IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)
[ORIGINATING SUMMONS NO: WA-24NCC-131-03/2020]

In the matter of Golden Plus Holdings Berhad (Company No.: 113076-T);

And

In the matter of the Adjourned Extraordinary General Meeting of Golden Plus Holdings Berhad (Company No.: 113076-T) held on 6.3.2020;

And

In the matter of the Constitution of Golden Plus Holdings Berhad (Company No.: 113076-T);

And

In the matter of Section 314(1)(b), 314(2)(b), 351, 582, 585 and 602 of the Companies Act 2016; And

In the matter of Order 29 rule 1 and / or Order 92 rule 4 of the Rules of Court 2012

BETWEEN

1. **TEO KIM HUI**
   (NRIC No.: 940605-12-5261)

2. **TEO HAN TONG**
   (NRIC No.: 311106-12-5089)

3. **LAI SU-CHEN**
   (PRC PASSPORT NO.: 306729784) ... PLAINTIFFS

AND

GOLDEN PLUS HOLDINGS BERHAD
(COMPANY NO.: 113076-T) ... DEFENDANT

[In the matter of an application by the Plaintiffs for an Order Committal against Tan Say Han ("1st Contemnor"), Mohd Salleh bin Lamsin ("2nd Contemnor"), Adey bin Liun ("3rd Contemnor"), Tan Yen Siang ("4th Contemnor"), Teh Wei Kian ("5th Contemnor") and Duwee Bao Kae ("6th Contemnor")]

GROUNDS OF JUDGMENT

Introduction

[1] This is the judgment of the Court in respect of the Plaintiffs/Applicants' (hereinafter referred to as the "**Applicants**") application under O. 52 r. 4 of the Rules of Court 2012 (**"the Rules**") seeking an order that the Proposed Contemnors be committed for contempt of court for non-compliance of this Court's order dated 28.8.2020 ("**the August Order**") and interfering with the implementation and/or the

subject matter of the August Order. The Applicants obtained leave from this Court to proceed with the committal application pursuant to O. 52 r. 3 of the Rules on 17.11.2020.

Background facts

[2] The Applicants are shareholders/members of the Respondent ("**the Company**"). The 1st to 5th Proposed Contemnors were formerly the directors of the Company until they were removed following the August Order.

[3] On 19.02.2020, the Applicants issued a Notice to Convene Adjourned General Meeting of Members ("**Notice of Adjourned EGM**") on 06.03.2020 which proposed, *inter alia*, resolutions for the removal of the entire Board of Directors of the Company including the 5th Proposed Contemnor and to replace them with three (3) new directors - Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai ("**the 3 Directors**") ("**Proposed Resolutions**").

[4] The Adjourned Extraordinary General Meeting ("**Adjourned EGM**") proceeded as scheduled on 06.03.2020 but was adjourned by the Chairman of the Adjourned EGM. After the adjournment, a number of members remained at the meeting venue and purportedly continued with the Adjourned EGM whereby the Proposed Resolutions were passed.

[5] On 11.03.2020, the Applicants commenced this instant action ("**OS 131**") for reliefs relating to the validity of the adjournment and Proposed Resolutions passed, *inter alia* –

(a) a declaration that the adjournment of the Adjourned EGM was null and void;

(b) a declaration that the resolutions passed during the Adjourned EGM are valid; and

(c) a declaration that all acts of the then Board of Directors of the Company taken subsequent to the Adjourned EGM are invalid.

[6] On 28.08.2020, this Court allowed OS 131. The terms of the August Order include the following prayers:

"(1) the adjournments of the Adjourned Extraordinary General Meeting of the Defendant on 6.3.2020 by Tan Yen Siang and / or Tan Say Han were null, void, ineffective and not valid;

(2) the continuation of the Adjourned Extraordinary General Meeting of the Defendant on 6.3.2020 following the said invalid adjournments together with all resolutions passed thereat on 6.3.2020 was valid and binding;

(3) all acts of the board of directors and / or directors of the Defendant as comprised prior to the passing of the resolutions on 6.3.2020, and taken subsequent to the passing of the resolution on 6.3.2020, unless validated by Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai, as the validly appointed directors pursuant to the Adjourned Extraordinary General Meeting of Golden Plus Holdings Berhad on 6.3.2020, are null, void and invalid;

