

Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo
[2013] SGHC 105

Case Number : Originating Summons No 595 of 2011 (Summons No 957 of 2013)
Decision Date : 14 May 2013
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Hri Kumar Nair SC, Emmanuel Duncan Chua and James Low (Drew & Napier LLC) for the plaintiff; Suresh Damodara (Damodara Hazra LLP) for the defendant.
Parties : Global Distressed Alpha Fund I Ltd Partnership — PT Bakrie Investindo

Contempt of Court – Civil Contempt

14 May 2013

Lai Siu Chiu J:

1 Pursuant to leave of court that was granted on 7 February 2013, Global Distressed Alpha Fund I Limited Partnership (“the Plaintiff”) filed the present application for, *inter alia*, Robertus Bismarka Kurniawan (“Kurniawan”), the Ex-President Commissioner and Ex-Chairman of the Supervisory Board of PT Barkrie Investindo (“the Defendant”), to stand committed to prison and/or fined and for a Warrant for Arrest to be issued for refusing to comply with an order made by the Assistant Registrar (“AR”) on 14 June 2012 for, *inter alia*, the examination of Kurniawan as an ex-officer of the Defendant in its capacity as a judgment debtor (“the EJD Order”). At the conclusion of the hearing, I allowed the application. As the Defendant has appealed against my decision (in Civil Appeal No 41 of 2013), I shall now set out the grounds for my decision.

The background to the EJD Order

2 The Plaintiff was a company that was part of a group which invested in different types of private distressed commercial and sovereign debt claims around the world. The Defendant was an investment holding company of a prominent family in Indonesia. Kurniawan was the President Commissioner and Chairman of the Defendant at all material times until 2 January 2012. He was/is, at all material times, ordinarily resident in Indonesia.

3 In 1996, one of the Defendant’s subsidiaries (“the Issuer”) issued US\$50m worth of loan notes (“the Notes”), and the Defendant guaranteed the payment of sums due under the Notes pursuant to a guarantee that was governed by English law (“the Guarantee”). In 1999, the Issuer defaulted on the payment of sums due under the Notes and the Defendant consequently became liable under the Guarantee. In addition, the Defendant faced mounting debts from other sources. The Defendant’s debts, including its liability under the Guarantee, amounted to over US\$500m.

4 Pursuant to Indonesian bankruptcy laws, the Defendant entered into an arrangement (“the Composition Plan”) with some of its creditors. Under the Composition Plan, participating creditors swapped their claims against the Defendant for shares in two special purpose vehicles into which the Defendant transferred its assets. On 6 March 2002, the Commercial Court of the Central Jakarta District Court ratified the Composition Plan (“the Indonesian Ratification Order”) such that thereupon, under Indonesian law, creditor claims against the Defendant, including those under the Guarantee,

were discharged.

5 In 2009, the Plaintiff bought US\$2m worth of the Notes. The Issuer subsequently defaulted on payment of sums due under the Notes. The Plaintiff then sued the Defendant on the Guarantee in the United Kingdom ("UK"). The Plaintiff obtained final judgment in UK on its claim and the Defendant was ordered to pay to the Plaintiff: (a) US\$2,000,000; (b) US\$1,283,333.32 by way of interest accrued; (c) interest continuing to accrue on the total amount of US\$3,282,333.32 or such lesser amount as may from time to time be outstanding, at a rate of 9.625% per annum from 17 February 2011; and (d) costs on a standard basis to be the subject of detailed assessment if not agreed ("the UK Judgment").

6 Pursuant to the UK Judgment, the Plaintiff submitted for taxation its bill of costs, which was not contested by the Defendant. On 10 June 2011, the UK High Court issued a Default Costs Certificate ("the UK Default Costs Certificate"), requiring the Defendant to pay to the Plaintiff: (a) costs of £205,327.98 with interest at the rate of 8% per annum from 17 February 2011; and (b) costs of £140 with interest at the rate of 8% per annum from 10 June 2011.

