

JUDGMENT Express

[2026] 1 MLRA Shencourt Sdn Bhd
v. Shencourt Properties Sdn Bhd & Ors
And Another Appeal 299

SHENCOURT SDN BHD v. SHENCOURT PROPERTIES SDN BHD & ORS AND ANOTHER APPEAL

Court of Appeal, Putrajaya
Nantha Balan Moorthy, Wong Kian Kheong, Ahmad Kamal Md Shahid JJCA
[Civil Appeal Nos: W-02(A)-1852-09-2022 & W-02(A)-1998-10-2022]
21 October 2025

Company Law: *Winding up — Whether creditors’ meeting of wound-up company could lawfully appoint Committee of Inspection (‘COI’) to act with liquidator of wound-up company without liquidator convening meeting of contributories of wound-up company to decide whether COI should be appointed — Whether res judicata (including issue estoppel principle) could not estop application of mandatory statutory provision*

The 1st respondent in Civil Appeal No: W-02(A)-1852-09-2022 (‘1st appeal’), Shencourt Properties Sdn Bhd (‘wound-up company’) was wound up on 19 April 2002, and joint liquidators were appointed. Shencourt Sdn Bhd (‘SSB’) (in liquidation), which was the respondent in Civil Appeal No: W-02(A)-1998-10-2022 (‘2nd appeal’), filed a proof of debt (‘SSB’s 1st POD’) with the joint liquidators who rejected the same. The 2nd appellant in the 2nd appeal, Messrs Putra Gill (‘Messrs PG’), filed a POD in the liquidation of the wound-up company, and the same was admitted by the Court of Appeal. The wound-up company then applied to the Federal Court for leave to appeal against the Court of Appeal’s order (‘wound-up company’s leave application’). On 18 January 2019, the Court of Appeal removed the joint liquidators and appointed the Official Receiver (‘OR’) as the liquidator of the wound-up company, following which the OR issued a notice for the convening of a creditors’ meeting on 17 October 2019 (‘17 October 2019 creditors’ meeting’) to decide whether a Committee of Inspection (‘COI’) comprising creditors of the wound-up company should be formed or not. The OR informed the 17 October 2019 creditors’ meeting that in view of s 241(2) of the Companies Act 1965 (‘CA 1965’), the formation of the creditors’ COI was subject to the approval of the meeting of the contributories of the wound-up company (‘contributories’ meeting’). Due to a lack of *coram*, the contributories’ meeting did not proceed and thereafter no such meeting was held by the OR to approve the formation of the creditors’ COI. A resolution was passed at the 17 October 2019 creditors’ meeting to appoint a creditors’ COI comprising Jagjit Singh Gill, the 2nd respondent in the 1st appeal, together with the 3rd, 4th and 5th respondents and one Bong Lep Siong. On 21 October 2019, a meeting of the creditors’ COI was held (‘21 October 2019 creditors’ COI meeting’) and a resolution was passed directing the OR to withdraw all ongoing civil matters in court relating to the wound-up company. Based solely on the said resolution,



Messrs PG applied to the Federal Court to strike out the wound-up company's leave application. The Federal Court on 28 July 2020 allowed the striking-out application ('Federal Court's decision dated 28 July 2020'). On 29 September 2020, SSB filed a second POD with the OR, which was rejected, and SSB's appeal to the Winding-Up Court against that decision was dismissed. SSB thereafter, on 19 October 2020, applied to the Winding-Up Court for, *inter alia*, an order declaring that the 17 October 2019 creditors' meeting and all resolutions and/or decisions made therein were invalid (prayer 1) ('SSB's Application'). Messrs PG, in turn, on 4 December 2020, applied to strike out SSB's Application. On 20 September 2022, the Winding-Up Court dismissed prayers 1 and 5 of SSB's application and allowed prayers 2 to 4 and 6. Hence, the instant appeals, comprising the 1st appeal by SSB against the dismissal of prayer 1 of SSB's Application, and the 2nd appeal by Jagjit Singh Gill and Messrs PG against the granting of prayers 2 to 4 and 6 of SSB's Application.