(4) Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai are the directors of the Defendant;

(5) an order that all records, books and properties of whatsoever nature belonging or which appear to belong to the Defendant be delivered up by the Defendant, its directors, officers, employees, agents, and / or servants to Chiew Keong On, Yapp Kiam Yen and / or Wong Koon Wai within seven (7) days from the date of service of the order to be made herein; and

(6) that the Defendant, its directors, officers, employees, agents and / or servants be ordered to, within seven (7) days from the date of service of this order, take all necessary action to give effect to the resolutions passed at the Adjourned Extraordinary General Meeting of the Defendant on 6.3.2020 including to lodge with the relevant authorities including the Companies Commission of Malaysia the necessary forms to reflect the terms of this Order in particular the removal of Teh Wei Kian, Tan Say Han, Mohd Salleh Bin Lamsin, Adey Bin Liun, Tan Yen Siang, Yang Jin, Wang Zhi Yu and Wang Li Jun and the appointment of Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai as directors of the Defendant, all with effect from 6.3.2020."

[7] On 17.11.2020, the Applicants commenced the instant committal proceedings against the Proposed Contemnors as documented under enclosure 55.

The alleged contemptuous acts

[8] The Applicants seek a committal order against all the Proposed Contemnors on the following grounds:

A. Ground 1 - Allegedly failing to abide by the August Order in failing to, within the time stipulated –

(i) deliver up to the 3 Directors all records, books and properties of whatsoever nature belonging or which appear to belong to the Company – i.e. paragraph (5) of the August Order; and **("Failure to deliver up the Company records, books and properties")**

(ii) take all necessary action to give effect to the resolutions at the Adjourned EGM of the Company on 06.03.2020, namely to lodge with the Companies Commission of Malaysia ("**CCM**") the necessary forms to reflect the removal of the then Board of Directors and the appointment of the 3 Directors, with effect from 06.03.2020 – i.e. paragraph (6) of the August Order. **("Failure to lodge CCM forms")**

B. Ground 2 – Allegedly interfering with the implementation and/or the subject matter of the High Court Order dated 28.08.2020 by allotting 46,196,995 shares of the Company ("**the Shares**") to Eng and thereafter transferring or allowing the same to be transferred to the Alleged 6th Proposed Contemnor, thereby interfering with the administration of justice.
("Allotment of Shares")

The Law

Requirement under O. 52 r. 3 (2) of the Rules

[9] A committal application is akin to a criminal charge. The foundation of any committal application is the statement drawn up by the applicant under O. 52 r.3 of the Rules ("**the Statement**"). The act of contempt must be adequately described and particularised in detail within the Statement itself. (See *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458).

> *"**We wish to state in clear term that the alleged act of contempt must be adequately described and particularised in detail in the statement itself.** The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. **Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself.**"*

(Emphasis added)

Standard of proof

[10] Lee Hun Hoe CJ (Borneo) in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151 discussed extensively in his reasoning several decisions in coming to the ruling that the burden was on the party making the charge to prove all the charges beyond reasonable doubt.

[11] A restatement of the position was made again by the Federal Court in *Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458, where the Honourable Federal Court at pages 468 to 469 quoted the decision of Lord Denning MR in an English case of ***Re Bramblevale Ltd*** as follows:

> *"[29] it is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance .. ..*

[31] *Later, in Re Bramblevale LTO [1970] 1 Ch 125, lord Denning MR reaffirmed the same and had this to say:*

> ***A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use time honoured phrase, it must be proved beyond reasonable doubt*** *(See Lord Denning MR in at p137)."*

(Emphasis added)

(See also *Wee Choo Keong v. MBf Holdings Bhd & Anor and another appeal* [1995] 3 MLJ 549)

[12] Perhaps it is apposite to state that the standard of roof is applicable to civil as well as criminal contempt. As such, given that a contempt of court is criminal in character, a disobedience of an order originating from a civil proceeding is treated as a criminal offence. Before any person can be sanctioned, the offending act must be proven beyond reasonable doubt.

