

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

WINDING UP PETITION NO: D28-436-2007

In the matter of MUDI ANGKASA
DEVELOPMENT SDN BHD (In Liquidation)
(Company No: 387993-X)

And

In the matter of Section 218 Companies Act
1965 and the Companies (Winding - up)
Rules 1972

BETWEEN

**GAYA SYUKUR SDN BHD
(Company No: 425170-M)**

-

PETITIONER

AND

**MUDI ANGKASA DEVELOPMENT SDN BHD -
(Company No: 387993-X)**

RESPONDENT

GROUND OF JUDGMENT

In enclosure 47, the applicant, one Kamuja Corporation Sdn Bhd, seeks leave of this court to commence an action against the respondent, a company in liquidation under section 226(3) of the Companies Act 1965.

[2] I have perused the cause papers and submissions made by the parties. It is very obvious that the crux of the applicant's claim is a monetary claim for a sum of RM1,477,550.00 which the applicant contends it is entitled to, for work done to rehabilitate a project which the respondent in liquidation had failed to complete. Even the learned counsel for the applicant, at the hearing before this court admits that this application is merely for leave to take action against the respondent to recover the said amount.

[3] Hence the question that this court needs to look at is whether this claim can be adequately dealt with by the winding up court? In my view, since the applicant's claim is a monetary claim, it can be adequately dealt within the ordinary course of liquidation. Refer to the Court of Appeal in **Mesuntung Property Sdn Bhd v Kimlin Housing Development Sdn Bhd [2014] 4 MLJ 886**.

[4] The applicant itself admits that it is a creditor of the respondent when in paragraph 7 of its written submission it says inter alia “ *bahawa pemohon juga berhak sebagai kreditor untuk mendapatkan pembahagiannya*”. Its claim obviously makes the

applicant an unsecured creditor. Being an unsecured creditor, it cannot claim priority over other unsecured creditors. In **Malaysian Trustees Bhd v Transmille Group Bhd & Ors [2012] 3 MLJ 679**, the Court of Appeal held as follows:

" **[23]** [Section 292\(1\)](#) of the [Companies Act 1965](#) deals with matters relating to distribution of assets in the winding up of an insolvent company ie the liquidator is obliged to apply the unencumbered assets of the company first to settle the statutory preferential debts under the provisions of the section and secondly under sub-s (2) to pay the unsecured debts of the company *pari passu* ie 'debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves'.

[24] The *pari passu* rule is considered as mandatory in its application on the grounds of public policy. It reflects the principle for pro rata distribution

[25] The rule is that no one creditor can contract with the debtor to put himself in a better position than other creditors; this is because such arrangements provide a preference over creditors who never agreed to give up their rights

[26] In the present case, TAS was insolvent and under liquidation. This is not in dispute. In Malaysia *pari passu* rule is expressly stated under [s 292\(2\)](#) of the [Companies Act 1965](#) ie other

than the preference payment of debts listed under s 292(1) of the same Act, other unsecured debts of the same class 'shall rank equally between them' and if the property of the company is insufficient to meet them, they 'shall abate in equal proportions between themselves'.”

[5] Based on the above, I therefore agree with the respondent that the applicant’s debt has no better right or priority to the other unsecured debts.

[6] For those reason, I am of the view that there is no merit in this application and therefore dismiss enclosure 47 with cost.

DATO’ ZALEHA BINTI YUSOF
JUDGE
HIGH COURT OF MALAYA
KUALA LUMPUR

Dated: 18 Mei 2015

For the petitioner: Abdullah Abd Rahman; Messrs Firuz Jafril
Aidil & Zarina

For the respondent: Mark Lau Chin Ming ; Messrs Sreenevasan
Young