7 No appeal was filed against the UK Judgment or the UK Default Costs Certificate (collectively, "the Entire UK Judgment"). The time for appeal has now long since expired. The Defendant did not satisfy any part of the Entire UK Judgment.

8 On 18 July 2011, the Plaintiff filed Originating Summons No 595 of 2011 ("the OS"), seeking, *inter alia*, an order that: (a) the Entire UK Judgment be registered as a judgment of the High Court of Singapore pursuant to s 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed); and (b) the Defendant be at liberty to apply to set aside the said registration within 14 days after service upon it (within the jurisdiction of Indonesia) of notice of such registration pursuant to O 67 r 7 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court") if it had any grounds for so doing, and execution upon the Entire UK Judgment would not issue until after the expiration of that period or any extension of that period granted by the court or, if an application was made to set aside the registration, until such application had been disposed of.

9 On 18 July 2011, the AR granted an order in terms of the OS ("the Registration Order"). The Registration Order was served on the Defendant in Indonesia on 4 August 2011. No application to set aside the Registration Order was made within 14 days of the service of the Registration Order.

10 On 14 June 2012, pursuant to an application by the Plaintiff in Summons No 2944 of 2012, the AR made the EJD Order as follows:

(a) Kurniawan was to attend before the Registrar of the Supreme Court ("the Registrar") and to be orally examined as to whether any, and if so, what debts are owing to the Defendant and whether the Defendant has any, and if so, what property or other means of satisfying the Entire UK Judgment ("Order 1").

(b) Kurniawan was to produce upon such examination all books or documents in his possession, custody or power relevant to the matters referred to above, including but not limited to:

(i) bank account statements of all bank accounts held in the name of the Defendant;
and

(ii) all documents evidencing the assets and properties owned by the Defendant ("Order 2").

(c) Kurniawan should, by way of an affidavit, provide all the answers and documents sought by the Plaintiff in an attached questionnaire ("the Questionnaire") not less than seven days before any hearing fixed for the oral examination ("Order 3").

(d) Costs of this application and of the said examination thereunder were to be in the discretion of the Registrar conducting the examination.

The EJD Order was the order that formed the subject matter of the committal proceedings before this court.

11 The notice prescribed under O 45 r 7(4) of the Rules of Court informing Kurniawan that if he disobeyed the EJD Order he would be liable to the process of execution for the purposes of compelling him to obey the same was endorsed on the EJD Order. On 16 June 2012, Kurniawan was personally served with the EJD Order while he was at a taxi-stand at Changi Airport.

Subsequent events after the grant of the EJD Order

12 The EJD was fixed for hearing on 3 July 2012 ("the 1st EJD Hearing"). On 29 June 2012, the solicitor acting for both the Defendant and Kurniawan, Mr Suresh Damodara ("Mr Damodara"), wrote to the Registrar of the Supreme Court ("the Registrar") requesting that the 1st EJD Hearing be adjourned as: (a) Kurniawan was on a family vacation; (b) he needed time to take instructions; and (c) he would be away from 1 to 8 July 2012. The Registrar did not respond to this request before the 1st EJD Hearing. On 3 July 2012, Kurniawan did not attend the 1st EJD Hearing. Mr Damodara's colleague explained the situation to the AR at the hearing. The AR re-fixed the EJD to 14 August 2012 ("the 2nd EJD Hearing").

13 On 13 August 2012, Mr Damodara wrote to the Registrar requesting that the 2nd EJD Hearing be adjourned as he had been instructed to set aside the Registration Order. The Registrar did not respond to this request before the hearing. On 14 August 2012, Kurniawan did not attend the 2nd EJD Hearing. Mr Damodara explained to the AR that he had instructions to set aside the Registration Order. The AR re-fixed the EJD to 4 September 2012 ("the 3rd EJD Hearing").