Interference with the administration of justice - a specie of contempt

[13] Given the wide categories of contempt, when dealing with "interference with the due administration of justice" an open approach must be adopted. This is because of the generality of the phrase itself. In the decision of the Federal Court in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 MLJ 241, Haidar FCJ held:

> *"In view of the generality of the phrase 'interference with the due administration of justice', we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop*

Bing J, in Chandra Sri Ram v. Murray Hiebert [1997] 3 MLJ 240 at 270 :

> *The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court.*
>
> *The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.".*

Analysis

Ground 1 – *(i) Failure to deliver up the Company records, books and properties*

[14] The 1st to 5th Proposed Contemnors responded by explaining that they had no access to the Company's offices and the Company's items. It was also highlighted that the 2nd, 3rd and 4th Proposed

Contemnors were non-executive directors of the Company and were not in any manner in control of the day to day affairs of the Company. Instead the 1st Applicant himself had attended the Kota Kinabalu office of the Company to perform a search and seizure of Company records, books and properties and locked up the office thereafter. Staffs were also prohibited from entering the office and were asked to take leave.

Findings

[15] This Court does not find that the Proposed Contemnors were in any manner guilty of contempt under this category of complaint for the following reasons:

a) The Proposed Contemnors were no longer in control of the Company after the August Order was issued.

[16] It is only logical that a person cannot be guilty of non-compliance of a specific duty if it has no capacity to carry the task. In the current scenario, it is clear the inability to perform the impugned acts emanated from the relieving of all authority and control of the Company. It simply meant that the Proposed Contemnors had no capacity to perform the specified duties even if they wanted to do so. These averments were not rebutted, and based on settled principles of law are deemed admitted (*Ng Hee Thong & Anor v. Public Bank Bhd* [1995] 1 MLJ 281).

[17] It is clear to the mind of this Court that the sequence of events that followed after the August Order was sufficient to dislodge the complaint against the Proposed Contemnors. Simply put, they no longer had control of the Company. The Applicants have failed to show beyond reasonable doubt to this Court that there was a deliberate and intentional act on the part of the Proposed

Contemnors to not make available all the relevant Company records, books and properties.

[18] Conversely, what the Proposed Contemnors have shown was their inability to comply as a result of the Applicants' own action.

[19] In *Brambervale Ltd* [1970] Ch 128 (CA) the English Court of Appeal dealt with a committal order obtained against the alleged contemnor, Mr. Hamilton, for failing to deliver company books to the registrar. Mr. Hamilton contended that he no longer had the books but the High Court judge took the view that there were two possibilities: he either had or no longer had the books. On appeal, the UK Court of Appeal quashed the committal order against Mr. Hamilton and held that there was no evidence which proved beyond reasonable doubt that Mr. Hamilton still had the books when he was ordered by court to produce the books and failed to do so -

> *"A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time- honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Take this very case. Mr. Hamilton told a lie when he said that the books were damaged and lost in the car accident on October 25, 1967.* ***That lie does not prove that Mr. Hamilton kept those books for a further year and still had them in his possession from November 19 to 26, 1968. He may have told the lie for another purpose - to conceal the fact that he destroyed the books himself shortly after the car accident. That would be a***

> ***criminal offence, but not the one with which he is charged.***

(Emphasis added)

[20] Similarly, in the case of *E & E Equipment Sdn Bhd v. Speci Avenue (M) Sdn Bhd & Ors* [2005] 6 MLJ 589 (HC), the plaintiff applied to commit the defendants to prison for failing to comply with a mandatory injunction for the return of four cranes to the plaintiff. The High Court dismissed the application because there was no evidence to prove that the cranes were still in their possession -

> *"[7] The plaintiff had argued that it is highly unlikely that D1's counsel attended court without any instructions. A reasonable person would have instructed his solicitors regarding the status of the cranes. And, that it is unlikely that first defendant's counsel, who must have spoken to second defendant when he informed court that the four cranes were in the first defendant's possession, were merely on an assumption. Notably, the plaintiff had failed to adduce any evidence at all to prove that the four cranes were at the material time in the possession, custody or control of the defendants.* ***It is my considered view that since the standard in contempt proceeding is beyond reasonable doubt, clearly the Plaintiff's case falls short of this standard, as any argument based merely on implication of certain facts finds no place in contempt proceedings.***
>
> *[8] It is trite and settled that the standard of proof in contempt proceeding is the criminal standard, that is, proof beyond reasonable doubt. In the light of the evidence of Mr SM Kam I agreed with the defendants' submission that there was insufficient evidence to find the defendants*

guilty of disobedience of the mandatory injunction order. I thus held that the plaintiff had failed to discharge their heavy burden of proving beyond reasonable doubt that the cranes were in the possession, custody or control of the first defendant when the injunction order was served on the defendants. I was satisfied that there was insufficient evidence to support the plaintiff's contention that the defendants were able to comply with the order as the cranes had not been sold to third parties".