A novel question of law was raised, namely, whether a creditors' meeting of a wound-up company could lawfully appoint a COI to act with the liquidator of the wound-up company, without the liquidator convening a meeting of contributories of the wound-up company to decide whether a COI should be appointed. In addition, the following issues were raised for determination: (i) whether SSB had the right to file SSB's Application and the 1st appeal; (ii) whether Messrs PG was presently a creditor of the wound-up company and entitled to proceed with the 2nd appeal; (iii) whether SSB was required to obtain leave of the Winding-Up Court to file SSB's Application; and (iv) whether SSB was estopped by the Federal Court's decision dated 28 July 2020 from proceeding with SSB's Application and the 1st appeal.

Held (allowing the 1st appeal; and dismissing the 2nd appeal; ordered accordingly):

(1) SSB, being a contributory of the wound-up company, was 'aggrieved' by the OR's act or decision with regard to the 17 October 2019 creditors' meeting, all the resolutions, decisions, acts and consequences which arose therefrom, including the 21 October 2019 creditors' COI meeting. SSB therefore had the right under s 279 of the CA 1965 to file SSB's Application and the 1st appeal. (paras 23-24)

(2) Messrs PG, having been paid its POD in full by the OR, no longer had any right to continue with the 2nd appeal. On this ground alone, the 2nd appeal was dismissed with costs. (para 25)

(3) *N Chanthiran Nagappan v. Kao Che Jen* ('*Chanthiran*') relied on by the 3rd and 5th respondents in the 1st appeal and by Messrs PG, in support of the preliminary objection that the 1st appeal was not competent, was distinguishable from the instant case. *Chanthiran* did not concern an appeal pursuant to s 279 of the CA 1965 by a party aggrieved by an act or decision of a liquidator, and it was not decided by the Federal Court that *Chanthiran* had retrospective effect. For the aforesaid reasons, the preliminary objection was dismissed. (para 28)



(4) The effect of the Federal Court’s decision dated 28 July 2020 was merely to affirm the Court of Appeal’s order for the admission of Messrs PG’s POD. It did not estop SSB’s Application and the 1st appeal. SSB’s Application should be allowed on the ground that the mandatory provision of s 241(2) of the CA 1965 had not been complied with. *Res judicata* (which included the issue estoppel principle) could not estop the application of a mandatory statutory provision. (para 30)

(5) Reading s 241(1) and (2) of the CA 1965 together harmoniously, for a liquidator of a wound-up company to form a COI to act with the liquidator, the liquidator should convene both creditors and contributories’ meetings (to be held separately). As required by s 241(2) of the CA 1965, if there was any difference between the determinations of the meetings of the creditors and contributories, the Winding-Up Court “shall decide the difference and make such order as it thinks fit”. (para 32)

(6) Without the approval of the contributories’ meeting, the formation of the creditors’ COI in this case by way of resolution was invalid, and all actions taken pursuant to all resolutions and decisions made therein were unlawful. In the premises, the Winding-Up Court had erred in law in dismissing prayer 1 of SSB’s Application. (paras 32-33)

Case(s) referred to:

N Chanthiran Nagappan v. Kao Che Jen [2023] 5 MLRA 247 (distd)

Sabah Development Bank Bhd v. TYL Land & Development Sdn Bhd [2024] 6 MLRA 784 (refd)

Wong Weng Foo v. Residensi Laguna Joint Management Body & Ors [2024] MLRAU 327 (refd)

Legislation referred to:

Companies Act 1965, ss 241(1), (2), 279

Companies Act 2016, ss 517, 619(6), Tenth Schedule, paras 1, 2

Companies (Winding-Up) Rules 1972, r 93

National Land Code, ss 42(iii), 270(1)(a), 271(1)(a)

Counsel:

For Appeal No: W-02(A)-1852-09-2022

For the appellants: Alvin Tang Wye Keet (Ponnie Govindasamy & Chin Wui Imm with him); M/s Alvin Tang Law Office

