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Restructuring & Insolvency

## Singapore Court of Appeal Strikes Out Appeal against Bankruptcy Decision

### Introduction

In *Aathar Ah Kong Andrew v OUE Lippo Healthcare Ltd* [2021] SGCA 48, the Singapore Court of Appeal has struck out an appeal against a bankruptcy decision, thus bringing to a close the latest chapter in a long-running bankruptcy and voluntary arrangement dispute. The Court's decision highlights the importance of complying with the procedural requirements of bankruptcy proceedings and appeals, including observing the relevant timelines and obtaining the prior sanction of the Official Assignee ("OA").

The appellant here sought to appeal against a decision of the High Court Judge revoking a voluntary arrangement ("VA") so as to stave off bankruptcy proceedings. However, the Court of Appeal held against the appellant, finding that the appellant had shown a "blatant disregard" for procedural rules.

First, the Court found that appeal should be deemed withdrawn as the appellant had failed to file the Appellant's Case by the stipulated deadline. The Court declined to grant the appellant an extension of the deadline as it had already done so once before, and the appellant was delaying proceedings by insisting that he be represented by solicitors even though he had failed to provide any evidence that his solicitors were in discussion with the OA regarding his ability to proceed with the appeal.

The Court added that it would have struck out the Notice of Appeal ("NOA") in any case as the appellant had failed to obtain the prior sanction of the OA for the appeal, and because the appellant's lawyers had filed the appeal without a warrant to act from the appellant.

The respondent was successfully represented by Jansen Chow and Sasha Gonsalves from Rajah & Tann Singapore LLP.

### Brief Facts

The appellant, Mr Aathar, was a Singapore businessman who ran into serious financial difficulties and eventually faced bankruptcy proceedings. He had attempted to stave off bankruptcy proceedings by proposing three VAs to settle debts worth hundreds of millions of dollars owed to various creditors in Singapore and Indonesia.

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The VAs were all passed at the respective creditors' meetings, but approval was subsequently revoked by the courts in all three instances due to "material irregularities" in the approval process. Eventually, Mr Aathar was adjudged bankrupt.

The third VA had been objected to by the respondent in this case. In CA 157, Mr Aathar sought to appeal against this decision of the High Court Judge to revoke his third VA to the Court of Appeal.

The NOA for CA 157 was filed by Mr Aathar's then solicitors ("**A&P**"). However, neither Mr Aathar nor A&P had obtained prior sanction from the OA to file the appeal, and A&P had not obtained a warrant to act for Mr Aathar in filing the NOA.

## Holding of the Court of Appeal

The Court held that CA 157 ought to be deemed withdrawn as the Appellant's Case had not been filed in time. The Court further stated that, it would have struck out the NOA due to the failure of the appellant to obtain the prior sanction of the OA and the failure of A&P to obtain Mr Aathar's authority prior to filing the appeal.

### Withdrawal of CA 157

Order 57 r 9(4) of the Rules of Court provides that an appeal to the Court of Appeal shall be deemed to have been withdrawn if the appellant omits to file the Appellant's Case within two months of the service of the NOA (subject to any extension granted by the Court of Appeal).

Here, Mr Aathar failed to meet the two-month deadline for filing the Appellant's Case for CA 157. The Court extended the deadline for Mr Aathar to file and serve his Appellant's Case by more than four months. However, Mr Aathar failed to meet this deadline as well. As a result, CA 157 was deemed to be withdrawn.

The Court was unwilling to grant an extension of time to Mr Aathar as he had not raised sufficient grounds to persuade the Court to show sympathy to him, finding instead that his conduct showed blatant disregard for the procedural rules. In reaching its decision, the Court noted Mr Aathar's refusal to appear in the appeal as a litigant-in-person, as well as his failure to show any evidence to support his submission that he required more time because his solicitors were in discussion with the OA regarding his ability to prosecute CA 157.

### Striking out the NOA

Although the above holding was sufficient to dispose of the appeal, the Court went on to discuss the striking out of the NOA.

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The respondent's application to strike out the NOA was based on the following grounds:

- (a) Pursuant to section 401(1)(a) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), there is an absolute bar against bankrupts commencing or maintaining legal proceedings without the previous sanction of the OA.
- (b) A&P had filed CA 157 without a warrant to act from Mr Aathar, and without having received any instruction or authority from Mr Aathar to do so.

Section 401(1)(a) of the IRDA (as well as section 131(1) of the now-repealed Bankruptcy Act) states that a bankrupt is incompetent to commence, continue or defend any prescribed action or appeal unless the bankrupt has obtained the previous sanction of the OA. Here, Mr Aathar submitted that his failure to seek the OA's prior consent was remediable because it was not the result of any fault on his part.

The Court rejected Mr Aathar's argument that the OA can grant retrospective sanction. As Mr Aathar had not obtained the OA's prior sanction to file the NOA, he was "incompetent" to commence CA 157.