(Emphasis added)

[21] Similar to ***Re Bramblevale Ltd*** and ***E & E Equipment***, the Applicants in this case have failed to discharge their burden of proving beyond reasonable doubt that the Company records, books and properties were in the Proposed Contemnors' possession.

(b) Failure to list / identify the relevant Company records, books and properties.

[22] The Applicants failed to particularise which specific documents and materials belonging to the Company are in the Proposed Contemnors' possession which they have failed to deliver up.

[23] It is the duty of the Applicants to demonstrate if at all, which Company records, books and properties are still not being delivered. In this respect, the Proposed Contemnors must be informed of the specific items that they have failed to deliver.

[24] Given that committal proceedings have penal consequences, it behooves the Applicants to specify with precision, the specific non- compliance or the particulars of the non-compliance. It must be drafted with specific, identifiable and precise allegation of facts. In this case the Applicants need to particularize the documents or the Company records, books and properties that

have yet to be delivered up. Failure to do so would render the Statement to be bad on grounds of being vague and lacking in particulars.

[25] In *Basset v. Magee* [2015] B.C.J no. 2166 the British Columbia Court of Appeal held that order said to be in breach must be clear and strictly construed -

> *"35 The notion of strictissimi juris encompasses more than the examples given in Peel. It requires close adherence to procedural requirements: a precision in pleadings, procedure and evidence appropriate to the nature of the process which engages the court in a conflict with one of the parties. The process must be carried out with great care* ***. The order said to be breached must be clear, for it will be strictly construed*** *."*

(Emphasis added)

[26] The failure of particularizing the Statement with the relevant particulars was fatal to the Applicants' application.

Ground 1 – (ii) Failure to lodge CCM forms

[27] It was explained to the Court that the failure to comply with the filing of the necessary documents with CCM flows from the inability to do so as a result of the Applicants' action in barring all the Proposed Contemnors from entering the Company premises.

Findings

[28] Again, the issue is whether the Proposed Contemnors were in a position to carry out the terms of the August Order as a result of the Applicants' action of barring them from entering the

Company premises. As reasoned previously, such an inability cannot tantamount to contempt.

[29] Be that as it may, it was highlighted to this Court that the relevant CCM documents were in fact lodged. This simply meant that the August Order had been put into effect. From the CCM documents exhibited by the 5th Proposed Contemnor in his Affidavit in Reply, it shows clearly that at the date the CCM form searches were printed (11.9.2020), the 3 Directors had already been appointed and were officially recorded with CCM as directors of the Company.

[30] The above would show that the appointment of the 3 Directors and the removal of the previous Board of Directors was already given effect and lodged with CCM at the very latest on 11.9.2020 which is two (2) days after service of the August Order. This is in compliance with the specific terms of the of the August Order which reads :

> *"(6) that the Defendant, its directors, officers, employees, agents and / or servants be ordered to, within seven (7) days from the date of service of this order, take all necessary action to give effect to the resolutions passed at the Adjourned Extraordinary General Meeting of the Defendant on 6.3.2020 including to lodge with the relevant authorities including the Companies Commission of Malaysia the necessary forms to reflect the terms of this Order in particular the removal of Teh Wei Kian, Tan Say Han, Mohd Salleh Bin Lamsin, Adey Bin Liun, Tan Yen Siang, Yang Jin, Wang Zhi Yu and Wang Li Jun and the appointment of Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai as directors of the Defendant, all with effect from 6.3.2020."*

[31] Therefore, it is the view of this Court that the Applicants' argument that there was a failure to carry out the terms of the August Order is a non-starter.