14 On 31 August 2012, the Defendant filed an application to set aside the Registration Order and the EJD Order in Summons No 4443 of 2012 ("the 1st Setting Aside Application"). The fact that Kurniawan had resigned as the President Commissioner and Chairman of the Supervisory Board of the Defendant on 2 January 2012 was first made known to the Plaintiff via Kurniawan's first affidavit of 31 August 2012 filed in support of the 1st Setting Aside Application. Kurniawan also stated in this affidavit that the Defendant was dormant without any staff and had no assets. On 31 August 2012, Mr Damodara wrote to the Registrar requesting that the 3rd EJD Hearing be adjourned in view of the 1st Setting Aside Application. The Registrar replied that "[t]he [3rd EJD Hearing] will remain[s] [sic] on 04 September 2012 at 9am". On 4 September 2012, Kurniawan did not attend the 3rd EJD Hearing. The AR re-fixed the EJD to 16 October 2012 ("the 4th EJD Hearing"). There was no Pre-Trial Conference fixed for 4 September 2012, and it was clear from the context that the Registrar was actually referring to the 3rd EJD Hearing.

15 On 14 September 2012, the AR heard the 1st Setting Aside Application and directed the Defendant to amend the same to remove its prayer for the EJD Order to be set aside and for that

prayer to be filed in a separate summons. The Defendant complied and filed a separate application in Summons No 4682 of 2012 ("the 2nd Setting Aside Application") for the EJD Order to be set aside. On 24 September 2012, the AR heard the 1st and 2nd Setting Aside Application and dismissed both. On 25 September 2012, the Defendant filed Registrar's Appeal No 392 of 2012 and Registrar's Appeal No 393 of 2012 (collectively, the "Setting Aside RAs") respectively against the AR's dismissals of the 1st and 2nd Setting Aside Application. The Setting Aside RAs were heard by Woo Bih Li J on 11 October 2012, who reserved judgment.

16 On 11 October 2012, Mr Damadora wrote to the Registrar requesting that the 4th EJD Hearing be adjourned pending Woo J's decision. The Registrar acceded to the request and adjourned the 4th EJD Hearing to 6 November 2012.

17 On 31 October 2012, Woo J dismissed the Setting Aside RAs (see *Global Distressed Alpha Fund I Limited Partnership v PT Bakrie Investindo* [2013] 2 SLR 228 released on 16 January 2013). On 5 November 2012, the Defendant filed Civil Appeal No 144 of 2012 and Civil Appeal No 145 of 2012 ("the Setting Aside Appeals") against Woo J's decision in the Setting Aside RAs.

18 On 5 November 2012, Mr Damodara wrote to the Registrar requesting that the 4th EJD Hearing which was adjourned to 6 November 2012 be further adjourned pending the determination of the Setting Aside Appeals. The Plaintiff objected to this adjournment as there was no stay of the EJD Order. On 6 November 2012, the Registrar replied disallowing the request and indicated that the EJD was to proceed as fixed. Kurniawan did not attend the 4th EJD Hearing. Instead at the 4th EJD Hearing, Mr Damodara submitted to the AR that O 67 r 10(2) of the Rules of Court provided for an automatic stay of the EJD Order until the final determination of the Setting Aside Appeals ("the Stay Application"). The AR reserved judgment. On 21 November 2012, the AR dismissed the Stay Application and re-fixed the EJD to 6 December 2012 ("the 5th EJD Hearing").

19 On 28 November 2012, the Defendant filed Registrar's Appeal No 483 of 2012 ("the Stay RA") against the AR's decision. The Stay RA was fixed to be heard on 17 December 2012, which was after the scheduled date of the 5th EJD Hearing on 6 December 2012. On 29 November 2012, the Plaintiff's solicitors wrote to the Defendant's solicitors inviting the Defendant to take steps to expedite the Stay RA. The Defendant did not do so. Instead, on 3 December 2012, Mr Damodara wrote to the Registrar requesting that the 5th EJD Hearing be adjourned for "an initial 12 weeks" as Kurniawan was "occupied by various engagements in respect of his work and family members, and therefore [would] be unable to come to Singapore for the [5th EJD Hearing] until the end of the first quarter of 2013". On 4 December 2012, the Registrar informed all parties that the 5th EJD Hearing fixed for 6 December 2012 was to remain unless the Plaintiff consented to the adjournment. The Plaintiff did not consent to the adjournment, so the 5th EJD Hearing on 6 December 2012 was to proceed as fixed.

