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Directors' Duties and Responsibilities and Members' Rights for Management Review

Majlis Amanah Rakyat (MARA) v Dato' Abd Rahim Abd Halim & Ors

| by Sharmeen Dahlia |

A tussle arose between the directors and the shareholders of Med-Bumikar Mara over an offer to purchase the shares in MBM Resources, in which Med-Bumikar had a stake of 49.5%.

Med-Bumikar had seven shareholders, with the largest being MARA. The remaining shares were held by six founding families, two of which together with MARA made up a majority in favour of the sale of the shares in MBM Resources. However, of the seven directors on the board, only three were in agreement with the sale.

On receipt of the offer to purchase, MARA had issued a requisition notice for an EGM to be held to pass resolutions accepting the offer and at the same time appointing two additional directors to the board. In a board meeting, the directors resolved to reject MARA's requisition notice and to decline the offer. A few days later, through a circular resolution, the board appointed two additional directors of their own, bringing the total to nine directors, the maximum permitted under the Articles of Association of Med-Bumikar.

In accordance with the Articles of Association of Med-Bumikar, MARA proceeded to hold the EGM and had both resolutions to accept the offer and to appoint the two additional directors passed.

MARA then commenced proceedings to invalidate the appointment by the board of the two directors by circular resolution. Correspondingly, the board and Med-Bumikar counterclaimed for a declaration that the management and control of the business of the company laid within the exclusive purview of the board and a further declaration that the two resolutions passed at the EGM were null and void.

The High Court, in allowing MARA's claim and dismissing Med-Bumikar's counterclaim, held that:

- (a) MARA had fulfilled the shareholding requirement to requisition an EGM, and the rejection of the requisition notice by the directors amounted to a breach of their duties;
- (b) The real intention of the appointment by circular resolution of the two directors by the board was to pre-empt MARA from exercising its right as a shareholder to appoint directors. Since the appointment of the two additional directors had not been made in good faith and for any proper purpose, the appointment was invalid; and
- (c) By virtue of s 195 of the Companies Act 2016, the resolution that was passed at the EGM to accept the offer for the sale of the shares in MBM Resources was not binding on the board as it was not passed as a special resolution. However, it constituted a recommendation that the board must still consider and act in the best interest of the company.

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