Ground 2 – Allotment of Shares

[32] In their defence, the Proposed Contemnors relied on the historical facts which led to the allotment of the Shares. It was explained that before the instant action arose, in 2016, the Company entered into a Facility Agreement dated 18.10.2016 ("**Facility Agreement**") with a company, China Idea Development Limited ("**CIDL**") in which CIDL granted a facility to the Company for USD 1.5 million. This resulted in the Company owing a debt to CIDL since January 2017 which was due and outstanding up till August 2019 in the sum of RM 9, 239, 399. 00 ("**the Debt**"). At all material times, the Facility Agreement and the Debt was reported in the financial reports of the Company from 2016 up to 2018 and, thus, made known to all the members including the Applicants.

[33] It was shown to this Court that the losses of the Company as at 31.12.2018 stood at RM 16,828,678.00. This can be seen from the Audited Financial Statement of the Company for the year ending 31.12.2018.

[34] It was explained to the Court that the Proposed Contemnors were acting in accordance with a resolution passed during the Annual General Meeting of the Company held on 28.6.2019 ("**the AGM**"). Of crucial importance was the passing of Resolution 5 which reads as follows:

> *"THAT subject always to the Companies act 2016 ("Act"), the Constitution of the Company and the approvals of the relevant governmental or regulatory authorities, where*

such approval is required, the Directors be and are hereby authorised and empowered pursuant to Section 75 and 76 of the Act to issue and allot shares in the Company to such persons, at any time until the conclusion of the next AGM and upon such terms and conditions and for such purposes as the Director may, in their absolute discretion, deem fit."

[35] It was contended that the purpose of the said Resolution was to raise funds to reduce the Company's liabilities by the issuance and allotment of shares.

[36] The explanatory note for special business stated that the purpose for Resolution 5 is to give flexibility to the Directors of the Company to issue shares for such purposes as they consider would be in the best interest of the Company without having to convene a separate general meeting.

[37] The purpose of the general mandate sought was to provide flexibility to the Company for any possible fundraising activities but not limited to placement of shares for the purpose of funding current and/or future investment projects, working capital, repayment of borrowings and/or acquisitions.

[38] As such, Resolution 5 was passed as one of the measures to reduce the losses of the Company.

[39] It was also explained that CIDL issued a Statutory Demand under s. 218 of Companies Act 1965 on 23.1.2017. Further, CIDL via one of its directors had on 16.6.2020 demanded for the payment of the Debt.

[40] Up until the August Order, the incumbent Board of Directors of the Company continued to perform their duties and obligations as directors of the Company to ensure its continuous operations. This included exploring options to settle the Debt, which

ultimately resulted in a Settlement Agreement dated 25.08.2020 ("**Settlement Agreement**") being entered into between the Company, CIDL and one Eng Hup Tatt ("**Eng**"). Under the Settlement Agreement, the Company agreed to allot the Shares at the issue price of RM0.20 per share to Eng in consideration of Eng settling the Company's Debt.

Findings

[41] This Court does not find the allotment of the Shares merits a committal order against the Proposed Contemnors. The reasons are as follows:

(i) the Proposed Contemnors were acting based on a resolution passed at the Company's AGM.

[42] The Proposed Contemnors were not in any manner acting on their own accord without valid authority. Instead, it was premised upon a mandate based on a resolution passed at the Company's AGM.

(ii) The allotment was prior to the August Order.

[43] While the decision to carry out the settlement with CIDL and the allotment of the Shares was done during a period while the Court was still deliberating on OS 131, questionable timing it may be, but there was nothing prohibiting the Proposed Contemnors from acting in the manner which they did. The allotment was approved on 26.8.2020 while the August Order was dated 28.8.2020; and

(iii) The allotment would not be an issue if the August Order was against the Applicants.

[44] Had the August Order been in favour of the Proposed Contemnors, the said allotment would not offend any court order. It would be purely a "business as usual" transaction. It would just be an action to carry out the mandate passed during the Company's AGM.

[45] It is trite that to arrive at a finding of contempt, it must be shown beyond reasonable doubt that the allotment was made to defeat the August Order. If there was a possibility that the allotment be vitiated by an intervening act (such as a decision in favour of the Proposed Contemnors), the alleged contemptuous act cannot be proven beyond reasonable doubt to achieve its intended outcome.

