

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 12/4-2102/06**

**BETWEEN**

**MOHD ALIAS MANDEH SHAH**

**AND**

**MODULAR CORP. (M) SDN BHD**

**AWARD NO: 1181 OF 2009**

**Before** : **YA TUAN GULAM MUHIADDEEN - CHAIRMAN  
BIN ABDUL AZIZ**

**Venue** : Industrial Court, Malaysia  
Kuala Lumpur

**Date of Reference** : 20.9.2006

**Dates of Mention** : 15.11.2006; 25.01.2007; 02.02.2007; 16.11.2007;  
25.02.2008; 05.03.2008; 12.09.2008; 16.09.2008;  
15.05.2009; 13.07.2009; 13.08.2009; 27.08.2009;  
08.09.2009

**Representation** : *For the Claimant - David Peter; M/s Jerald Gomez &  
Associates*

: *For the Company - Khabir Dhillon; M/s Soosay  
Dhillon Sharma*

**Reference:**

This is a reference made under section 20(3) of the Industrial Relations Act 1967 arising out of the dismissal of **MOHD ALIAS BIN MANDEH SHAH** (“the Claimant”) by **MODULAR CORP. (M) SDN. BHD.** (“the Company”).

## AWARD

In this case, the parties to the dispute are Mohd. Alias Bin Mandeh Shah (“the Claimant”) and Modular Corp. (M) Sdn. Bhd. (“the Company”). The dispute is over the dismissal of the Claimant by the Company on 30 November 2004 and was referred to the Industrial Court by the Honourable Minister of Human Resources on 20 September 2006.

On 31 July 2009, the Company filed an application to the Court for an order that the case be stayed and/or adjourned sine die pending the disposal of the High Court: Sivil Suit No. S6-22-815-2007. The said application is supported by the Affidavit Pertama Majikan of one Haleelur Rahman bin Abdul Gaffor, the Director of the Company affirmed on 31 July 2009 and filed herein.

The grounds of the application stated are as follows;

*“Saya dengan hormatnya menyatakan bahawa tindakan ini patut digantung sehingga penghakiman Mahkamah Tinggi diberikan dalam tindakan Mahkamah Tinggi Malaya di Kuala Lumpur, Guaman sivil No: S6-22-815-2007 di antara Pekerja, Mohd Alias Bin Mandeh Shah, dan Majikan.*

*Ini adalah kerana tindakan ini dan tindakan di Mahkamah Tinggi perlu dihakimi dengan membuat keputusan sama ada Pekerja berhak mendapat 200,000 saham dalam Majikan.*

*Dilampirkan di sini dan ditandai sebagai Eksibit-eksibit "A" dan B" adalah Pernyataan Tuntutan dan Pembelaan, yang masing-masing difailkan dalam tindakan di Mahkamah Tinggi.*

*Saya juga dengan hormatnya menyatakan bahawa Mahkamah Tinggi telah menetapkan bicara tindakan di situ dijalankan dari 16 sehingga 20 November 2009.*

*Saya dinasihat peguam dan dengan hormatnya menyatakan bahawa jikalau Mahkamah Yang Mulia ini memutuskan atau sungguhpun hanya membicarakan isu ini sebelum Mahkamah Tinggi membuat keputusannya, maka:-*

- (i) Pentadbiran keadilan akan diskandalkan sekiranya keputusan Mahkamah Yang Mulia ini bercanggah dengan kepututsan Mahkamah Tinggi; dan*
- (ii) Bicara di Mahkamah Yang Mulia ini akan merupakan satu kelakuan sub judice kerana ini melibatkan penghakiman suatu isu yang sedang menunggu bicara di Mahkamah Tinggi".*

## **Facts of the Case**

The Claimant commenced employment with the Company on 10 March 2003 as the General Manager of Business Development with the following remuneration package;

Salary : RM10,000/=.

Marketing Incentive: % to be determined upon completion of Company's budget for 2003.

ESOS : 200,000 unit of shares to be issued upon Company's eligibility for listing with no time limit to take up.

On 23 September 2004, the Claimant was directed to vacate his workstation at Empire Tower and to work from the Technology Park Malaysia office instead. On 12 October 2004, the Claimant was directed to cease all his business development activities including those ongoing activities with immediate effect. On 30 November 2004, the Claimant services were terminated with immediate effect.

