

**IN THE HIGH COURT OF MALAYA
IN THE STATE OF MALACCA
[ORIGINATING SUMMONS NO: MA-24NCC-4-07/2024]**

BETWEEN

- 1. IMPONOTIVE AUTO SDN BHD**
(COMPANY NO: 200301011490 (613910-U))
 - 2. KUASA WAJA AUTOMOBILE (M) SDN BHD**
(COMPANY NO: 200501033310 (715450-K))
 - 3. LTB MARKETING SDN BHD**
(COMPANY NO: 200601038047 (757807-T))
 - 4. S.P.A. AUTO GROUP (M) SDN BHD**
(COMPANY NO: 200801023607 (824930-K))
 - 5. S.P.A. HOTEL SDN BHD**
(COMPANY NO: 200901039775 (882918-H))
 - 6. S.P.A. SUPREME HOLDINGS (M) SDN BHD**
(COMPANY NO: 200801008511 (809798-D))
 - 7. SUPREME POWER AUTO SDN BHD**
(COMPANY NO: 200401030935 (669443-U))
 - 8. SUPREME POWER MARKETING (M) SDN BHD**
(COMPANY NO: 200601024682 (744436-A))
 - 9. SUPREME POWER PERFORMANCE (M) SDN BHD**
(COMPANY NO: 200601038054 (757814-U))
- ... APPLICANTS**

AND

- 1. OCBC BANK (MALAYSIA) BERHAD**
(COMPANY NO: 199401009721 (295400-W))
- 2. OCBC AL-AMIN BANK BERHAD**
(COMPANY NO: 200801017151 (818444-T))
- 3. GOVERNMENT OF MALAYSIA**
- 4. STANDARD CHARTERED BANK
MALAYSIA BERHAD**
(COMPANY NO: 198401003274 (115793-P))
- 5. AFFIN BANK BERHAD**
(COMPANY NO: 197501003274 (25046-T))
- 6. TETUAN KARTIKA & CO**
- 7. CIMB BANK BERHAD**
(COMPANY NO: 197201001799 (13491-P)) **... INTERVENERS**

GROUNDS OF JUDGMENT**INTRODUCTION**

- [1] This a decision on the Applicants' application via Enclosure 1 for: -
- (i) an order pursuant to Section 366(1) of the Companies Act 2016 granting leave to the Applicants to convene a Creditors' Meeting for the purpose of presenting for approval a scheme of arrangement between the Applicants and its respective Scheme Creditors; and
 - (ii) a restraining order pursuant to Section 368(1) of the Companies Act 2016 to stay all proceedings initiated by the Applicants' creditors.

BACKGROUND

- [2] The Applicants are manufacturers of parts and components in the automotive industry collectively known as the ‘SPA Group’. They are inter-related via a common majority shareholder Dato Sri Lim Teck Boon who holds in excess of 95% shareholding in the Applicants. The Applicants have experienced serious financial issues, amongst others, poor cashflow and cost overruns as a result of the Covid-19 pandemic and that has impacted its financial well-being and its commitments to a number of financial institutions.
- [3] There was an earlier application for judicial management and proposed scheme of arrangement (“Previous Scheme”) via Originating Summons No. MA-28JM-1-11/2023 by the 1st, 3rd, 7th and 9th Applicants (“JM Application”) filed on 20.11.2023. There was opposition to the scheme by their creditors including secured creditors and it led to the withdrawal of that scheme on 5.4.2024.
- [4] Enclosure 1 is the application is for leave to convene a meeting of creditors for the purposes of considering and approving a scheme of compromise and arrangement under Section 366(1) of the Companies Act 2016 and for a restraining order under Section 368(1) of the Companies Act 2016 which was filed on 15.7.2024 (“Application”).
- [5] The current Application proposes a revised restructuring scheme of arrangement (“Revised Scheme”) to repay the SPA Group liabilities to the Scheme Creditors. The Revised Scheme states that the Scheme Creditors are divided into 2 groups, first are the secured creditors which consist of Ambank (M) Berhad, Public Bank Berhad, RHB Bank Berhad, Malayan Banking Berhad (“Malayan Banking”), OCBC Al Amin Bank Berhad (“OCBC AL Amin”), OCBC Bank (Malaysia) Berhad (“OCBC”), Affin Bank Berhad (“Affin”), HSBC Amanah Malaysia Berhad (“HSBC”), CIMB Bank Berhad (“CIMB”) and Standard Chartered Bank Malaysia (“Standard Charteed”). Secondly, the unsecured creditor which consist of only Lembaga Hasil Dalam

Negeri (“LHDN”). The detailed breakdown of each of the Applicants’ liability to the secured creditors and the unsecured creditor appears in Exhibits A-15, A-16, A-17, A-18, A- 19, A-20, A-21, A-22, A-23 in Enclosure 5.