20 On 6 December 2012, Kurniawan did not attend the 5th EJD Hearing. The Plaintiff's counsel indicated that they would take the Plaintiff's instructions as to whether to commence committal proceedings against Kurniawan, and Mr Damodara confirmed to the court that he had advised Kurniawan on the possible consequences of his absence. The AR re-fixed the EJD to 8 January 2013 ("the 6th EJD Hearing").

21 On 17 December 2012, Tay Yong Kwang J heard the Stay RA and dismissed it (see *Global Distressed Alpha Fund I Limited Partnership v PT Bakrie Investindo* [2013] SGHC 30). On 3 January

2013, the Defendant filed Civil Appeal No 1 of 2013 ("the Stay Appeal") against Tay J's decision.

22 On 8 January 2013, Kurniawan did not attend the 6th EJD Hearing. Mr Damodara conveyed to the court that Kurniawan relied on the same reasons given in his earlier letter dated 3 December 2012 (*ie*, that he was occupied by various engagements in respect of his work and family). The Plaintiff's counsel confirmed to the court that the Plaintiff would be taking up committal proceedings against Kurniawan. The AR re-fixed the EJD to 22 January 2013 ("the 7th EJD Hearing").

23 On 10 January 2013, the Defendant took out applications to expedite and consolidate the Setting Aside Appeals and the Stay Appeal ("the Consolidation Applications"). The Consolidation Applications were fixed for hearing on 25 January 2013.

24 On 18 January 2013, the Plaintiff filed an application seeking, *inter alia*, leave to apply for an order of committal against Kurniawan with a prayer for personal service of the documents stated in O 52 r 3(4) of the Rules of Court ("the Committal Documents") to be dispensed with, or for service of the Committal Documents on Mr Damodara's firm Damodara Hazra LLP to be deemed good and sufficient service ("the Leave Application").

25 On 22 January 2013, Kurniawan did not attend the 7th EJD Hearing. Mr Damodara conveyed to the court that Kurniawan relied on the same reasons given in the letter dated 3 December 2012 (*ie*, that he was occupied by various engagements in respect of his work and family), and that the Consolidation Applications were to be heard soon. The AR re-fixed the hearing to 19 February 2013 ("the 8th EJD Hearing").

26 On 25 January 2013, the Consolidation Applications were heard by Vinodh Coomaraswamy JC. He granted an order for the consolidation of the Setting Aside Appeals but dismissed the prayer for the Stay Appeal to be consolidated and the prayer for the three appeals to be expedited.

27 On 7 February 2013, this court heard the Leave Application on an *ex-parte* basis, with Mr Damodara appearing on behalf of the Defendant and Kurniawan on a watching brief. After hearing the parties, I ordered that: (a) leave be granted to the Plaintiff to apply for an order of committal against Kurniawan; (b) the Defendant's solicitors were to write to the Plaintiff's solicitors within 48 hours to confirm if their firm had instructions to accept service of the Committal Documents; and (c) if the Defendant's solicitors did not confirm that their firm had instructions to accept service, substituted service of the Committal Documents would be effected on Kurniawan by inserting a notice of advertisement of my order in one issue of The Jakarta Post in the week commencing 11 February 2013, such service to be deemed good and sufficient service on Kurniawan of the Committal Documents.

