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Analysis Of Section 477 Of The Companies Act 2016 & Majority Rule In Appointment Of Liquidators

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The recent decision of the High Court in *Asia Media Sdn Bhd (In Liquidation) (Post Winding Up Application No. WA-28PW-356-06/2024)* offers a timely reminder of where real power lies when a company enters liquidation. The ruling clarifies the weight to be given to creditors' preferences in the appointment of private liquidators under Section 477 of the Companies Act 2016, a provision that has long left room for discretion and dispute.

The dispute in *Asia Media* was, on its face, unremarkable: two competing nominations for private liquidators after the company had already been wound up. The majority shareholder, MMM Group Berhad, put forward Andrew Heng and Ashvin Mahendran.

A minor creditor, Peakmax Sdn Bhd, countered with its own nominee, Tee Siew Kai. The voting, however, was decisive. MMM held more than 95 per cent of the admitted debt and mustered 99.72 per cent support at the creditors' meeting; Peakmax accounted for just 0.28 per cent.

A Familiar Legal Principle, Re-emphasised

Section 477 gives the court a broad discretion in post winding-up appointments. Malaysian courts have traditionally deferred to the wishes of creditors holding the bulk of the debt. The High Court in *Asia Media* stayed true to this line of authority, citing earlier decisions such as *Malaysian Assurance Alliance Bhd v Comsa Properties Sdn Bhd* [2011] 7 CLJ 942, *Dato' Sri Shamir Kumar Nandy v Crest Worldwide Resources Sdn Bhd* [2020] 1 LNS 1134, and *Southwind Development Sdn Bhd v Tanjung Tiara Sdn Bhd* [2015] 1 LNS 523.

The logic, as those cases repeatedly underscore, is commercial rather than doctrinal: the creditors with the most at stake should, as a matter of practical justice, have the greatest influence over who manages the liquidation.

Yet that preference is not unqualified. The courts have also held, most recently in *KNM Group Bhd & Anor v Hitachi Zosen Corp & Ors* [2025] MLJU 3528 that deference to the majority does not extend to endorsing a liquidator who is compromised by conflict, partiality or any real risk of dereliction.

Peakmax's Challenge — And Why It Fell Short

Peakmax argued that MMM's nominees were too closely linked to the group's corporate recovery advisers, who had previously been remunerated by MMM and had advised on restructuring exercises. One nominee even sat on the adviser's board. Peakmax argued these links created an appearance of conflict sufficient to disqualify the pair.

The High Court was not persuaded. Drawing on a line of authority including an Australian decision in *Pongrass Group Operations* which was cited with approval in *KNM Group, the court* stressed that commercial realities inevitably produce overlapping professional relationships. Such histories, without more, do not amount to conflicts of interest. What is required is evidence of actual or apparent bias, or a tangible risk that the liquidators' independence might be compromised. The relevant passage of judgment in *KNM Group Bhd* relied by the court is reproduced as follows:

> *"[29] Commercial reality dictates that the existence of such relationship by itself should not disqualify liquidators or their audit clients. … In Pongrass Group Operations Pty Ltd v Lowerpinems Pty Ltd (1994 15 ACSR 341 with respect to the appointment of the liquidators and possible conflict, the court ruled:*
>
> *… the evidence of relationship between a senior partner of Ferrier Hodgson and the Pongrass family who are associated with creditors of the company does not seem sufficient to impair the capacity of another member of the firm to perform and be seen to perform his duties as liquidator."*

Peakmax produced none. Its objections, the court held, were speculative at best, and certainly insufficient to override the wishes of creditors holding virtually the entire debt.

A Pragmatic But Pointed Outcome

The court accordingly appointed MMM's nominees and dismissed Peakmax's application. The decision sits comfortably within existing jurisprudence, but it also carries a broader message, i.e. minority creditors cannot weaponise vague allegations of conflict to upset the will of the majority. Nor can they expect professional connections which is an unavoidable feature of a concentrated restructuring market to be fatal to a nomination.

The Wider Significance

Asia Media therefore reinforces a pragmatic reading of Section 477. Majority creditors' preferences remain the starting point and, in most cases, the end point. Challenges will only succeed where independence is genuinely in doubt, not where a disgruntled minority seeks leverage through accusations unsupported by real evidence.

In an era when insolvency disputes are growing more complex and more tactical, this ruling brings a measure of clarity. It signals that the courts will not indulge minority manoeuvres, and that commercial logic, rather than procedural gamesmanship, continues to govern the appointment of liquidators in Malaysia.

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