- [6] The secured creditors OCBC Al Amin, OCBC, Affin, HSBC, CIMB, Standard Chartered, Malayan Banking and the unsecured creditor LHDN had applied to intervene and oppose this Application and that application was allowed by this Court on 6.11.2024 (“Intervenors”). HSBC Amanah and Malayan Banking were not present at the hearing of this Application.

THE REVISED PROPOSED SCHEME

- [7] Briefly, the Revised Scheme which appears in Exhibit A-14 of Enclosure 5 proposed that: -

- (i) in respect of the secured creditors, each of the secured creditors will receive a 100% return on their respective outstanding principal sum and there will be waiver of late payment charges, penalties and interest accrued until the effective date of the proposed scheme; and
- (ii) in respect of the unsecured creditor, the outstanding amount will be settled via an instalment as detailed in the Revised Scheme.

- [8] The Revised Scheme consists of a number of components, namely the Asset Backed Securities Bond Programme, Sale & Leaseback Transaction, Bond Issuance and Moratorium Request.

- [9] The Applicants state that the present Revised Scheme has been revised with sufficient particularity, made in good faith and in the interests of the scheme creditors. The Revised Scheme involves preservation of the principal amount without any haircut, the value of the Applicants’ assets will be unlocked via the bond issuance exercise and it will ensure the business operations of the Applicants will continue

unhindered to sustain the value of the business and protecting the interest of creditors and stakeholders.

- [10] The Applicants claim that the estimated value of their current assets stand at RM821,509,218.50 compared to the current liabilities of RM484,099,738.80 and it shows that the Revised Scheme is made in good faith and in the interests of the creditors. Thus, a restraining order is necessary to allow the proposed scheme to be refined and presented to the scheme creditors.
- [11] To support the Applicants case for leave, reference was made to the decisions in *AirAsia X Bhd v. BOC Aviation Ltd. & Ors* [2021] CLJU 188 / [2021] 1 LNS 188 / [2021] 10 MLJ 942; *Re Kuala Lumpur Industries Bhd.* [1991] 3 CLJ 2867/[1991] 3 CLJ (Rep) 86) / [1990] 2 MLJ 180; *Sham Chin Yen & Ors v. Mansion Properties Sdn. Bhd.* [2021] 1 CLJ 609 / [2021] 1 MLJ 527 / [2019] 1 LNS 781 (COA) and *Mansion Properties Sdn. Bhd. v. Sham Chin Yen & Ors* [2021] 1 CLJ 609/[2021] 1 MLJ 527.
- [12] To support its case for a restraining order the decisions in *Sentoria Bina Sdn. Bhd. v. Impak Kejora Sdn. Bhd. & Ors* [2021] 9 CLJ 814 / [2021] 12 MLJ 690 and *Lagenda Erajuta Sdn. Bhd. v. Acre Square Sdn. Bhd. & Ors* [2020] CLJU 698 / [2020] MLJU 789 / [2020] 1 LNS 698 was referred to.

THE INTERVENERS

- [13] All the Interveners oppose the Revised Scheme. Their reasons are briefly reproduced as follows.
- [14] For OCBC, their position are as such:-
- (i) they are the largest secured creditor to the 3rd and 7th Applicant, LTB Marketing Sdn. Bhd. and Supreme Power Auto Sdn. Bhd. in the sum of RM128,265,816.08 as at 6.9.2023;

- (ii) the 3rd and 7th Applicants will not be able to achieve 75% approval of the class of secured creditors ;
- (iii) since the 3rd and 7th Applicant's proposed scheme is inter conditional and part of the proposed Revised Scheme with all other Applicants, the Revised Scheme is bound to fail;
- (iv) the Revised Scheme is not bona fide lacking in particulars, highly speculative, impractical and not viable; and
- (v) the Revised Scheme is not dissimilar and no better from the Previous Scheme proposed by the Applicants under the JM Application to which OCBC Bank had opposed and therefore the current Application is frivolous merely to serve the Applicants' objective to stifle recovery actions or enforcement proceedings.