28 On 8 February 2013, the Defendant's solicitors sent a fax to the Plaintiff's solicitors confirming that it had instructions to accept service of the Committal Documents. However, due to an administrative oversight, this fax was not forwarded to the Plaintiff's solicitors' attention. As such, on 16 February 2013, the Plaintiff's solicitors effected substituted service of the Committal Documents by advertisement in The Jakarta Post. The Plaintiff's solicitors also served a copy of the Committal Documents on the Defendant's solicitors on 25 January 2013 by hand and on 22 February 2013 through the Electronic Filing System respectively. On 22 February 2013, the Plaintiff's solicitors also sent a physical copy of the Committal Documents to Kurniawan's address as stated in his affidavit filed on 31 August 2012.

29 On 13 February 2013, the Defendant and Kurniawan filed (without obtaining leave) an affidavit

affirmed by one Edemarau Purba, an attorney from the Indonesia law offices of Demarau Pangestu, who had been requested by the Defendant to issue a legal opinion in connection with the capacity, authority and liability of Kurniawan ("the Expert Affidavit"). The main thrust of the Expert Affidavit was that: (a) Kurniawan's evidence was irrelevant since he was not involved with the day-to-day management of the Defendant when he was the President Commissioner and Chairman of the Supervisory Board of the Defendant; and (b) as Kurniawan had since resigned, he could not be held liable for the Defendant's liabilities and could not represent the Defendant before any court or tribunal.

30 On 19 February 2013, Kurniawan did not attend the 8th EJD Hearing. Mr Damodara conveyed to the court his clients' position that: (a) it would be inconsistent for them to file a formal stay application since O 67 r 10(2) of the Rules of Court purportedly provided for an automatic stay of the EJD Order until the final determination of the Setting Aside Appeals and the Stay Appeal; and (b) Kurniawan's participation in the EJD would be contrary to the Indonesian Ratification Order. The AR re-fixed the EJD to 20 March 2013 ("the 9th EJD Hearing").

31 On 20 March 2013, Kurniawan did not attend the 9th EJD Hearing. Mr Damodara again reiterated his clients' position that it would be inconsistent for them to file a formal stay application. The AR re-fixed the EJD to 10 April 2013.

32 The substantive committal application was subsequently heard and granted by this court on 25 March 2013.

The Issues

33 As a preliminary point, it should be noted that the action against Kurniawan was clearly an action for *civil* and not criminal contempt since he was personally bound by the EJD Order and the application by the Plaintiff was directed at securing Kurniawan's compliance with the EJD Order (see *Aurol Anthony Sabastian v Sembcorp Marine Ltd* [2013] 2 SLR 246 at [29]). For the purposes of establishing civil contempt, it would be sufficient if there was a deliberate breach of an order. Kurniawan's reasons for his disobedience was not relevant in establishing liability; it was only relevant at the later sentencing stage (see *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("OCM Opportunities") at [27] and *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 at [52] and [53]).

34 The issues decided in the substantive committal application were therefore as follows:

- (a) Was there a deliberate breach of the EJD Order by Kurniawan?
- (b) If so, what was the appropriate sentence?

35 The details of the EJD Order were set out earlier at [10]. For clarity, I will address Kurniawan's liability in relation to each order in the EJD Order separately.

Order 1 of the EJD Order

36 Order 1 of the EJD Order required Kurniawan to attend before the Singapore court to be orally examined as to the Defendant's assets. In my view, Kurniawan's course of conduct since the grant of the EJD Order clearly showed that he was in deliberate flagrant breach of this order. I elaborate more below.

37 Kurniawan was in breach of the EJD Order in failing to attend the 1st and 2nd EJD Hearings fixed for 3 July 2012 and 14 August 2012 respectively. As noted at [12] and [13] above, the Registrar did not respond to Kurniawan's request for an adjournment before the 1st and 2nd EJD Hearings. That being the case, and in the absence of an express grant of an adjournment, it was understood that those two EJD Hearings were to proceed as scheduled.