For the 1st respondent: Hafizah Johor Ariff; Malaysian Department of Insolvency

For the 2nd, 3rd & 5th respondents: Rajan Navaratnam (Jagjit Singh Gill & Sheena Sebastian with him); M/s Putra Gill



For Appeal No: W-02(A)-1998-10-2022

For the appellants: Rajan Navaratnam (Jagjit Singh Gill & Sheena Sebastian with him); M/s Putra Gill

For the respondent: Alvin Tang Wye Keet (Ponnie Govindasamy & Chin Wui Imm with him); M/s Alvin Tang Law Office

[For the High Court judgment, please refer to *Hew Kiang Hoe & Anor v. Shencourt Properties Sdn Bhd & Ors* [2022] MLRHU 2409]

JUDGMENT**Wong Kian Kheong JCA:****A. Introduction**

[1] The above two appeals (2 Appeals) discuss, among others, a novel question of law, namely, whether a meeting of creditors of a wound up company can lawfully appoint a “Committee of Inspection” (COI) to act with the liquidator of the wound up company, without the liquidator convening a meeting of contributories of the wound up company to decide whether a COI should be appointed.

B. Background

[2] Shencourt Properties Sdn Bhd (Wound Up Company) was wound up by an order of the High Court (Winding Up Court) on 19 April 2002.

[3] On 4 February 2004, Mr Ricky Thong Yew Fook (Mr Thong) was appointed as the liquidator for the Wound Up Company. Dato’ Narendrakumar a/l Chunalil Rugnath (Dato’ Narendrakumar) was subsequently appointed on 26 April 2011 as a joint liquidator of the Wound Up Company (together with Mr Thong). This judgment shall refer to both Mr Thong and Dato’ Narendrakumar as the “Joint Liquidators (Wound Up Company)”.

[4] Shencourt Sdn Bhd (in liquidation) (SSB) filed a proof of debt (SSB’s 1st POD) with the Joint Liquidators (Wound Up Company), but SSB’s 1st POD was rejected by the Joint Liquidators (Wound Up Company) on 15 January 2018 [Joint Liquidators’ Rejection (SSB’s 1st POD)].

[5] M/s Putra Gill (M/s PG), a law firm, had filed a POD in the liquidation of the Wound Up Company (M/s PG’s POD). On 3 December 2018, the Court of Appeal had admitted M/s PG’s POD [Court of Appeal’s Order (Admission of M/s PG’s POD)]. An application to the Federal Court had been made by the Wound Up Company for leave to appeal against the Court of Appeal’s Order (Admission of M/s PG’s POD) [Wound Up Company’s Federal Court Leave Application (Admission of M/s PG’s POD)].



[6] On 18 January 2019, the Court of Appeal-

- (1) removed the Joint Liquidators (Wound Up Company); and
- (2) appointed the Official Receiver (OR) as the liquidator for the Wound Up Company.

[Court of Appeal's Order (18 January 2019)].

[7] On 24 September 2019, the OR issued a notice for the convening of a meeting of the creditors of the Wound Up Company on 17 October 2019 [Creditors' Meeting (17 October 2019)]. The main agenda for the Creditors' Meeting (17 October 2019) was to decide on whether a COI comprising creditors of the Wound Up Company (Creditors' COI) should be formed or not.

[8] The OR did not serve the notice of the Creditors' Meeting (17 October 2019) on SSB.

[9] At the Creditors' Meeting (17 October 2019)-

- (1) a resolution had been passed to appoint a Creditors' COI [Resolution (Creditors' COI)] comprising the following creditors-
 - (a) Mr Jagjit Singh Gill (Mr Jagjit), the 2nd respondent in Civil Appeal No W-02(A)-1852-09/2022 (1st Appeal);
 - (b) Mr Bong Lep Siong;
 - (c) Mr Yong Yow Khong, the 3rd respondent in the 1st Appeal [3rd Respondent (1st Appeal)];
 - (d) Mr Ker Cheng Hoo, the 4th respondent in the 1st Appeal [4th Respondent (1st Appeal)]; and
 - (e) Mr Pang Yew Fatt, the 5th respondent in the 1st Appeal [5th Respondent (1st Appeal)]

All the members of the Creditors' COI shall be referred collectively in this judgment as the "Members (Creditors' COI)"; and

- (2) the OR informed the Creditors' Meeting (17 October 2019) that in view of s 241(2) of the Companies Act 1965 [CA (1965)], the formation of the Creditors' COI was subject to the approval of the meeting of the contributories of the Wound Up Company (Contributories' Meeting). We shall refer to this OR's statement in the Creditors' Meeting (17 October 2019) as the "OR's Reservation".

