

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
DALAM WILAYAH PERSEKUTUAN, MALAYSIA

(BAHAGIAN DAGANG)

**GUAMAN NO: D8-28-79-2009**

Dalam perkara Mengenai AMALAN  
TEPAT SDN BHD (223294-D)

Dalam Perkara Mengenai Seksyen 218  
Akta Syarikat 1965; dan

Dalam Perkara Mengenai Kaedah-  
Kaedah Syarikat-syarikat  
(Penggulungan), 1972 dan Kaedah-  
Kaedah Mahkamah Tinggi, 1980

**ANTARA**

**NG KIAN TENG (No. K/P:631120-10-5503 (7178674) ... PEMPETISYEN**

**DAN**

**AMALAN TEPAT SDN BHD (223294-D) ... RESPONDEN**

**GROUND OF JUDGMENT**

1. **Enclosure 1** is a petition to wind-up the Respondent company following a failure to settle the debt mentioned in the notice issued under section 218 Companies Act on 23.12.2008. This petition was filed on 11.2.2009.

2. The debt of RM166,109.20 arises from a judgment entered on 31.10.2008 after full trial in High Court in KL Civil Suit No: S7-22-1523-2003. The decision is under appeal. The Respondent also filed an

application for stay of the execution of the judgment on 13.1.2009. That application was served on the solicitors for the Petitioner on 30.4.2009. Affidavits were filed and the application was mentioned on 13.4.2009 and 4.5.2009. On 12.5.2009, the application for stay of execution pending appeal was refused.

3. When this petition came up for hearing on 14.5.2009, the court was informed of an order of stay granted by the High Court in Muar in Winding-Up Petition No: 28-50-2008 on 23.2.2009. The salient parts of the Order made by the High Court in Muar read as follows:

- “(i) kesemua tindakan dan/atau prosiding yang diambil oleh pihak-pihak lain terhadap Responden yang masih belum selesai adalah digantungkan serta merta daripada diteruskan sehingga Petisyen ini diselesaikan;
- (ii) perintah untuk Perenggan (i) di atas tidak akan menjejaskan Responden daripada memohon dan/atau meneruskan dengan permohonan-permohonan yang telah difailkan oleh Responden;”.

4. The parties were then invited by the court to address the issue as to whether that order binds and stays these present proceedings. In brief, learned counsel for the Petitioner submitted that the order does not bind and stay these current proceedings for the following reasons – *estoppel* and abuse of court process. This court was also invited to exercise its jurisdiction and set aside that order due to the presence of exceptional circumstances.

5. The Respondent's position is simple – the order is valid and binds these proceedings. The cases of ***Sri Jeluda Sdn Bhd v Pentalik Sdn Bhd [2008] 4 CLJ 359*** and ***Shing Hup Hin Construction Sdn Bhd v General Soil Engineering Sdn Bhd [1999] 1 CLJ 303*** were relied on.

6. First, on *estoppel* and in this respect the conduct of the Respondent is examined. Upon scrutiny, the submission by learned counsel for the Petitioner is that the Respondent had failed to promptly alert everyone, in particular the Petitioner, on the existence of that order. Instead, the Respondent took steps in the various proceedings to the effect that the doctrine of *estoppel* operates to deny the Respondent the right to rely on the order made by the High Court in Muar. It is said to be unconscionable and highly inequitable on the part of the Respondent to now insist on its legal rights and invoke the effect of that order. Learned counsel for the Petitioner also submitted that much judicial time and expense had been wasted due to the Respondent's silence. The cases relied on include ***Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Berhad [1995] 3 MLJ 331***; ***Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor [1989] 2 MLJ 202***; and ***Lim Teng Huan v Ang Swee Chuan [1992] 1 WLR 113***. In short, the Petitioner is of the view that the Respondent cannot rely on the order made on 23.2.2009 because of its own conduct. Indirectly, it may be said that that order has no effect.

7. With respect, this argument must fail. The law of *estoppel* was never intended to operate in the context and conditions described by the Petitioner. An order of court confers both rights and obligations in law.

Most basic and fundamental is the obligation to comply and respect the terms of the order. Not invoking those rights cannot mean that *estoppel* operates. Neither can it be suggested that one can ignore compliance of the clear terms of an order of court. Any complaint including those raised before this court should, if the Petitioner sees fit, be raised in the High Court in Muar. In any event, paragraph (ii) in the order dated 23.2.2009 clearly allows the Respondent to take steps with regard the stay application and appeal as those applications were indeed applications initiated by itself. To me, informing the court on the first date of hearing of the petition, that is, on 14.5.2009 is good enough.

8. The second argument concerns alleged abuse of court process. The point made by learned counsel for the Petitioner is that the order dated 23.2.2009 ought not to have been granted because it was questionably motivated on the part of the Respondent. The Petitioner was also not heard before that order was granted. Furthermore, the order was one made by consent.

9. Again, these arguments ought to be taken up before the High Court in Muar and not here. Until and unless that order is set aside the order is valid and operates – see ***Lee Tain Tshung v Hong Leong Finance Bhd [2000] 3 MLJ 364***. This court is not the correct forum for this issue. From the terms of the order, I notice that the parties concerned did not object to the application. That is quite different from consenting to an application. This second argument is also not sustainable.

10. Finally, I was invited to set aside that order based on exceptional circumstances. Learned counsel relied on cases like ***Perwira Affin Bank***

***Berhad v MDV Technical Services Sdn Bhd [2008] 4 CLJ 66*** and ***Badiaddin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 2 CLJ 66***. This is untenable as this is neither a final court nor is the judgment final. I do not need to go into the reasons for this view.

11. Since this petition was filed on 11.2.2009, these proceedings are properly said to be proceedings pending at the time of the order of court made on 23.2.2009, I accordingly stay these proceedings till disposal of the proceedings before the High Court in Muar. I am informed by both counsel those proceedings are fixed for disposal on 5.8.2009. Under the circumstances, this petition will now be fixed for disposal on 6.8.2009.

Date: 19<sup>th</sup> June 2009

**(DATO' MARY LIM THIAM SUAN)**  
JUDICIAL COMMISSIONER  
HIGH COURT KUALA LUMPUR  
(COMMERCIAL DIVISION)

Solicitors:

L.E. Tan for the Petitioner  
Tetuan Tan Norizan & Associates

Mahendra Mahason for the Respondent  
Tetuan R.Y. Nanthan & Partners