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First Decision in Malaysia Relating to Judicial Management Under Companies Act 2016^[1]

Leadmont Development Sdn Bhd v Infra Segi Sdn Bhd and another appeal [2018] MLJU 1320

| by Eleena Abd Wahab |

Following the granting of a judicial management order, or JMO, to the applicant company, Leadmont Development Sdn Bhd, Infra Segi Sdn Bhd, a secured creditor of Leadmont, made an application to the High Court to set aside the JMO on the grounds that there had been material non-disclosure of facts and that Leadmont had acted *mala fides*.

Leadmont is the developer of a project valued at RM1.4 billion known as Selayang StarCity Project, which eventually came to a halt due to the termination of contracts by the project's contractors and nominated sub-contractors for non-payment. It was not in dispute that Leadmont was unable to pay its debts.

In addition to Leadmont's inability to pay its debts, the JMO was granted on the basis that there was a reasonable probability of rehabilitating Leadmont's business as Leadmont, through its subsidiary, Sierra Delima Sdn Bhd, was expecting to receive a foreign currency loan and proposed advances whereby such funds would be utilised to complete the project.

Infra Segi argued that Leadmont failed to disclose to the court in its application for a JMO that the proposed advances that Sierra Delima was expecting to receive were a "*no go at the outset*", and that Leadmont failed to inform the court that Sierra Delima had also made an application for a JMO and vice versa, Sierra Delima had also omitted to disclose to the court in its JMO application that Leadmont had separately applied for a JMO.

Thus, the main issue laid before the court in this case was whether a creditor may apply to seek to set aside a JMO, on the grounds that there had been material non-disclosure of facts and that the applicant

company which was granted the JMO^[2] had acted *mala fides*. In considering Infra Segi's application for the setting aside of the JMO, the court expressed that:

- (a) The "special right" to apply for the setting aside of an application for JMO is only conferred on a specific type of secured creditors, which are debenture holders who have appointed, or are entitled to appoint a receiver or a receiver and manager of the company's property^[3] which are entitled to exercise a veto over the judicial management application.
- (b) Other creditors of the company can only oppose the nomination of a judicial manager during the hearing of the application for the JMO, and not the making of the JMO itself.^[4]
- (c) Although the court has the inherent jurisdiction to set aside an *ex parte* order where such order was obtained without full and frank disclosure or was obtained *mala fides* or was otherwise defective on substantial grounds, the court opined that Leadmont had disclosed sufficient facts to satisfy the threshold for the granting of the JMO,^[5] and found that the lack of full disclosure was not material.

Having said the above, the court granted Infra Segi's application to set aside the JMO, basing its judgment on different reasons. The court held that it was clear that the scheme to be proposed by the appointed judicial manager would not be approved by the requisite 75% majority of the total value of creditors,^[6] as evidenced by letters submitted to the court by Leadmont's creditors, including Infra Segi, confirming that such creditors were opposed to the JMO and wished to have it set aside as well. Therefore, the court opined that the JMO would be an exercise in futility in view that the creditors of Leadmont, who made up more than 25% of the total value of creditors, would vote against any scheme proposed by the judicial manager under the JMO, and as such, the court would not act in vain.^[7]

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[1] The Corporate Rescue Mechanism (CRM) under Division 8 Part III of the Companies Act 2016 and the accompanying Companies (Corporate Rescue Mechanism) Rules 2018 came into force on 1 March 2018.

[2] Pursuant to Section 404 of the Act, either a company itself, or the company's creditor may seek to apply for an order that the company be placed under judicial management, and for an appointment of a judicial manager.

[3] See Paragraphs [47] to [49] of the judgment. It is to be noted that under the Act, there are only 4 situations whereby a JM is capable of being discharged as set out under Sections 421(5), 424(1) and 2(a), 424(1) and 2(a), and 425(1)(a) and 425(3)(d). Other than the 4 situations envisaged in the aforementioned Sections under the Act, the JMO cannot be discharged or set aside.

[4] See paragraphs [50] to [53] of the judgment.

[5] See Paragraphs [67] to [99] of the judgment.

[6] Section 421(2) of the Act provides that the proposal put forward by the judicial manager appointed by the Court under a JMO shall be approved by 75% of the total value of creditors whose claims have been accepted by the judicial manager, present and voting at the meeting held for that purpose.

[7] See Paragraphs [100] to [105] of the judgment.