

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(COMMERCIAL DIVISION)**

**COMPANIES WINDING UP PETITION NO. D1-28-791-2007**

Petitioner

FW INDUSTRIES BERHAD

v.

Respondent

SUITECH SDN BHD

**GROUND OF JUDGMENT**

This is a section 218(1)(f) and (i) winding up petition by the petitioner against the respondent company.

I granted the petition with costs.

I shall now state my grounds.

I granted the petition because the cause papers were in order and that there was no defence at all raised by the respondent against the petition. In fact, the respondent was absent and there was no affidavit in opposition filed.

At the commencement of the proceeding there were applications for an adjournment by certain parties but I rejected the applications as they failed to satisfy me that there were good reasons for an adjournment.

First, there was the application by learned counsel, Encik Gabriel Danial, who, on behalf of a creditor, Logamweld Sdn Bhd, had applied for an adjournment of the hearing of the present petition so that their two summons in chambers applications, namely, encls. 19 and 21, which were filed on 15 January 2008 and also fixed for hearing on 24 January 2008 (that is on the same day as the present petition), could be heard first, before the present petition is heard. The purpose of encl. 21 is, inter alia, to stay the hearing of the present petition pursuant to section 222 of the Companies Act 1965. The purpose of encl. 19 is, inter alia, to seek leave of this Court pursuant to section 226(3) of the Companies Act 1965 for Logamweld to proceed with a

winding up petition against the respondent (Suitech) in another Court, that is, the Kuala Lumpur High Court, Commercial Division No: 3 Court. The argument of Logamweld is that the petition in the Commercial Division No: 3 Court was filed on 7 August 2007, whereas the petition in the present case was filed on 2 November 2007. Counsel argues that since the petition in the Commercial Division No: 3 Court was filed first, hence, that petition must be heard first instead of the present petition.

Both applications, namely, encls. 19 and 21 were filed by Logamweld on 15 January 2008.

The learned counsel for the petitioner, Encik Alex Chang, objected to the application for an adjournment; and pointed out that there was short service on the petitioner in respect of encls. 19 and 21 as these two summonses in chambers were only served on his firm on Monday 21<sup>st</sup> January at 4.10 p.m.. Encik Alex Chang cites rule 7 (2) of the Companies (Winding-Up) Rules 1972. Encik Gabriel conceded that there was short service of the two applications but submitted that if the Court were minded to proceed with the petition, instead of granting an adjournment to hear the two applications

first, then he urged the Court to waive the short service and to have the two applications heard together with the petition.

I rejected the argument. I am of the view that if Logamweld is really serious in their applications, then they should have filed their applications, namely, encls. 19 and 21 well in advance (instead of filing them only on 15 January 2008) so that the petitioner would have the opportunity to file affidavits in reply to oppose the two applications; and so that the two applications could be heard and disposed off well before the hearing of the petition. In this regard, when I asked Encik Gabriel as to why encls. 19 and 21 were filed so late, the only answer that he gave was –

***Judge:***

*Why were encls. 19 and 21 only filed on 15 January 2008?*

***Encik Gabriel:***

*It was filed late because we had to take instructions from clients. We had to secure the deponents to sign the applications*

With respect, the above excuse is very lame. It is unacceptable to me. Further, in my view, the application for a stay of the present proceeding

pursuant to section 222 of the Companies Act 1965, in the light of the winding-up petition in the Commercial Division No: 3 Court, should have been made in that Court instead of in this Court. Section 222 reads –

**222. Power to stay or restrain proceedings against company.**

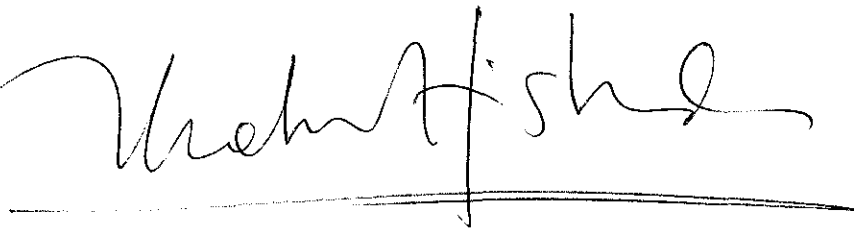
**At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.**

The words ‘the Court’ in the above section, to my mind, refer to the Winding-Up Court and in the context of the present case it means the Commercial Division NO: 3 Court, where the first petition was filed (or presented); since it is in relation to that Winding-Up proceeding that encl. 21 was filed. Only that Court can restrain this Court from proceeding with the present petition.

The other party applying for an adjournment was Encik Albert Ewe, the learned counsel for an intended intervener, one Cheok Kim Kee. Cheok Kim

Kee wants to intervene because, if allowed to intervene, he intends to apply to this Court for a declaration that the Court Order dated 26 November 2007 (the Court order that appointed the provisional liquidator) does not direct him to do anything (Cheok Kim Kee had received a letter from the provisional liquidator asking him to deliver all records of the respondent company in his possession to the provisional liquidator within three days). I disallowed the intended intervener's application for an adjournment because his application to intervene was only filed very late: it was filed only on 22 January 2008 and the sealed copy of the summons in chambers was yet to be extracted and served on the petitioner and the respondent.

*[Order in terms of the petition]*

A handwritten signature in black ink, appearing to read 'Mohd Hisham', written over a horizontal line.

(Dato' Mohd Hishamudin bin Mohd Yunus)

Judge, High Court

(Commercial Division)

Kuala Lumpur

Date of decision: 24 January 2008

Date of written grounds of judgment: 4 March 2008

Encik Alex Chang (Messrs Alex Chang & Co) for the petitioner

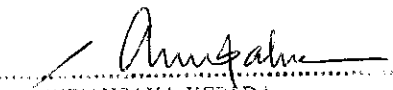
Respondent absent

Encik Gabriel Daniel (Messrs Paul Ong & Associates) for the creditor,  
Logamweld Sdn Bhd

Encik Albert Ewe (Messrs Wan Ewe Chong) for the proposed intervener

Puan Siti Mafuza for the Official Receiver

DISAMBAKUT

  
.....  
SETIAUSAHA KEPADA  
Y.A. DATU MOHD HISHAMUDIN BIN MOHD YUNUS  
HAKIM MAHKAMAH TINGGI  
KUALA LUMPUR