[15] For OCBC Al-Amin, they are the 3rd Applicant's 2nd largest creditor constituting 40.16% of the 3rd Applicant's debts. All other arguments in opposing the Revised Scheme are similar to those raised by OCBC Bank.

[16] Reference was made to the decisions, inter-alia, in *Francis Augustine Pereira v. Dataran Mantin Sdn. Bhd. & Ors* [2014] 1 CLJ 161/ [2014] 6 MLJ 56; *Alias bin Mohd Salleh v. Peninsular Park Sdn. Bhd.* [2016] CLJU 953 / [2016] 1 LNS 953 / [2016] MLJU 474; *Damai City Sdn. Bhd. v. Grand Dynamic Builders Sdn. Bhd. & Ors* [2024] 5 CLJ 467 / [2024] MLJU 633; *Sri Hartamas Development Sdn. Bhd. v. Mbf Finance Berhad* [1990] 3 CLJ Rep 106 / [1992] 1 MLJ 313; *Twenty First Century Oils Sdn. Bhd. v. Bank of Commerce (M) Bhd. & 2 Ors* [1993] 2 CLJ 677 / [1993] 2 MLJ 353; *Dynawell Corporation (M) Sdn. Bhd. v. Universal Trustee (M) Berhad* [2013] CLJU 1391 / [2015] MLJU 1128 / [2013] 1 LNS 1391; *Metroplex Bhd. & Ors v. Morgan Stanley Emerging Markets Inc & Ors* [2005] 3 CLJ 810/[2005] 6 MLJ 487; *RHB Sakura Merchant Bankers Bhd. & Ors (Intervenors)* [2005] 3 CLJ 810 / [2005] 6 MLJ 487 and *Martin Bencher (Malaysia) Sdn. Bhd. v. Sapura Energy and 2 Others* [2024] MLJU 65.

[17] For CIMB Bank, their position is that:-

- (i) they are the secured creditor of the 5th Applicant, S.P.A. Hotel Sdn. Bhd.;
- (ii) the Revised Scheme lacks in particulars and details not enabling the Revised Scheme to be evaluated on its feasibility and merits;
- (iii) there no clear timeline for each stage of the Revised Scheme to be completed and for full payment to be made; and
- (iv) since all the secured and unsecured creditors oppose this scheme it is not possible for the 5th Applicant to garner 75% approval in favor of the proposal and therefore the Application is a futile exercise and bound to fail.

[18] Reference was made to the decisions in *Sri Hartamas Development Sdn. Bhd. v. Mbf Finance Berhad* [1990] 3 CLJ Rep 106 / [1992] 1 MLJ 313; *Re Kuala Lumpur Industries Bhd.* [1991] 3 CLJ 2867 / [1990] 2 MLJ 180; *PECD Bhd. & Anor v. Amtrustee Bhd. & Other Appeals* [2010] 1 CLJ 940 / [2010] 5 MLJ 357/[2010] 3 AMR 334; *Leadmont Development Sdn. Bhd. in Infra Segi Sdn. Bhd. and Another Suit* [2018] 10 CLJ 412 / [2019] 8 MLJ 473 and *Intrakota Komposit Sdn. Bhd. and Anor v. Sogolese Advance (Malaysia) Sdn. Bhd.* [2004] 8 CLJ 276 / [2004] MLJU 588.

[19] For Affin Bank, their position is no different, that is:-

- (i) they are the majority secured creditor against the 2nd, 4th, 8th and 9th Applicant and therefore the Revised Proposed Scheme cannot secure enough support to make up the 75% vote required to approve the scheme; and
- (ii) to emphasize the point that the scheme cannot get 75% of votes in its favor it is shown that the total debts owed to all the secured creditors amount to RM301,997,724.79 out of the total debts of RM484,099,738.22 which equates to 62.38% votes not in favor; and

(iii) the Applicants have not been able to show any further details or information to the Revised Scheme compared to the Previous Scheme and therefore demonstrates unclarity and uncertainty in the terms of the Revised Scheme.

[20] Reference was made to the decisions in *MSDA Resources Sdn. Bhd. v. Adrian Sia Koon Leng* [2023] 7 CLJ 843 / [2023] MLJU 1566 and *KNM Group Berhad v. Ann Joo Metal Sdn. Bhd.* [2024] CLJU 1250 / [2024] MLJU 1250.