Additionally, the Court highlighted that a solicitor's failure to obtain proper authority can justify the striking out of proceedings commenced by the solicitor for or on behalf of that client. Here, A&P did not possess a warrant to act from Mr Aathar, and had not remedied the initial failure to procure authority at a later stage. The absence of such a warrant constituted *prima facie* evidence that A&P did not have Mr Aathar's authority to act in commencing CA 157. The Court found that A&P did not act responsibly in filing CA 157 without Mr Aathar's authority and without the OA's consent, and thus imposed costs against A&P personally.

On the above grounds, the Court would have allowed the striking out of the NOA.

## Concluding Words

The Court's decision shines a spotlight on the procedural requirements in bankruptcy appeals. This includes the need to comply with the relevant timelines, as failure to do so may result in the entire appeal being deemed withdrawn, as demonstrated in this case.

In particular, the decision demonstrates that – where required by statute – bankrupt parties should obtain the sanction of the OA before embarking on legal proceedings. The failure to do so cannot be subsequently remedied.

For further queries, please feel free to contact our team below.

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## Contacts



**Jansen Chow**  
Partner  
Fraud, Asset Recovery &  
Investigations  
Commercial Litigation

T +65 6232 0624

[jansen.chow@rajahtann.com](mailto:jansen.chow@rajahtann.com)



**Sasha Gonsalves**  
Associate  
Commercial Litigation

T +65 6232 0426

[sasha.gonsalves@rajahtann.com](mailto:sasha.gonsalves@rajahtann.com)

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Please feel free to also contact Knowledge and Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com)

## Our Regional Contacts

RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**

T +65 6535 3600  
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

**Assegaf Hamzah & Partners**

**Jakarta Office**

T +62 21 2555 7800  
F +62 21 2555 7899

**Surabaya Office**

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

**Rajah & Tann (Laos) Co., Ltd.**

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

**Christopher & Lee Ong**

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

**Rajah & Tann Myanmar Company Limited**

T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**

T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

RAJAH & TANN | *Thailand*

**R&T Asia (Thailand) Limited**

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

**Hanoi Office**

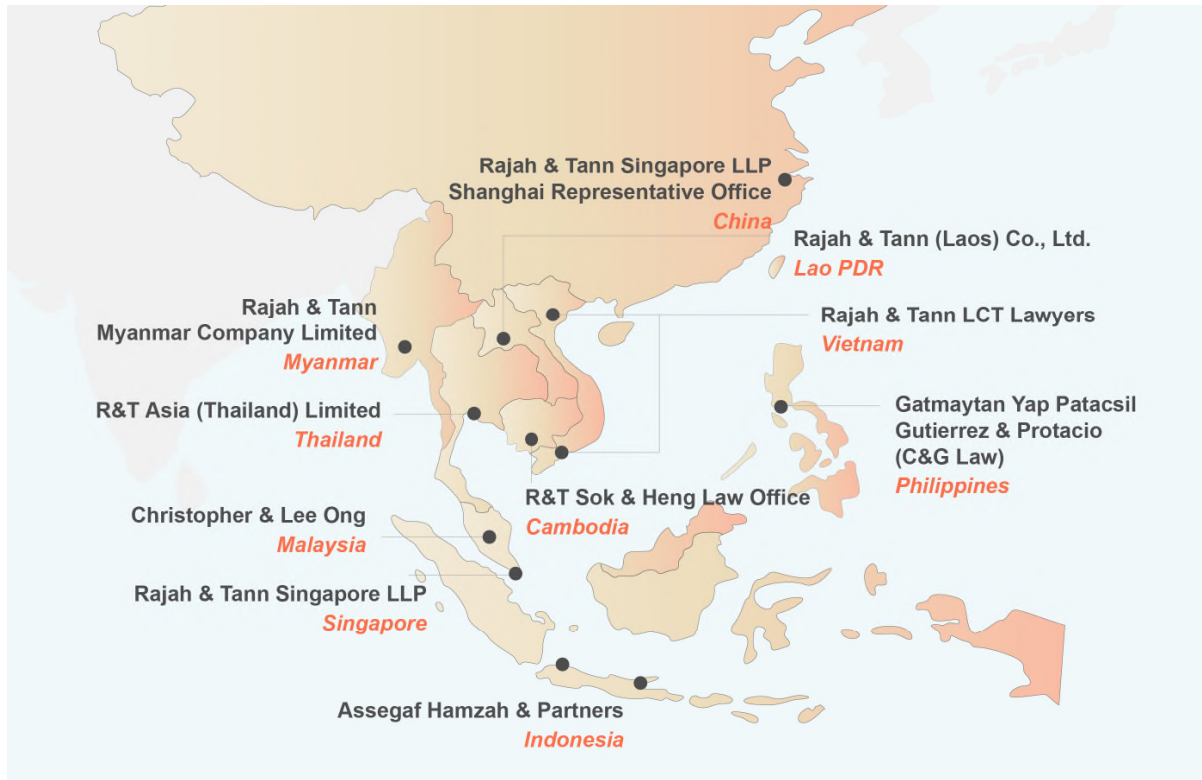
T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

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