

# COURTROOM INSIGHTS

27 JANUARY 2025

Creditor's Right to Be Excluded from Scheme of Arrangement

Martin Bencher (Malaysia) Sdn Bhd v. Sapura Energy Berhad & Ors (Civil Appeal No. : W-02(IM) (NCC)-1879-11/2023(CA) [2025] MLRAU 26

A significant legal issue about filing of a second application for convening and restraining order the appellant creditor's application to be excluded from a proposed scheme of arrangement between the 3 respondent debtor companies and their creditors.

# INTRODUCTION



#### (A) The Settlement Agreement dated 23.02.2022

- The appellant, a provider of shipping and freight services, had filed two suits against the respondents for unpaid invoices totaling RM409,242.37 (on 07.10.2021) and RM1,140,722.60 (on 07.12.2021).
- Later, the parties entered into a Settlement Agreement on 23.02.2022, consolidating the debts into a settlement sum to be paid in instalments. However, the respondents defaulted on the instalments.

#### (B) The Proposed Scheme of Arrangement

- The respondents, part of the Sapura Energy Group, were experiencing financial difficulties and sought to restructure their debts through a Proposed Scheme of Arrangement under the Companies Act 2016 (hereinafter "CA 2016").
- They obtained restraining orders to prevent creditors from taking legal action while the scheme was being formulated.
- The Respondents, in pursuance of the Proposed Scheme, invited creditors to submit their proofs of debts with a specification of a cut-off date of 31.01.2022. In response, appellant filed its proof of debts on 18.05.2022.

# INTRODUCTION



- On 17.01.2023, the 2<sup>nd</sup> and 3<sup>rd</sup> respondent partially rejected the appellant's submitted proof of debt in OS 148 & no adjudicator review application on the rejection was made. The 1<sup>st</sup> Respondent fully admitted the appellant's proof of debt on 24.10.2023 with regard to OS 148
- Separately, the parties also agreed to a consent order on 27.01.2023 on the appellant's intervention in OS 148.

#### (C) Fresh convening & restraining orders

 As the OS 148 Convening and Restraining Order were expiring on 10.03.2023 and 03.03.2023 (the RO already extended by 9 months), <u>applicants filed another suit and obtained a fresh</u> <u>ex-parte orders</u> to convene creditor meetings within 3 months and restraining actions for 3 months starting 11.02.2023. Then was extended 9 months again.



# COURT RULINGS & REASONING

# High Court Decision:

The High Court
 <u>dismissed</u> the
 application to set aside
 the Convening and
 Restraining Orders.
 There was <u>no</u> duplicity
 or abuse of process.

Whether the 2<sup>nd</sup>
 Application Under OS 121
 and the orders granted
 pursuant thereto are valid
 and regular// whether
 they constituted an abuse
 of process.

# Legal

 Whether by reason of the Settlement Agreement, the Appellant's debt fell outside the cut-off date for the filing of proofs of debts.

# Court of Appeal Decision:

- Appealed against the High Court's decision.
- The Court of Appeal <u>dismissed</u> the appeal and affirmed the High Court's decision







1st issue: Court was not in favour of appellant's position.

#### Ratio:

- S 366 CA 2016 does <u>not</u> prohibit consecutive or fresh applications for convening orders.
- There is **nothing** to restrict the Court from granting a fresh convening order after the earlier one has lapsed (after expiry of the time limit of 12 months).
- The 2<sup>nd</sup> proposed scheme application made by the Respondent is not deemed as an extension of the earlier proposed scheme application but a fresh set of orders altogether.
- The court held that S 366 of CA 2016 and S 368 of CA 2016 ought to be interpreted liberally to facilitate companies who are facing financial difficulties.
- The court **accepted** the reason previous schemes could have failed for number of reasons such as inadequate information the in explanatory statement.

 The filing of OS 121 which resulted in the OS 121 Convening and Restraining Orders was not an abuse of process but a legitimate exercise of any company's rights under the law, aimed at facilitating its financial restructuring and survival.

2nd issue: The Court of Appeal found that the Appellant creditor had filed its proof of debts for the purpose of the proposed scheme in the first place and was therefore estopped from excluding itself from the proposed scheme on this premise.

#### Ratio:

 The appellant had voluntarily submitted proofs of debt (PODs) in the first proceeding (OS 148) based on debts that had accrued before the cut-off date (31 January 2022). The Settlement Agreement, dated 23.02.2022, was irrelevant to the inclusion of the debt in the scheme.





- The court found that the appellant had submitted to the jurisdiction of the Proposed Scheme by filing the PODs. This submission continued in the immediately succeeding proceedings (OS 121 and beyond), as the restructuring effort was a single and continuous process.
- The court emphasized that the Settlement Agreement was <u>not</u> the basis for the PODs, as the debts had already been incurred before the cutoff date. The respondents had examined the PODs based on the preexisting debts, <u>not</u> the Settlement Agreement.

# IMPACT ANALYSIS

This decision benefits distressed companies, giving them greater legal protection in restructuring, while limiting creditors' ability to enforce independent claims after engaging in a scheme of arrangement.

## <u>Distressed Companies</u> (<u>Debtor Companies</u>)

- i) Companies can file fresh applications for convening and restraining orders under CA 2016.
- ii) Creditors who submit proofs of debt (PODs) may be barred from later opting out or pursuing separate legal claims.

### **Creditors**

- i) Once a creditor engages in the restructuring process, they may lose the right to independent legal action.
- ii) Creditors must carefully assess their participation, as they could be bound by the restructuring process.

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