANT: SPANLAND SDN BHD

HEARD TOGETHER WITH

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)**

POST WINDING-UP NO. 28PW-133-03/2020

**RE: RENTAK ARENA DEVELOPMENT SDN BHD
(IN LIQUIDATION)
(Company No. 702453-X)**

APPLICANT: SABAH DEVELOPMENT BANK BERHAD

JUDGMENT

1. There are 2 Notice of Motions before me in 2 separate matters which I have directed to be heard together as they are both in relation to the appointment of Liquidators in place of the Official Receiver for Rentak Arena Development Sdn Bhd (In Liquidation) (Company) being firstly a Notice of Motion under Companies Post

Winding Up No WA-28PW-30-01/2020 (Motion 30) filed by Spanland Sdn Bhd (Spanland) and secondly another Notice of Motion vide Companies Post Winding Up No WA-28PW-133-03/2020 (Motion 133) filed by Sabah Development Bank Berhad (SDBB).

2. Both Motion 30 and Motion 133 were filed pursuant to section 477 of the Companies Act 2016, whilst Motion 30 had also relied on section 478 of the Companies Act 2016 whereas Motion 133 also included the Companies (Winding Up) Rules 1972 and /or the inherent jurisdiction of the Court.
3. Motion 30 had applied for one Sundarasan a/l Arumugam (Sundarasan) to be appointed as Liquidator in place of the Official Receiver and was grounded upon the fact that the said Sundarasan was a qualified and suitable person to assume the responsibilities and duties of the liquidator. On the other hand Motion 133 had applied for Chan Siew Mei (Chan) of KPMG Deal Advisory Sdn Bhd to be appointed as Liquidator in place of the Official Assignee on the grounds inter alia that Chan was also a qualified, fit and proper person to be appointed as Liquidator (ii) as it is in the best interest of the Company and its creditors as it will speed up the liquidation exercise (iii) it will help and reduce the workload of the Official Receiver and clear up backlog of cases (iv) the Motion does not prejudice any parties who are concerned with the liquidation of the Respondent.

Background Facts

4. The Company is involved in property development and is the developer of the Templer's Hills Project (Project). To-date only 22 units have been sold in the Project which involved 39 bungalow units and 6 Bungalow lots.
5. The Company was wound up on 11.2.2019 and the Official Receiver was appointed as the Liquidator of the Company.
6. It is alleged that Company owes Spanland the sum of RM58,498,638.91 whilst SDBB's debt is for the sum of RM35,066,201.59 being the unsecured portion of debt which are based on banking facilities provided by SBDB to the Company.
7. The Official Receiver had accepted both Spanland and SDBB's respective proof of debts (POD's) and admitted them.
8. On 5.6.2020 a general meeting of creditors and contributories (Meeting) was called by the Official Receiver wherein the agenda was to seek the creditors and contributories views in respect of Spanland's and SDBB's Motion and to vote as to which of the proposed liquidators were to take over from the Official Receiver.
9. At the Meeting, 6 creditors including Spanland and SDBB attended and voted whereas there were no contributories present. The outcome of the Meeting was that:
 - a) 1 out of 6 creditors (with a total value of RM58,498,638.91) which is 61.89% of the debt admitted by the Official Receiver voted in favour of Sundarasa;

- b) 4 out of the 6 creditors (with a total value of RM35,892,840.99) which is 37.98% of the debt admitted by the Official Receiver voted in favour of Chan;
- c) 1 out of the 6 creditors (with a total value of RM125,998.32) which is 0.135 of the debt admitted by the Official Receiver abstained from voting.

Spanland's Submissions

- 10. Spanland had submitted that Sundarasan was able to administer the Company in an impartial and fair manner, having due consideration to all the creditors and that he had 28 years of experience in the liquidation of companies which included successfully turning around 13 abandoned projects.
- 11. It was alleged by Spanland that there was clear bias by SDBB in its affidavits and submissions that the candidate proposed by them would not give any serious considerations to the interest of and may even sideline Spanland as a creditor of the Company.

SDBB Submissions

- 12. SDBB contends that Chan is a qualified, fit and proper person to be appointed as the Liquidator as she possesses over 30 years of experience as she and her team have extensive experience in dealing and managing liquidation of property development companies and their projects and that they had conducted a

preliminary investigation and research to rehabilitate the Project as well as formulated a proposed course of action premised on an immediate assessment of the Company's position which will be attended to if Chan is appointed.

13. It was also submitted by SDBB that they had proposed that the remuneration of Ms Chan be within this courts discretion including restricting and/or allowing her remuneration based on distribution fee guided by Table C, Second Schedule of the Companies (Winding Up) Rules 1972 which will allow for transparency of the remuneration.
14. SDBB submits that it is opposing Spanland's alleged debt as they are questionable and disputed as they allege that Spanland's undisputed debt is only RM44,672.08 as the other amounts claimed by Spanland relates to inter alia the alleged costs of remedial works including the building of a retention wall on the land trespassed belonging to Spanland, the alleged damages for loss of the building development land as a result of the alleged trespass, engineering consultancy fees relating to remedial works pursuant to an Order of Court dated 8.3.2019 which was alleged to have been obtained after the winding up order had been made and the alleged interest thereto.
15. It is also alleged by SDBB that Spanland has accordingly not come to court with clean hands in their Motion 30.