[21] For Standard Chartered Bank,

- (i) the Revised Scheme is almost identical to the Previous Scheme which was opposed by the secured creditors;
- (ii) The Revised Scheme lacks details and speculative with no details given regarding the proposed rescue financing; and
- (iii) no timeline has been provided regarding the implementation of the Asset Backed Securities Bond Programme.

[22] Reference was made to the decisions in *Damai City Sdn. Bhd. v. Grand Dynamic Builders Sdn. Bhd. & Ors* [2024] 5 CLJ 467 / [2024] MLJU 633; *Sentoria Bina Sdn. Bhd. v. Impak Kejora Sdn. Bhd* [2021] 9 CLJ 814 / [2021] 12 MLJ 690 and *intrakota Komposit Sdn. Bhd. & Anor v. Sogolese Advance (Malaysia) Sdn. Bhd.* [2004] 8 CLJ 276/[2004] MLJU 588.

[23] As for LHDN, the sole unsecured creditor who is owed a total RM45,212,891.03, they too oppose the Revised Scheme. Their reasons include that:-

- (i) the 3rd and 8th Applicant's have failed to make full and frank disclosure of material facts when they did not disclose that both these companies are facing petitions for winding up by LHDN;
- (ii) the scheme is unreasonable and speculative more so when the

Revised Scheme is not dissimilar to the Previous Scheme;

- (iii) the Applicants do not have the ability to perform the requirements of the scheme when the Applicants merely propose to pay the indebtedness in instalments from the proceeds of the Applicants' businesses; and
- (iv) the Revised Scheme shows that the Applicants are unable to meet their obligation to the Government as provided under Section 106(1) of the Income Tax Act 197 and public interest demands that taxes are settled expediently.

[24] Reference was made to the decisions in *Kosma Palm Oil Mill Sdn. Bhd. v. Koperasi Serbausaha Makmur Sdn. Bhd.* [2004] 1 CLJ 239 / [2004] 1 MLJ 257; *PECD Bhd & Anor v. Amtrustee Bhd. & Other* [2010] 1 CLJ 940 / [2010] 5 MLJ 357; *In Re Foursea Construction (M) Sdn. Bhd.* [1998] 3 CLJ 135; *MDA Resources Sdn. Bhd. v. Adrian Sia Koon Leng* [2023] 7 CLJ 843 / [2023] 5 MLRA 358; *Damai City Sdn. Bhd. v. Grand Dynamic Builders Sdn. Bhd. & Ors* [2024] 5 CLJ 467 / [2024] MLJU 633; *Intrakota Komposit Sdn. Bhd. & Anor v. Sogolese Advance (Malaysia) Sdn. Bhd.* [2004] 8 CLJ 276 / [2004] MLJU 588 and *Raub Resources Sdn. Bhd. v. Kerajaan Malaysia* [2024] CLJU 289 / [2024] MLJU 293.

APPLICANTS' RESPONSE

[25] In response to the issues raised, the Applicants contend as follows:-

- (i) the Applicants have provided sufficient particulars of material facts necessary in the filing of the Application;
- (ii) the Revised Scheme is meritorious and there are material changes in comparison to the Previous Scheme filed in the JM Application;
- (iii) the Applicants have taken steps to create a Special Purpose Vehicle known as Vanguard ASB Berhad pursuant to Section 15

of the Companies Act 2016 for the purposes of sale transactions involving assets of the Applicants in respect of the Asset Backed Securities Bond Programme; and

- (iv) the approval of the scheme is not dependent on the amount or percentage of debt to the Interveners but on 75% majority of creditors present and voting at the meeting and therefore the Interveners' argument that the Application is futile is premature.

[26] Reference was made to the decisions in *AirAsia X Bhd v. BOC Aviation Ltd. & Ors* [2021] CLJU 188/[2021] 1 LNS 188/[2021] 10 MLJ 942 and *Capital City Property Sdn. Bhd. v. Achwell Property Sdn. Bhd.* [2023] CLJU 22 / [2023] 1 LNS 22 / [2020] MLJU 2518.

DELIBERATIONS AND FINDINGS

Revised Scheme

[27] Now, the Revised Scheme highlights at Exhibit A-14 (page 102- 113), Enclosure 5 on the material changes between the current scheme and the Previous Scheme. This Court finds that the only material change highlighted by the Revised Scheme is the reduction on the timing of repayment of the principal amounts for the secured creditors from 7 years under the Previous Scheme to approximately 6 to 12 months after the Revised Scheme approval date. As for the unsecured creditor, repayment will take 147 months or 12.2 years to complete. Thus, apart from LHDN, according to the Revised Scheme, all other features of the Previous Scheme have not materially changed.