38 Kurniawan was in breach of the EJD Order in failing to attend the 3rd EJD Hearing fixed for 4 September 2012. As noted at [14] above, the Registrar had expressly rejected the Defendant's request for an adjournment of the 3rd EJD Hearing and replied that it will remain [sic] on 04 September 2012 at 9 am".

39 I noted that Kurniawan was not in breach of the EJD Order in failing to attend the 4th EJD Hearing originally fixed for 16 October 2012 since the Registrar had expressly granted his request for an adjournment (see [16] above).

40 However, Kurniawan was in breach of the EJD Order in failing to attend the adjourned 4th EJD Hearing fixed for 6 November 2012. It is trite law that an appeal does *not* operate as an automatic stay of proceedings unless a stay of execution has been ordered. In the present case, the Defendant did not obtain a stay order pending the determination of the Setting Aside Appeals. That being the case, the Plaintiff was perfectly entitled to enforce the EJD Order after the Setting Aside RAs were dismissed by Woo J. Furthermore, as noted at [18] above, Kurniawan's request for a further adjournment of the 4th EJD Hearing was expressly rejected by the Registrar.

41 Kurniawan was again in breach of the EJD Order in failing to attend the 5th EJD Hearing fixed for 6 December 2012. As noted at [19] above, his reason for requesting an adjournment was that he was "occupied by various engagements in respect of his work and family members". The vagueness of this reason and the total lack of supporting evidence aside, such an excuse was wholly unacceptable. Kurniawan was *bound* by an order of court to attend the EJD Hearing. This was not some invitation that Kurniawan was entitled to turn down based on his (purportedly) busy schedule. Kurniawan did not even show that he had at least made some attempt to reschedule his engagements. The Registrar had also clearly indicated that the 5th EJD Hearing was to remain unless the Plaintiff consented to the adjournment (which it did not).

42 Kurniawan was again in breach of the EJD Order in failing to attend the 6th EJD Hearing fixed for 8 January 2013. At the hearing, Kurniawan through his counsel had again sought to rely on the excuse that he was occupied by various engagements. This was clearly unacceptable for the reasons set out earlier at [41].

43 Kurniawan was similarly in breach of the EJD Order in failing to attend the 7th EJD Hearing fixed for 22 January 2013. His excuse that he was busy and that the Consolidation Applications were to be heard soon were unacceptable for the same reasons as elaborated upon in [40] and [41] above.

44 Kurniawan was in breach of the EJD Order in failing to attend the 8th Hearing fixed for 19 February 2013. As noted at [30] above, the first reason provided by Kurniawan and the Defendant at that hearing was that O 67 r 10(2) of the Rules of Court provided for an automatic stay of the EJD proceedings, and taking out a formal application for a stay would be inconsistent with that belief. I found this unacceptable. Since the Stay Application was dismissed, the proper course of action that the Defendant and Kurniawan should have adopted was to take out a formal stay application while

expressly reserving the right to pursue their argument on appeal that O 67 r 10(2) of the Rules of Court provided for an automatic stay of the EJD proceedings. If that had been done, it could not and would not reasonably be said that the Defendant and Kurniawan had waived their rights. The beliefs of Defendant and Kurniawan as to the incorrectness of the dismissal of the Stay Application and the Stay RA could not justify its disobedience of the same.

45 The following passage from *OCM Opportunities* is apposite (at [29]):

*As long as the orders stood, the plaintiffs were entitled to have them respected and obeyed. It is not for the majority defendants to disregard the orders on the basis of a belief that the Order of 5 March 2004 was basically wrong in that the action should be set aside or stayed and the Mareva injunction discharged. The legal position on this is clear. Romer LJ in *Hadkinson v Hadkinson* [1952] P 285 at 288 said:*

*It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. "A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it. ... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null and void - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question: that the course of a party knowing of an order which was null and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed." (Per Lord Cottenham L.C. in *Chuck v Cremer* [(1846) 1 Coop t Cott 205 at 338; 47 ER 820 at 884].)*

Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court ... is in contempt and may be punished by committal or attachment or otherwise.