[10] On 17 October 2019, the Contributories' Meeting did not proceed due to a lack of quorum. Thereafter, the OR did not hold a Contributories' Meeting to approve the formation of the Creditors' COI.



[11] On 21 October 2019, a meeting of the Creditors' COI was held [Creditors' COI Meeting (21 October 2019)]. Mr Jagjit chaired the Creditors' (21 October 2019), and a resolution was passed which directed the OR to withdraw immediately all ongoing civil matters in court related to the Wound Up Company [Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company)].

[12] Based solely on the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company), M/s PG filed an application in the Federal Court to strike out the Wound Up Company's Federal Court Leave Application (Admission of M/s PG's POD) [M/s PG's Striking Out Application (Wound Up Company's Federal Court Leave Application)]. On 28 July 2020, the Federal Court allowed with costs M/s PG's Striking Out Application (Wound Up Company's Federal Court Leave Application) [Federal Court's Decision (28 July 2020)].

[13] SSB filed with the OR a second POD on 29 September 2020 and 6 November 2020 (SSB's 2nd POD). With regard to SSB's 2nd POD-

- (1) on 30 May 2022, the OR rejected SSB's 2nd POD [OR's Rejection (SSB's 2nd POD)]; and
- (2) SSB had appealed to the Winding Up Court on 28 June 2022 against the OR's Rejection (SSB's 2nd POD) {SSB's Appeal [OR's Rejection (SSB's 2nd POD)]}. We have been informed by SSB's learned counsel that-
 - (a) SSB's Appeal [OR's Rejection (SSB's 2nd POD)] had been dismissed by the Winding Up Court [Winding Up Court's Decision (SSB's 2nd POD)]; and
 - (b) SSB had appealed to the Court of Appeal against the Winding Up Court's Decision (SSB's 2nd POD) [SSB's Appeal to Court of Appeal (SSB's 2nd POD)]. At the time of our decision, SSB's Appeal to Court of Appeal (SSB's 2nd POD) is still pending.

C. Proceedings In The Winding Up Court

[14] SSB filed a notice of motion on 19 October 2020 in the Winding Up Court (SSB's Application). SSB's Application prayed for the following orders, among others:

- (1) an order that the Creditors' Meeting (17 October 2019) is invalid [Prayer 1 (SSB's Application)];
- (2) an order that all resolutions and/or decisions made at the Creditors' Meeting (17 October 2019) and Creditors' Meeting (21 October 2019), are invalid, including-



- (a) the Resolution (Creditors' COI); and
- (b) Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company) [Prayer 2 (SSB's Application)];
- (3) an order that the purported Creditors' COI comprising the Members (Creditors' COI), is invalid [Prayer 3 (SSB's Application)];
- (4) an order that the Creditors' COI Meeting (21 October 2019) and any other meeting of the Creditors' COI, and all resolutions passed at such meetings, are invalid [Prayer 4 (SSB's Application)];
- (5) in the event that the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company) is found to be valid, an order that the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company) is of no effect and/or is not binding on the OR [Prayer 5 (SSB's Application)]; and
- (6) the OR and/or liquidator of the Wound Up Company be directed to take all necessary steps to reverse the consequences of the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company) [Prayer 6 (SSB's Application)].

[15] M/s PG filed a notice of motion on 4 December 2020 in the Winding Up Court (M/s PG's Application). M/s PG's Application prayed for the following orders, among others:

- (1) an order to strike out SSB's Application; and
- (2) costs of M/s PG's Application shall be paid personally by the liquidator of SSB to M/s PG.