[46] The Court of Appeal in ***Brambervale Ltd*** clearly stated that when there are two consistent possibilities open to the court, the burden of proof cannot be said to have been proven -

> *"On this charge, the court has to see whether there is sufficient evidence that Mr. Hamilton did have these books in the week of November 19 to 26 of 1968. On his own confession, he had them on October 25, 1967; but there is nothing more. That confession leaves two possibilities: either that he had them on that date in November, 1968, and wrongfully refused to deliver them, or alternatively, that he got rid of them before that time so that he could not deliver them.* ***Those two possibilities are equally likely. It is not possible to say which of them is correct. The court cannot be satisfied beyond reasonable doubt that he still had the books in November, 1968.*** *That would be conjecture rather than inference - surmise rather than proof. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt. Mr. Hamilton's conduct in telling lies was very reprehensible. But it is not*

sufficient ground for holding that he committed contempt of court about these two books. No doubt he was guilty of a contempt in not delivering the other papers in the seven days. He has been long enough in prison for that. I would allow the appeal. Mr. Hamilton can be released forthwith".

(Emphasis added)

[47] There was nothing shown to this Court that the Proposed Contemnors knew that the outcome would not favour them and in anticipation of the unfavorable decision, they then, allotted the Shares to Eng simply to scuttle the eventual August Order.

(iv) Validity of the allotment

[48] Given that the allotment was an act done between 3.6.2020 and the August Order, any acts not subsequently approved by the 3 Directors, would result in the allotment to be invalid. The terms of the August Order cater for this scenario.

[49] Reference is made to paragraph 3 of the August Order which reads as follows:

"(3) all acts of the board of directors and / or directors of the Defendant as comprised prior to the passing of the resolutions on 6.3.2020, and taken subsequent to the passing of the resolution on 6.3.2020, unless validated by Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai, as the validly appointed directors pursuant to the Adjourned Extraordinary General Meeting of Golden Plus Holdings Berhad on 6.3.2020, are null, void and invalid."

[50] At the heart of the Applicants' argument is the allegation that CIDL is in fact, owned by the 5th Proposed Contemnor and his

sister, Valarie Teh. The Settlement Agreement was therefore a sham agreement. The allotment was calculated to increase the share spread and thus diluting the shareholding of its members. However, this is the subject of another suit.

[51] The Company has on 23.09.2020 commenced a separate suit under Kuala Lumpur High Court Suit No. WA-22NCC-461-09/2020 ("**Suit 461**") against the Proposed Contemnors on the grounds that, inter alia, the acts done by them as the previous Board of Directors are invalid and unlawful. Suit 461 is also premised on the August Order.

[52] In another separate action via Kuala Lumpur High Court Originating Summons No.: WA-24NCC-444-09/2020, this Court ruled that the allotment of the Shares was void based on the terms of the August Order. The matter had been rightly dealt with.

[53] This Court is only concerned if at the material date, there was beyond reasonable doubt evidence to show that the Proposed Contemnors had the relevant *mens rea* to defeat the August Order. Unfortunately, it is the finding of this Court that the Applicants have failed to discharge this burden.

Reliance on ***Jasa Keramat***

[54] The Applicants squarely relied on the decision of the Court of Appeal in *Jasa Keramat v. Monatech (M) Sdn Bhd* [2011] 4 CLJ 549.

[55] On appeal to the Federal Court in *Monatech (M) Sdn Bhd v. Jasa Keramat* (*supra*) the Federal Court discussed contempt of court not for breach of a particular order of court but for conduct of interfering with the due administration of justice or the course

of justice by disposing the subject matter of a pending proceeding for Mareva Injunction.

[56] The learned High Court judge found on the facts that no contempt of court was committed and hence, dismissed the application. The Court of Appeal found otherwise on the facts and ruled there was contempt of court and set aside the order of the learned judge.

[57] The Federal Court dealt with two questions: (i) whether the appellant against whom an application for a Mareva injunction is pending in court, free to dispose off its assets until the moment when the Mareva injunction is granted against it; and (ii) if the answer to the first question is in the affirmative, then, whether the appellant can be found to have been guilty of being in contempt of court by interfering with the due administration of justice for his conduct in disposing off his assets, in all the circumstances of this case.

[58] The apex court outlined the need to take into account conduct as a relevant factor when determining intention. The Federal Court found intention on the part of the appellant to dispose of the assets of the company as the appellant knew very well that there was a pending Mareva Injunction application. Factors such as the speed with which the assets were disposed of and for that matter to parties that are closely related to the persons in control of the proposed contemnor were taken into account.