[emphasis added]

46 The second reason provided by Kurniawan and the Defendant at the 8th EJD hearing was that Kurniawan's participation in the EJD would be contrary to the Indonesian Ratification Order. I could not and did not accept this argument. Since the ambit of the EJD Order was only to ascertain if the Defendant had any assets, I could not see how compliance with the EJD Order would contravene the Indonesian Ratification Order. Even if it was discovered that the Defendant has assets, any payment ordered by the Singapore court could not and would not be construed as a voluntary act of payment by the Defendant in contravention of the Indonesia Ratification Order. I would add that even if such a predicament occurred, Kurniawan only had the Defendant, and indirectly, himself, to blame, at least until he resigned as the President Commissioner and Chairman of the Supervisory Board of the Defendant on 2 January 2012.

47 As noted by Woo J at [46] of his decision in the Setting Aside RAs, the Defendant should have filed an appeal against the Entire UK Judgment if it was dissatisfied with the decision. Yet, for reasons best known to the Defendant, it chose not to do so, not even after Woo J explained at [48] of his decision that the sensible thing for the Defendant to do was to file an application in the UK for an extension of time to appeal against the Entire UK Judgment, which was the root of the Defendant's problems.

48 I therefore also rejected Mr Damodara's submission in the substantive committal application that committal proceedings being a measure of last resort, the Plaintiff was obliged to first pursue all other available means to elicit answers from Kurniawan without him having to participate in the EJD (such as allowing Kurniawan to give his statement in Indonesia with the sanction of the Indonesian courts). Since Kurniawan's purported predicament was ill-founded, the Plaintiff was not obliged to pursue such measures. Even if Kurniawan was in fact in such a predicament, it did not lie in his mouth to argue that the Plaintiff was obliged to pursue such measures, since he and the Defendant were the authors of their own perceived predicament. In any event, I was of the view that there were no other reasonable alternatives that the Plaintiff could and should have pursued before taking out the present committal proceedings.

49 Lastly, I noted that Kurniawan was in breach of the EJD Order in failing to attend the 9th Hearing fixed for 20 March 2013 for the same reasons set out in [44] above.

50 I should also mention that I did not accept the Expert Affidavit (see [29] above). Not only was it filed without the leave of court, it was also irrelevant to the present committal proceedings. The issue before me in the present committal proceedings was not whether the EJD Order should have been made but rather, whether there had been a deliberate breach of the EJD Order. On the evidence before this court, I found that Kurniawan had deliberately breached Order 1 of the EJD Order.

Order 2 of the EJD Order

51 Order 2 of the EJD Order required Kurniawan to produce all books or documents in his possession, custody or power relevant to the matters upon examination. I accepted the submission of Mr Damodara that it was not possible for Kurniawan to comply with this order since the latter was no longer the President Commissioner and Chairman of the Supervisory Board of the Defendant with effect from 2 January 2012, which was about six months before the EJD Order was granted. I thus held that Kurniawan had not deliberately breached Order 2 of the EJD Order.

Order 3 of the EJD Order

52 Order 3 of the EJD Order required Kurniawan to respond to the Questionnaire on the Defendant's assets. I accepted Mr Damodara's argument that Kurniawan had effectively complied with this order when he stated in his first affidavit dated 31 August 2012 that the Defendant was dormant, and had no assets. This would have been sufficient to cover all of the substantive questions in the Questionnaire. However, I noted that Kurniawan only responded to the Questionnaire in his first affidavit filed on 31 August 2012 when, pursuant to the terms of Order 3 of the EJD Order, he should have done so at least seven days before the 1st EJD Hearing on 3 July 2012. No satisfactory reason was provided for such a delay. I thus found that Kurniawan had also deliberately breached Order 3 of the EJD Order.