[16] On 20 September 2022, the Winding Up Court decided as follows:

- (1) with regard to SSB's Application-
 - (a) Prayer 1 (SSB's Application) was dismissed;
 - (b) Prayer 2 (SSB's Application), Prayer 3 (SSB's Application), Prayer 4 (SSB's Application) and Prayer 6 (SSB's Application) were granted;
 - (c) Prayer 5 (SSB's Application) had become academic and was therefore dismissed;
 - (d) an order that the formation of the Creditors' COI and the appointment of the Members (Creditors' COI) shall not be determined until a Contributories' Meeting has taken place or alternatively, s 241 CA (1965) has been effectively complied with; and



(e) no order as to costs

[Winding Up Court's Decision (SSB's Application)]; and

(2) M/s PG's Application was dismissed with no order as to costs.

D. The 2 Appeals

[17] The 2 Appeals are-

- (1) the 1st Appeal was SSB's appeal to the Court of Appeal against the Winding Up Court's dismissal of Prayer 1 (SSB's Application); and
- (2) Civil Appeal No W-02(A)-1998-10/2022 had been lodged by Mr Jagjit and M/s PG against the granting of Prayer 2 (SSB's Application), Prayer 3 (SSB's Application), Prayer 4 (SSB's Application) and Prayer 6 (SSB's Application) by the Winding Up Court (2nd Appeal).

[18] The 2 Appeals were heard together in the Court of Appeal.

[19] The 4th Respondent (1st Appeal) did not appoint solicitors to act for him in the 1st Appeal. Nor was the 4th Respondent present during the hearing of the 2 Appeals.

E. Application Of CA (1965)

[20] It is clear from s 619(6) CA (2016) that the provisions of CA (1965) [not CA (2016)] shall apply to the 2 Appeals. This is because the Wound Up Company was wound up pursuant to CA (1965) [before the enforcement of CA (2016)]. Reproduced below is s 619(6) CA (2016):

“section 619. **General transitional provisions**

...

(6) A company which is in the course of winding up immediately before the commencement of this Act shall continue to be wound up under the relevant provisions in the [CA (1965)].”

[Emphasis added]

F. Issues

[21] In addition to the novel question of law stated in the above para 1, the following issues shall be determined in these 2 Appeals:

- (1) did SSB have a right to file SSB's Application and the 1st Appeal?;
- (2) whether M/s PG is presently a creditor of the Wound Up Company and is thereby entitled to proceed with the 2nd Appeal;



- (3) was SSB required to obtain leave of the Winding Up Court for the filing of SSB's Application?; and
- (4) whether SSB was estopped by the Federal Court's Decision (28 July 2020) from proceeding with SSB's Application and the 1st Appeal.

G. Does SSB Have A Right To File SSB's Application And The 1st Appeal?

[22] Section 279 CA (1965) states as follows:

“section 279. **Appeal against decision of liquidator**

Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.”

[Emphasis added]

Section 279 CA (1965) is in *pari materia* with the present s 517 CA (2016).

[23] It is not disputed that SSB is a contributory of the Wound Up Company. As such, SSB was “aggrieved” by the OR's “act or decision” with regard to the Creditors' Meeting (17 October 2019), all the resolutions, decisions, acts and consequences which arose from the Creditors' Meeting (17 October 2019) and Creditors' Meeting (21 October 2019). It is thus clear that SSB had the right under s 279 CA (1965) to file-

- (1) SSB's Application; and
- (2) the 1st Appeal.

[24] We have not overlooked the submission by learned counsel for Mr Jagjit, 3rd Respondent (1st Appeal), 5th Respondent (1st Appeal) and M/s PG, that SSB had no *locus standi* to file SSB's Application and the 1st Appeal because SSB was not a creditor of the Wound Up Company. This contention is premised on the following two grounds:

- (1) SSB did not appeal to the Winding Up Court against the Joint Liquidators' Rejection (SSB's 1st POD) pursuant to r 93 of the Companies (Winding Up) Rules 1972; and
- (2) OR's Rejection (SSB's 2nd POD) which was affirmed by the Winding Up Court's Decision (SSB's 2nd POD).