[28] After reading the Revised Proposed Scheme, this Court finds that the proposal lacks the following: -

- (i) any preliminary financial model or forecasts;
- (ii) any assessment or opinion on viability and financial models by an independent advisor;

- (iii) no information on the prospects of who will subscribe the bonds to be issued and what will be the indicative general terms of the bonds;
- (iv) how the Applicants' financials will perform under the Sale & Leaseback Transaction;
- (v) how the Applicants' financials can execute a full settlement of all principal sums owing to the secured creditors within 12 months from the date of approval of the scheme;
- (vi) any explanation why the unsecured creditor has to wait 12 years for full settlement; and
- (vii) clarity on the proposed timelines for the execution of each component under the scheme including proposed time periods for securing all approvals from relevant authorities on the Sale and Lease back and Bonds issuance, scheme completion date, execution of the Sale and Lease back, negotiations with potential subscribers and subscription of bonds and commencement of payment obligations.

[29] This Court further finds that the Revised Scheme now proposes a moratorium period of 6+6 months as opposed to just 6 months to provide, as the scheme says, breathing space to execute the proposed corporate exercise efficiently.

[30] Counsel for the Applicants rely heavily on the decision of the High Court in *AirAsia X Bhd v. BOC Aviation Ltd. & Ors.* and *Re Kuala Lumpur Industries Bhd.* to argue that the Revised Scheme need not be too detailed and it would fulfil the requirement of the Application if the proposal contains sufficient materials to show the scheme features which will later be refined and made exact by the time the Creditors Meeting is convened. The Court should not consider the merits or fairness of the Revised Scheme as these issues are best left for the creditors to decide.

[31] Now, those decisions do not rigidly dictate what information need or need not be included in the proposal. Although it may not be the practice in Malaysia as argued in *AirAsia X Bhd v. BOC Aviation Ltd. & Ors* that a full Explanatory Statement is normally included in the application for leave, the Court in that case nonetheless opined that the duty of disclosure are as follows:-

“[66] In connection with the Court’s role in determining the jurisdictional issues at the Convening Stage, it is incumbent upon the scheme company to adduce evidence of sufficient quality to persuade the Court to act on the scheme and it has a duty to make full and frank disclosure of all relevant facts and matters to the Court relevant to such jurisdictional issues including the classification of creditors.”

[32] This Court finds agreement with the observations made in *Indah Kiat International Finance Company BV [2016] BCC 418* and *Pathfinder Strategic Credit LP and Another v. Empire Capital Resource Pte. Ltd. and Another Appeal [2019] 2 SLR 77*, both referred in *AirAsia X Bhd v. BOC Aviation Ltd & Ors*, that the applicant bears the burden of providing such financial disclosure of sufficient quality and credibility to assist the Court in assessing and in determining that the proposal is bona fide, workable and deserves for consideration by the creditors.

[33] In fact, in *Re Kuala Lumpur Industries Bhd.*, the Court held that while the proposal need not be in its final form ready for a creditor to vote, it must at least contain sufficient particulars to allow for proper consideration:-

“...In my view, what must be available to the court when considering a s. 176(10) application must be a proposal of a scheme of compromise or arrangement not necessarily ready for presenting to the creditors to be voted upon but with sufficient particulars to enable the court to assess that it is feasible and merits due consideration by the creditors when it is eventually placed before them in detailed form. Further, the

court has to be satisfied that there is or that there would be a bona fide s. 176(1) application.”