Conclusion

53 I was satisfied [beyond all reasonable doubt] that Kurniawan had deliberately breached Order 1 and Order 3 of the EJD Order. In particular, his continued absence from all the EJD Hearings without any valid reason (save for one occasion where he had obtained the court's leave for an adjournment of the 4th EJD Hearing on 16 October 2012), displayed a conscious and deliberate decision on his part not to comply with Order 1 of the EJD Order. The fact that Kurniawan subsequently gave his response to the Questionnaire did not exonerate him from having to comply with Order 1 of the EJD Order, as the Plaintiff was entitled to have Kurniawan's answers tested in court. Accordingly, I found that

Kurniawan was guilty of contempt of the Singapore court. I now turn to the issue of sentencing.

Sentencing

54 When a contemnor has been found guilty of contempt of court, committal to prison is usually a measure of last resort (see *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 (“*Sembcorp*”) at [47], *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 at [45] and *Monex Group (Singapore) Pte Ltd v E-Clearing (Singapore) Pte Ltd* [2012] 4 SLR 1169 at [40]). I agreed with Quentin Loh J’s views at [68] of *Sembcorp* that the following factors are relevant in sentencing a contemnor:

- (a) The attitude behind the contemptuous behaviour;
- (b) The motive for committing the contemptuous act;
- (c) Whether a fine would be an adequate specific and general deterrent;
- (d) The reversibility of the breach;
- (e) The standard of care expected of the individual;
- (f) Nature of the contemptuous act;
- (g) Whether the contemnor was remorseful; and
- (h) Whether the contemnor procured others to commit the contemptuous act.

The above list is by no means exhaustive and there would invariably be some degree of overlapping in all the factors.

55 Having considered all the relevant factors in the round, I was of the view that an imprisonment term, as opposed to a fine, was appropriate in the present case. Kurniawan’s persistent absence at the many EJD Hearings and the lack of any justifiable excuse reflected that he had no regard for the EJD Order. He was, for all intents and purposes, effectively thumbing his nose at the Singapore court. His conduct had deprived the Plaintiff of its ability to take substantive steps in enforcement proceedings to realise the fruits of the Entire UK Judgment. It seemed to me that Kurniawan wanted to frustrate the Plaintiff’s efforts for as long as possible and perhaps have the claim against the Defendant defeated by literally wearing out the Plaintiff. Kurniawan’s own views of the law, even if sincere, could not in themselves justify his disobedience to an existing and enforceable court order. Since financial advantage played little part in Kurniawan’s breaches, I was of the view that a fine would not be a sufficient deterrent.

56 I also considered that Kurniawan was an educated businessman, was legally represented at all material times, and was advised on the possible consequences of his breaches. Furthermore, Kurniawan had breached the EJD Order not once or twice, but *eight times*. That to me was an aggravating factor.

57 It was also clear that Kurniawan had no intention of mitigating his breaches. The Plaintiff through its counsel had indicated that it was considering commencing committal proceedings against Kurniawan as early as the 5th EJD Hearing on 6 December 2012. Kurniawan also had at least three opportunities to purge his contempt since the Plaintiff filed the Leave Application on 18 January 2013

by attending any of the 7th, 8th or 9th EJD Hearings. Yet, he chose to remain uncooperative even when faced with potential committal liability. Indeed Kurniawan, through his counsel, evinced no remorse and in fact denied having been in contempt of court. There was therefore little by way of mitigation.

58 All in all, I was satisfied that a custodial sentence would be the only effective means to ensure Kurniawan's compliance with the EJD Order since he had shown himself to be a recalcitrant party in continually breaching a mandatory court order.

59 I was of the view that a short custodial sentence of seven days would be sufficient to punish Kurniawan's contemptuous acts, specifically and generally to deter such behaviour and to preserve the authority of the Singapore court. I therefore ordered that he be committed to prison for seven days and for a Warrant of Arrest to be issued, although both the committal order and the Warrant of Arrest were suspended pending the outcome of the Setting Aside and the Stay Appeals. I also awarded the Plaintiff fixed costs for this application.

Copyright © Government of Singapore.