At this juncture, we express no view on whether SSB is a creditor of the Wound Up Company because-

- (a) by virtue of the Court of Appeal's Order (18 January 2019), the Joint Liquidators' Rejection (SSB's 1 POD) may not be valid; and



- (b) SSB's Appeal to Court of Appeal (SSB's 2nd POD) is still pending.

As explained in the above para 23, the fact that SSB is a contributory of the Wound Up Company, *ipso facto*, conferred a right on SSB under s 279 CA (1965) to file SSB's Application and the 1st Appeal.

H. Whether M/s PG Is Presently A Creditor Of The Wound Up Company

[25] After the Federal Court's Decision (28 July 2020), the OR had paid in full M/s PG's POD. Consequently, M/s PG has no right to continue with the 2nd Appeal. On this ground alone, we dismiss the 2nd Appeal with costs.

I. Was SSB Required To Obtain Leave Of The Winding Up Court For The Filing Of SSB's Application?

[26] After the Winding Up Court's Decision (SSB's Application), on 17 May 2023, Nallini Pathmanathan FCJ delivered a judgment in the Federal Court case of *N Chanthiran Nagappan v. Kao Che Jen* [2023] 5 MLRA 247.

[27] Premised on *Chanthiran*, learned counsel for Mr Jagjit, 3rd Respondent (1st Appeal), 5th Respondent (1st Appeal) and M/s PG, had raised a preliminary objection that the 1st Appeal was not competent because SSB had not obtained leave of the Winding Up Court to file SSB's Application and the 1st Appeal (PO).

[28] We dismiss the PO with costs on the following grounds:

- (1) *Chanthiran* can be easily distinguished from this case because-

- (a) in *Chanthiran*, at [5], a contributory of the company had filed a suit against a liquidator as follows-

"[5] The present appeal arose from an application by the contributory dated 6 April 2018, where the contributory claimed that the liquidator had failed to perform his duties and accordingly sought a court order to compel the liquidator to do the following:

- (a) to call a creditors' meeting within seven days of the court order;
- (b) to invite all the company's creditors to submit their proofs of debt;
- (c) to disclose the name of the company's trust account, the name of the bank that maintains the said account, any payments into the said account and the collection of debts from a list of purported debtors;



- (d) to show the steps taken by the liquidator in the liquidation process; and
- (e) to disclose all the expenses incurred in the liquidation process and the purpose of the said expenses.”

[Emphasis added]; and

- (b) *Chanthiran* did not concern an appeal pursuant to s 279 CA (1965) to the Winding Up Court by a party aggrieved by an act or decision of a liquidator. In fact, there was no discussion of s 279 CA (1965) in *Chanthiran*.

If we have applied *Chanthiran* and upheld the PO, this would have rendered nugatory s 279 CA (1965); and

- (2) the Federal Court in *Chanthiran* did not decide that *Chanthiran* had retrospective effect.

In *Wong Weng Foo v. Residensi Laguna Joint Management Body & Ors* [2024] MLRAU 327, the Court of Appeal applied *Chanthiran* retrospectively [Court of Appeal’s Decision (*Wong Weng Foo*)]. The Federal Court granted leave to appeal against the Court of Appeal’s Decision (*Wong Weng Foo*) on six questions of law, one of which concerned whether *Chanthiran* had retrospective effect [Federal Court’s Leave (*Wong Weng Foo*)]. We reproduce below the fourth question of law (for which leave of the Federal Court had been granted)-

- “4. **Whether the Federal Court’s decision in the case of *N Chanthiran Nagappan v. Kao Che Jen* [2023] 5 MLRA 247 applies retrospectively to the leave stage when the proceedings have ended at the Winding Up Court.**”

[Emphasis added]

On 19 May 2025 (after the oral hearing of these 2 Appeals on 23 April 2025), the Federal Court allowed the appeal and reversed the Court of Appeal’s Decision (*Wong Weng Foo*) [Federal Court’s Decision (*Wong Weng Foo*)]. As a matter of *stare decisis*, we are bound by the Federal Court’s Decision (*Wong Weng Foo*). Accordingly, *Chanthiran* cannot apply retrospectively to SSB’s Application. In other words, SSB was not required to obtain leave of the Winding Up Court to file SSB’s Application and the 1st Appeal.