- [34] Coming back to the Revised Scheme, this Court finds that the scheme is not too dissimilar from the Previous Scheme. With exception of the reduced timeline for the payment of the principal sum for the secured creditors, the unsecured creditor has to wait 12 years until full settlement. Those points aside this Court does not find enough financial information that shows how the Applicants will execute the components of the Revised Scheme.
- [35] There should at least be an indicative financial and cashflow forecast or projections demonstrating how the components of the Revised Scheme will positively impact the Applicants’ ability to meet its obligations under Revised Scheme. The Applicants’ claim their current assets are in excess of the debts are insufficient information on their own to push through the Revised Scheme without any explanation how the value of these assets will be monetized, in what value and apportioned towards settlement of each of the Applicants’ debts.
- [36] Such information would at least provide the creditors with better understanding and assessment of the viability of the Revised Scheme. Whilst this Court agrees with the views of the authorities referred above by the Applicants that they are not expected to present a vote-ready proposal, it must at least serve as the curtain raiser, so to speak, of what the creditors can look forward to when the meeting is convened. The Revised Scheme in its current form is, to this Court, too general, broad and wanting better particulars. It does not sufficiently assist the Court in determining that the Revised Scheme is suitable to be presented at the Creditors Meeting. As expressed by the Court of Appeal of Singapore in *Pathfinder Strategic Credit LP and Another v. Empire Capital Resource Pte Ltd and Another Appeal* [2019] 2 SLR 77 the Court should not act merely as a rubber stamp:-

“52. *We consider this formulation to be justified in principle. As an aspect of the company’s duty of disclosure at the leave stage, it should not be applied in a manner that is particularly onerous or exacting. The leave application is, after all, usually heard in an expedited basis... But this does not mean that the duty is a hollow one, and the court should not be taken as a rubber stamp just because the proposed scheme would likely return to the court at the sanction stage. By that stage, if an unsuitable creditors’ meeting had been convened in the interim, it is likely that valuable time and resources would have been spent, positions crystallised, the financial situation deteriorated and serious distrust engendered, all of which may be fatal to any prospective rehabilitation of the company while also being unfairly prejudicial to the creditors...*”

[37] For the above reasons, whilst this Court can agree with the views expressed by the Court in *AirAsia X Bhd* that the Court ought not to make any commercial judgment on the viability or otherwise of the company post the scheme at the convening stage without the benefits of any independent or expert report nor should the Court at that juncture speculate as to whether the proposer will or will not be able to raise the necessary funding and if successfully raised whether it is sufficient to implement the scheme, this Court declines however to take the same view as expressed by the Court in *AirAsia X Bhd* that the Court may exercise its judicial power to grant the leave to convene a creditors’ meeting absent of any financial forecast or model and absent independent opinion from financial advisors to at least demonstrate the viability and workings of the proposed scheme. To grant leave merely on broad terms without enough specifics and information pointing towards a prima facie viability of the scheme would as state in *Pathfinder Strategic Credit LP and Another v. Empire Capital Resource Pte. Ltd. and Another Appeal* reduce the Court’s function to a rubber stamp.

[38] Therefore, this Court does not find agreement with the Applicants’

Counsel's argument that this Court should see the Revised Scheme as work in progress and to allow the proposal to be improved and completed by the time the creditors meeting is convened. In this Court's view for such opportunity to be granted, the Revised Scheme must at the outset contain enough information to demonstrate its viability not merely by comparison of the value of assets and liabilities but more importantly by at least showing, inter-alia the following:-

- (i) how the Revised Scheme sets itself apart from the Previous Scheme other than the reduction of time for the payments to the secured creditors and the inclusion of LHDN;
- (ii) how the components of the scheme will work with each other to produce the funds required to settle the secured creditors;
- (iii) providing some basic financial projections supported by an assessment by an independent financial advisor; and
- (iv) showing how the 3 and 8th Applicants businesses will be turned around and will generate the necessary cashflow to settle the outstanding amount to LHDN in the period of 12 years.

[39] Thus, this Court finds difficulty in finding that that the Revised Scheme contains merits as claimed by the Applicants and that it is suitable to be referred and voted on by the creditors at the creditors' meeting.

Opposition from the Interveners

[40] It is clear that all the Interveners take the common stand that the Revised Scheme:-

- (i) is no better in terms of specifics and information than the Previous Scheme;
- (ii) lacks timeline on when the components are to executed and completed leaving them at the risk that the completion of the

scheme will take an unreasonably long time; and

(iii) it is not made bona fide in the interests of the creditors and is used merely for the purpose of frustrating claim and execution proceedings against the Applicants;

[41] It is clear that the Interveners' opposition to the scheme demonstrates the sentiment that will be carried to the meeting of creditors if leave is granted.

[42] The success of the Revised Scheme is inter-dependent on the fate of each Applicant in the hands of their respective creditors. The prospect of the Revised Scheme failing at a Creditor's Meeting increases which each opposition the respective Applicant receives. With all the Interveners opposing the Revised Scheme not much can be said of the chances that the Revised Scheme will survive the required 75% of votes of the total value of creditors or class of creditors or the members or class of members present and voting at the Creditors Meeting.