[59] This is what the Applicants in the current case is asking this Court to do.

[60] However, this Court is unable to accept the argument made by the Applicants. This Court is persuaded by the submissions of the 2nd, 3rd and 4th Proposed Contemnors which this Court finds equally applicable to all the Proposed Contemnors that:

(i) the Proposed Contemnors had ample basis to approve the allotment of the Shares to Eng, based on information which they (as Independent Non-Executive Directors) had received from the 5th Proposed Contemnor (as the Managing Director);

(ii) the law allows the Proposed Contemnors to make this business judgment and to rely on this information given to them by the 5th Proposed Contemnor:

a. S. 214 of the Companies Act 2016 ("**the Act**") allows the Proposed Contemnors to make the business judgment; and

b. S. 215 of the Act allows the Proposed Contemnors to rely on the information furnished to them by the 5th Proposed Contemnor as the Managing Director of the Company.

(iii) if the Proposed Contemnors had not approved the entry into the Settlement Agreement and the allotment of the Shares, they would have been in breach of their fiduciary duties to the Company, as CIDL would have enforced its debt with dire consequences;

(iv) the Proposed Contemnors had therefore acted in compliance with their duty under s. 213 of the Act, by exercising their powers for a proper purpose and in good faith in the best interests of the Company; and

(v) the August Order was only issued on 28.8.2020, which was after the Board Meeting (on 27.7.2020), the resolution approving the Settlement Agreement

(21.8.2020) and the resolution approving the allotment of the Shares (26.8.2020). Therefore, there is no question of the Proposed Contemnors interfering with the August Order.

[61] The very fact that the Proposed Contemnors were acting on a mandate of a resolution of an AGM is by itself sufficient to dislodge the allegation of an obstruction with the due administration of justice. No matter how suspicious the timing was, it is not sufficient for this Court to rule that this is a proper case for a beyond reasonable doubt finding of guilt to be made.

[62] For completeness, the facts in ***Jasa Keramat*** are distinguishable. Unlike in ***Jasa Keramat***, in the present action, there was no injunction that expressly prohibited the Proposed Contemnors from so allotting the Shares. The August Order had yet to be made. The reliance on the Court of Appeal decision in ***Jasa Keramat*** did not aid the Applicants.

The case against the 6th PC

[63] Given the findings of this Court with regards to the 1st to the 5th Proposed Contemnors, the case against the 6th Proposed Contemnor therefore cannot stand. There was clearly a failure of the Applicants to establish a case against the 6th Proposed Contemnor in particular to show that he had the requisite knowledge that the allotment was in any manner contrary to the August Order or was in any manner against the due administration of justice.

Conclusion

[64] This Court is unable with certainty, to make a finding of guilt against all the Proposed Contemnors. Lee Hun Hoe CJ (Borneo)'s reminder in *TO Thomas v. Asia Fishing Industry Pte*

Ltd [1977] 1 MLJ 151 is instructive. Where the party seeking to invoke the power of the court to commit people to prison and deprive their liberty, there has got to be clear certainty about it.

[65] In the foregoing, it is the finding of this court that the Applicants have failed to establish a case beyond reasonable doubt. The committal application in enclosure 55 is therefore dismissed with costs.

(AHMAD FAIRUZ ZAINOL ABIDIN)
Judge
High Court of Malaya Kuala Lumpur

Dated: 11 NOVEMBER 2021

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Case(s) referred to:

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458

TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151

Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458

Wee Choo Keong v. MBf Holdings Bhd & Anor and another appeal [1995] 3 MLJ 549

Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 MLJ 241

Ng Hee Thong & Anor v. Public Bank Bhd [1995] 1 MLJ 281

E & E Equipment Sdn Bhd v. Speci Avenue (M) Sdn Bhd & Ors [2005] 6 MLJ 589 (HC)

Basset v. Magee [2015] B.C.J no. 2166

Jasa Keramat v. Monatech (M) Sdn Bhd [2011] 4 CLJ 549

TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151

Legislation referred to:

Companies Act 1965, s. 218

Rules of Court 2012, O. 52 rr. 3 (2), 4