J. Whether SSB Was Estopped By The Federal Court's Decision (28 July 2020) From Proceeding With SSB's Application And The 1st Appeal

[29] Learned counsel for Mr Jagjit, 3rd Respondent (1st Appeal), 5th Respondent (1st Appeal) and M/s PG, had contended that by virtue of the second limb of *res judicata* doctrine, namely, the issue estoppel principle, SSB was estopped by the Federal Court's Decision (28 July 2020) from proceeding with SSB's Application and the 1st Appeal.

[30] We are of the view that the Federal Court's Decision (28 July 2020) does not estop SSB's Application and the 1st Appeal. Our reasons are as follows:

- (1) the effect of the Federal Court's Decision (28 July 2020) was merely to affirm the Court of Appeal's Order (Admission of M/s PG's POD), namely, the admission of M/s PG's POD; and
- (2) as discussed in para 32 below, SSB's Application should be allowed on the ground that the mandatory provision of s 241(2) CA (1965) had not been complied with in this case. It is trite law that the case law equitable doctrine of *res judicata* (which includes the issue estoppel principle) cannot estop the application of a mandatory statutory provision [such as s 241(2) CA (1965)]. Suffice it for us to rely on the following judgment of the Court of Appeal in *Sabah Development Bank Bhd v. TYL Land & Development Sdn Bhd* [2024] 6 MLRA 784, at [46(1)]:

“[46] With respect, the learned JC [Judicial Commissioner] committed an error of law in deciding that the Bank was estopped from denying the contents of the 4 PODs [Proofs of Debt] in this case (4th Legal Error). The 4th Legal Error is as follows:

- (1) the doctrine of equitable estoppel is premised on case law and cannot bar the effect of s 524(1)(a), (b) and (2) CA [Companies Act 2016] read with paras 13 and 15 [paragraphs 13 and 15 of Schedule C to the Insolvency Act 1967]. It is decided in the High Court case of *Jambatan Merah Sdn Bhd (In Liquidation) v. Public Bank Bhd* [2015] MLRHU 1092, at [78], as follows:

“[78] In respect of the Defendant's purported right to exercise remedy as a chargee under s 271(1)(a) NLC, it is trite law that there can be no application of the issue estoppel doctrine against the operation of a statutory provision (in this case, the application of s 270(1)(a) NLC). I cite the following cases:

- (a) in *Hotel Ambassador (M) Sdn Bhd v. Seapower (M) Sdn Bhd* [1991] 1 MLRA 89, at p 92, Hashim Yeop Sani CJ (Malaya) held in the Supreme Court as follows-



“On the question of issue estoppel we agree with the learned judge that on the facts of this case the appellants cannot invoke the doctrine of issue estoppel. There can be no estoppel as against statutory provisions.”

[Emphasis added];

- (b) Thomas CJ decided as follows in the Court of Appeal of the Federated Malay States in *Puran Singh v. Kehar Singh Bahadur Singh* [1937] 1 MLRH 335, at p 342 -

“The main question argued at the appeal was that the learned trial Judge having held that the registration of *Kehar Singh* as proprietor of certain lands had been obtained by means of an insufficient or void instrument, viz, an invalid power of attorney, and that it was in consequence void under s 42(iii) of the Land Code, he was wrong in holding that the plaintiff was estopped by his conduct from objecting to the registration. In support of this contention he cited *Borrow's* case (1880) 14 ChD 432 in which it is stated by Bacon, V.C., in the course of his judgment that:

“The doctrine of estoppel cannot be applied to an Act of Parliament. Estoppel only applies to a contract *inter partes* and it is not competent to parties to a contract to estop themselves or anybody else in the face of an Act of Parliament.”

This view is followed in the case of *Abdul Aziz v. Kanthen Mallik* 38 ILR Cal 512 515 in which at p 515 a long list of authorities has been set out. The Court there decided that it was not prepared to accede to the argument that the principle of estoppel overrides the provisions of either s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act....