[43] Thus, this Court does not agree that the Interveners' opposition at this stage is pre-mature on the basis that Section 366(3) of the Companies Act 2016 requires a majority of 75% votes at the Creditors' Meeting. Since they have been given leave to intervene and state their objection, this Court cannot ignore their sentiment in assessing whether leave to convene a Creditors Meeting ought to be granted (see *Globalcon Holding (M) Sdn. Bhd. v. Ambank Islamic Bank Bhd. & Anor* [2022] CLJU 2446/[2022] 1 LNS 2446 / [2022] MLJU 2546 and *Lagenda Erajuta Sdn. Bhd. v. Acre Square Sdn. Bhd. & Ors* [2020] CLJU 698 / [2020] MLJU 789 / [2020] 1 LNS 698).

[44] Since the Interveners are the only creditors under the Revised Scheme and will be the same creditors at the Creditors' Meeting, their objections are therefore relevant and must weight heavily on this Court. In that instance, the case of *Capital City Property Sdn. Bhd. v.*

Achwell Property Sdn. Bhd. [2023] CLJU 22 / [2023] 1 LNS 22 / [2020] MLJU 2518 referred to by the Applicants that reiterated the requirements of the law on the majority 75% votes at the creditors meeting is of no assistance.

- [45] For those reasons this Court finds that there is no prospect that the Revised Scheme will be approved by the Interveners at the Creditors Meeting. As decided in *Intrakota Komposit Sdn. Bhd. and Anor v. Sogolese Advance (Malaysia) Sdn Bhd* [2004] 8 CLJ 276/[2004] MLJU 588, the Court would decline to invoke its power in respect of any proposal which is bound to fail in limine, not viable, feasible, workable or intelligible from being put before the creditor because to do so would be a waste of time since the creditor would certainly reject the proposal.

“...Notwithstanding all these, the courts still retain control of the proceedings because the company is obliged under the law to go back to the courts at every stage of the s. 176 exercise (Re K Rees Emporiums Ltd [1969] Vic Lexis 156). To summarise, I must say that in a s. 176 application the court needs only to be concerned that the statutory provisions of s. 176 are complied with and that the court has the inherent power to prevent an abuse of its process and towards this end, the court would decline to invoke its power under s. 176 in respect of any proposal which is frivolous, vexatious, embarrassing or is bound to fail in limine. The court will not permit a scheme which is not viable, feasible, workable or intelligible from being put before the creditor because to do so would be a waste of time since the creditor would certainly reject the proposal (Twenty First Century Oils Sdn. Bhd. v. Bank Of Commerce (M) Bhd & Ors (No 2) [1993] 2 CLJ 677 at 680; Crystal Establishment Berhad & Ors v. Hong Leong Bank Berhad & Ors [2000] CLJU 44; [2000] 1 LNS 44; and FT Eastment & Sons Pty Ltd v. Metal Roof Decking Supplies Pty Ltd [1977] 3 ACLR 69)...”

- [46] In the end, this Court finds no sufficient basis to exercise its power in

favor of the Applicants to grant them leave to present the proposed Revised Scheme at a Creditors' Meeting pursuant to Section 366 of the Companies Act 2016.

On the matter of Restraining Order

[47] That brings this Court to the second part of the Applicants' application for a restraining order under Section 368(1) of the Companies Act 2016. Since the application for leave is denied, the application for an order to restrain all proceedings as prayed by the Applicants collectively or individually does not stand on any valid basis.

CONCLUSION AND DECISION

[48] To conclude, this Court finds no merits in the Application favoring the reliefs sought by the Applicants either collectively or individually.

[49] The following orders are therefore made:-

- (i) the Application in Enclosure 1 is thereby dismissed, with costs of RM3,000 to be paid by the Applicants to each of the Interveners;
- (ii) on that basis all prayers by OCBC Bank, LHDN, Affin Bank and Standard Chartered Bank for leave to continue with all pending court proceedings inclusive of any execution proceedings is therefore unnecessary to be specifically ordered; and
- (iii) no order is made for the relief sought by OCBC Al-Amin and OCBC Bank under prayer (d) of enclosure 8 and prayer (f) of Enclosure 10 are respectively.

Dated: 5 MAY 2025

[MOHD RADZI ABDUL HAMID]
HIGH COURT JUDGE
MALACCA

Counsel:

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