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JUDICIAL SUPERVISORY POWER RE-AFFIRMED: HIGH COURT SET ASIDE AUTOMATIC DISCHARGE OF BANKRUPT

by Mong Chung Seng & Medha Ong Ann Ting

After the introduction of s. 33C of the Insolvency Act 1967 (**Act**), there has been a surge of notices issued by the Director General of Insolvency (**DGI**) to automatically discharge bankrupts under s. 33C(1)(a) of the Act. While the provision was introduced to provide a second chance to bankrupts, it also raised concerns amongst creditors that an automatic discharge may have been prematurely or improperly granted.

This gives rise to the issue of whether the exercise of the power of DGI to discharge a bankrupt under s. 33C can be challenged. This issue was considered in *RHB Bank Berhad v Ketua Pengarah Insolvensi & Another*¹. In this case, the High Court invoked its supervisory jurisdiction under ss. 86 and 77 of the Act and set aside the notice of automatic discharge issued by DGI under s. 33C(3) of the Act (**Notice of Discharge**).

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[1] Shah Alam High Court Post Bankruptcy No.: BA-29PB-1542-08/2024

Brief Facts

Kamalul Ariffin bin Yusof (**Bankrupt**) was adjudicated a bankrupt on 20 September 2019. In June 2024, the DGI issued the Notice of Discharge to notify the creditors that the Bankrupt has satisfied the requirements under s. 33C of the Act and will be discharged with effect from 25 December 2024.

RHB Bank Berhad (**Bank**) challenged the decision of the DGI in issuing the Notice of Discharge and sought to set aside, reverse and/or revoke the Notice of Discharge.

The Bank submitted that while s. 33C of the Act confers power on the DGI to issue an automatic discharge, this provision must be read harmoniously with the other provisions of the Act so as not to undermine the objectives of the Act which include the collection, realisation and distribution of the assets of the Bankrupt²; and an investigation into whether the Bankrupt has any hidden assets being stashed away.³

The Bank also submitted that the DGI acted improperly and wrongfully in issuing the Notice of Discharge without first investigating and realising the known assets of the Bankrupt, including 2 luxury vehicles and another vehicle disclosed in the Statement of Affairs, shares in companies registered in the Bankrupt's name, an entitlement to approximately RM22.5 million in settlement proceeds, and a substantial sum of money which the Court of Appeal found to have been siphoned off by the Bankrupt⁴. It was further submitted that the DGI's failures to investigate and realise the Bankrupt's assets amount to a breach of statutory duties under ss. 15, 17, 43, 55 and 73 of the Act and the Court retains supervisory jurisdiction under ss. 86 and 87 to set aside the Notice of Discharge.

Decision

On 7 October 2025, the learned Judicial Commissioner invoked the supervisory jurisdiction of the Court under ss. 86 and 87 of the Act and set aside the Notice of Discharge.

The learned Judicial Commissioner in essence held:

- (a) S. 33C(4) of the Act remains the primary avenue for creditors' objection to discharge. Creditors should not seek to bypass s. 33C(4). Otherwise, s. 33C(4) would be rendered nugatory.
- (b) However, in exceptional circumstances, the supervisory jurisdiction of the Court under ss. 86 and 87 of the Act could be invoked in cases of clear illegality or failure of duty by the DGI.
- (c) The present case comes within the exception. The evidence shows that the DGI issued the Notice of Discharge despite failing to investigate or recover significant known assets of the Bankrupt and no justification was advanced for these omissions.

[2] *Agroco Plantation Sdn Bhd & Anor v Beshaprapan Sdn Bhd* [1999] 6 MLJ 80

[3] *Re Lau Kah Lay & Anor; ex p Cold Storage (M) Bhd* [2001] 6 MLJ 311

[4] *Maybank Trustee Bhd (formerly known as Aseambankers Malaysia Bhd) v Amtrustee Bhd & Ors* [2020] 4 MLJ 405

- (d) In issuing the Notice of Discharge while leaving such matters unattended, the DGI acted prematurely and unlawfully. This was not a valid exercise of discretion but a dereliction of duty under ss. 15, 17, 43, 55, 73 and 81 of the Act.
- (e) In such exceptional circumstances, the supervisory jurisdiction of this Court under ss. 86 and 87 is properly engaged to prevent abuse of the statutory discharge mechanism.

Key Takeaways

This decision provides useful guidance that in an automatic discharge of a bankrupt under s. 33C(1)(a) of the Act, the Court's power is not confined to suspending the discharge pursuant to s. 33C(4) of the Act. In exceptional circumstances, the Court may invoke its supervisory jurisdiction to set aside the notice of discharge.

This case also reaffirmed the settled principles that the DGI's discretion to discharge a bankrupt is not unfettered but must be exercised in accordance with its statutory duties under the Act.⁵

Mong Chung Seng and Medha Ong successfully acted for the Bank in this case. The grounds of judgment can be accessed via this [link](#).

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[5] Lim Hun Swee v Malaysia British Assurance Bhd & Ors and Other Appeals [2011] 2 MLJ 218