So far as this is an argument on the question of estoppel it cannot in my opinion succeed, since it is only another way of saying that acts of the parties *inter se* can amount to an estoppel in respect of an Enactment.”

[Emphasis added]; and

- (c) in *Re Salvage Engineers Ltd* [1962] 1 MLRH 185, at p 188, Ong J (as he then was) held in the High Court -

“There can be no estoppel against the operation of a statute.”

...”

[Emphasis added]



K. Was There Compliance With Section 241(2) CA (1965) In This Case?

[31] We reproduce below 241 CA (1965):

“Section 241. **Meetings to determine whether committee of inspection to be appointed**

- (1) **The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.**
- (2) **If there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall decide the difference and make such order as it thinks fit.”**

[Emphasis added]

The provisions of s 241(1) and (2) CA (1965) are now enacted in paras 1 and 2 respectively of the Tenth Schedule to the CA (2016).

[32] We have no hesitation to decide that reading together s 241(1) and (2) CA (1965) in a harmonious manner, for a liquidator of a wound up company to form a COI to act with the liquidator-

- (1) the liquidator shall convene **both** creditors’ meeting and contributories’ meeting (to be held separately) — please refer to s 241(1) CA (1965); and
- (2) as required by s 241(2) CA (1965), if there is a “difference between the determinations of the meetings of the creditors and contributories”, the Winding Up Court “shall decide the difference and make such order as it thinks fit”.

If we have accepted the construction of s 241(1) CA (1965) only as advanced by learned counsel for Mr Jagjit, 3rd Respondent (1st Appeal), 5th Respondent (1st Appeal) and M/s PG [without considering the mandatory effect of s 241(2) CA (1965)]-

- (a) this will render redundant s 241(2) CA (1965); and
- (b) a Creditors’ COI can be formed without the approval of the Contributories’ Meeting. This may cause irreparable prejudice to the wound up company’s contributories. Conversely, a contributories’ COI may be formed without the approval of the wound up company’s creditors and such an event may cause injustice to the wound up company’s creditors.

The above decision is fortified by the OR’s Reservation, of which Mr Jagjit (and consequently, M/s PG) had actual knowledge.



Accordingly, without the approval of the Contributories' Meeting-

- (i) the formation of the Creditors' COI in this case by way of the Resolution (Creditors' COI), is invalid; and
- (ii) all Creditors' COI meetings, including the Creditors' COI Meeting (21 October 2019), are unlawful;
- (iii) all resolutions and decisions made at all Creditors' COI meetings, including the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company), are invalid; and
- (iv) all action taken pursuant to all resolutions and decisions made at all Creditors' COI meetings, including the Resolution (OR's Withdrawal of Proceedings regarding Wound Up Company), are unlawful.

[33] In view of our reasons explained in the above para 32, the Winding Up Court had erred in law by dismissing Prayer 1 (SSB's Application).

L. Outcome Of The 2 Appeals

[34] Premised on the above reasons-

- (1) with regard to the 1st Appeal-
 - (a) the PO is dismissed with costs of RM20,000.00 to be paid by Mr Jagjit, the 3rd Respondent (1st Appeal) and the 5th Respondent (1st Appeal), jointly and severally, to SSB (subject to allocatur fee);
 - (b) the 1st Appeal is allowed and Prayer 1 (SSB's Application) is hereby ordered; and
 - (c) costs of the 1st Appeal and SSB's Application (proceedings in the Court of Appeal and Winding Up Court) in a sum of RM20,000.00 shall be paid by Mr Jagjit, the 3rd Respondent (1st Appeal) and the 5th Respondent (1st Appeal), jointly and severally, to SSB (subject to allocatur fee); and
- (2) the 2nd Appeal is dismissed with costs of RM10,000.00 to be borne jointly and severally by Mr Jagjit and M/s PG in favour of SSB (subject to allocatur fee).

[35] A draft copy of this judgment (Draft) had been previously forwarded to Nantha Balan Moorthy and Ahmad Kamal Md Shahid JJCA. Both my learned brothers had concurred with the Draft.