Courts Findings

16. Any liquidator appointed by the court is an officer of the Court and is therefore subject to the control and directions of this Court. See the Federal Court case of ***Ooi Woon Chee & Anor v Dato See Teow Chuan & Ors And Other Appeals [2012] 2 MLJ 713***. Reference can also be made to ***Antero Harapan Sdn Bhd v Restu Teguh Sdn Bhd (in liquidation) [2018] 7 MLJ 562*** where the Court held that:

“[12] It is a basic point in the law of company liquidation that the liquidator is the officer of the court. The liquidator of a company has a number of duties. One duty is to investigate the affairs of the company and the conduct of its business activities. The liquidator is also obliged to take into his or her custody, or under his or her control, all the property to which the company is or appears to be entitled. The liquidator’s powers and duties are found in [s 236](#) of the [Companies Act](#). The exercise by the liquidator of the powers conferred by this section is subject to the control of the court.”

17. It is therefore imperative for any applicant in the appointment of a liquidator to be appointed, including both the applicants herein, to be reminded that whichever Liquidator which this Court will appoint will therefore be subject to the court’s supervision and has to act independently for the benefit of all creditors and contributories of the company as held in ***Vijayalaskhmi Devi d/o Nadchatiram v Dr Mahadevan s/o Nadchatiram & 4 ors [1995] 2 MLJ 709*** where the Federal Court stated that:

“the duty of the liquidator was to act impartially and to draw the attention of the court to facts and matters which were material for the court's consideration. We would agree with the above proposition. In Gooch's Case (1872) 7 Ch App 207 at p 211, it was stated that:

[O]f the most importance that the liquidator should ... maintain an even and impartial hand between all individuals whose interests are included in the winding up. He should have no leaning for or against any individual whatever.”

Reference can also be made to *TR Hmazah & Yeang Sdn Bhd v City Centre Sdn Bhd [2012] 1 MLJ 383* where the High Court also adopted a similar proposition.

18. Bearing the principle of a liquidator having to act impartially and being subject to the control and directions of the court, I find that the allegations by SDBB that Spanland's debts are questionable and disputed, although I have also noted that Spanland's POD has been admitted by the Official Receiver, would in my view hardly carry any weight in the determination by this court of who should be appointed as the liquidator of the Company in place of the Official Receiver herein. Whether the debts are indeed disputed or not is a matter not for any of the applicants herein to determine but is an issue which the newly appointed liquidator is to impartially consider after his or her appointment.
19. With respect, the concept of clean hands which SDBB has also alleged that Spanland has not complied with, even if true, is not

directly relevant to the Motions before me and/or the principles governing the appointment of a liquidator.

20. That being said, this Court has examined the background and the experience of the proposed Liquidators and find that there is hardly any difference in the experience and expertise between the proposed liquidators in either of the Motions. The main difference, in this courts view between the proposed Liquidators were however as follows:

- a) Spanland in Motion 30 was silent as to the basis of the remuneration of its proposed liquidator whereas in Motion 133 SDBB had proposed that the remuneration of Ms Chan be within this courts discretion including restricting and/or allowing her remuneration based on distribution fee guided by Table C, Second Schedule of the Companies (winding up) Rules 1972;
- b) SDBB had provided this court with a report done by Ms Chan and her team which states that they had conducted a preliminary investigation and research to rehabilitate the Project as well as formulated a proposed course of action premised on an immediate assessment of the Company's position
- c) a perusal of the preliminary investigation and research report by Ms Chan in exhibit B-1 at enclosure 15 of Motion 133 also indicated that they appear to have interested parties who have expressed interests in their assets available for sale over these years and will be calling upon them to participate in the sale of the units in the Project

21. I have also noted the outcome of the votes in the Meeting and find that the majority in terms of the numbers of the creditors have voted in favour of Ms Chan and that this is a consideration which would should be given due weight by this Court in determining the Motions before it.
22. It would in my view, after considering all of the above factors, therefore be in the best interest of the creditors and contributories of the Company that Ms. Chan Siew Mei of KPMG Deal Advisory Sdn Bhd to be appointed as Liquidator in place of the Official Assignee as
- (i) Ms Chan and her team has appeared to have made a head start in assessing the project which would enable Ms Chan to deal, manage and possibly even turn around the Project, and thus probably be able to handle the liquidation process at a speedier pace;
 - (ii) this Court is able to determine her remuneration to be based on the distribution fee guided by Table C, Second Schedule of the Companies (winding up) Rules 1972 which will allow for transparency of the liquidator's remuneration for the benefit of all the Company's creditors and contributories.
23. Wherefore I hereby dismiss Motion 30 and allow Motion 133 and grant order in terms therein for prayers 1, 2, 3, 4, and for prayer 5 the remuneration of the Liquidator shall be as provided for under Table C, Second Schedule of the Companies (Winding Up) Rules

1972 and be paid out of the assets of the Company and order in terms for prayer 6 as well.

Dated: 18th day of November 2020

sgd.

**NADZARIN BIN WOK NORDIN
JUDICIAL COMMISSIONER
KUALA LUMPUR HIGH COURT**

Parties:

Jagdesch Singh for the Applicant in Motion 30

[Messrs Mohana Krishnan]

Wilson Lim for the Applicant in Motion 133

[Messrs Wilson Lim]

En Nizam for the Official Receiver

(Jabatan Insovensi Malaysia)