The Company in their Statement in Reply states that;

*“The Employer is a private company limited by shares. Its business is the development of “smart card” applications and the supply of “smart cards” and related consultancy services.*

*In May 2004, the employer's holding company, Modular Techcorp Holdings Sdn. Bhd. ("Modular Techcorp"), obtained the approval of the Securities Commission and the Bursa Malaysia Securities Bhd. to offer Modular Techcorp's shares to the public which would lead to the shares being listed and traded on the MESDAQ.*

*The listing exercise continued until 10.11.2004 when Modular Techcorp's shares were listed on the MESDAQ.*

*The period between May 2004 and 10.11.2004 was a critical period for Modular Techcorp and the Employer, as any irregularity or breach of statute and subsidiary legislation could cause the listing exercise to fail or to conclude unfavourably. The offer to the public and listing was within the purview of the Securities Commission which oversaw compliance with statutes and regulations.*

*The Employer terminated the Claimant for 2 reasons which were patently obvious to the Claimant:-*

*(a) The Claimant maliciously attempted to sabotage the offer to the public and listing in that the Claimant dishonestly claimed entitlement to 200,000 shares in the Employer and caused a letter dated 13.9.2004 to be issued, by his solicitors to the Employer. Subsequently in early November 2004, he maliciously lodged an untrue complaint to the Securities Commissions against the Employer.*

(b) *When the Claimant applied for employment with the Employer, he had falsely represented that he had numerous contacts within the banking industry and could secure substantial work for the Employer. In fact, during his entire tenure with the Employer, the Claimant failed to secure even one client.*

The Company proceed to detail out the attempted sabotage and the misrepresentation.

### **Company's Submission**

The Company submit that in the Civil Suit the Claimant is the Plaintiff and the Company is being brought in as the Defendant. In the suit, the Claimant alleges that he is entitled to 200,000 shares in the Company as one of the terms (or representations) of his Contract of Employment which is being denied by the Company. In this case, the Claimant alleges he was wrongfully dismissed. The Company's stand is that the Claimant was dismissed *inter alia* because of gross misconduct in attempting to sabotage the Company's listing exercise on the basis of his false claim for 200,000 shares. The Claimant lodged a complaint to the Securities Commission during the listing exercise while he was still working with the Company. In the Company's view this was done *mala fide* and with the intention to pressure the Company into acceding to the Claimant's demand.

Therefore, the germane issue in both the suit and this case is whether the Claimant was entitled to the 200,000 shares in the Company pursuant to his Contract of Employment.

## **Claimant's Submission**

Claimant submit that the Court has heard the Company on this very point before Y.A. Yeoh Wee Siam on 16 November 2007.

After hearing the Company out, and making extensive notes, the Court directed the Company to make the necessary application at the High Court and gave the Company time to do so. Hence the trial dates of 22 & 23.11.2007 were vacated to facilitate this.

As at 05.03.2008, the Company had failed to file any application. Instead, the Company came to Court and tried to argue the same points again. The attendance notes on that day will show this to be true.

The Learned Chairman nevertheless fixed 19 & 20.03.2009 for trial and at the same time informed the Company that this Court will certainly proceed with trial absent any order from a superior Court preventing it from doing so.

As the trial dates of March 2009 got closer, the Company once again via letter of 03.03.2009 tried to raise almost identical arguments, taking full advantage of the fact that a new Chairman had been appointed into this Court in replacement of Datin Yeoh Wee Siam.

The Claimant merely wants his case to be heard without undue delay. He cannot quite fathom why this Court is still being forced to deliberate a matter that was fully ventilated 2 years ago, and where directions have already been given.

If the Company is adamant about preventing this trial from proceeding, then it should obtain the necessary order from the High Court. This had been done before - see *Protek Engineer Sdn. Bhd. v. Sredharan s/o Ramakrishnan Nair* (Award 401 of 2007) and *Dunlop Slazenger (Far East) Sdn. Bhd. v. Mahkamah Perusahaan Malaysia & Anor* [1999] 8 CLJ 160.

### **Consideration And Finding**

Having considered the submission of both counsels and the authorities referred to, this Court is of the view that the issue to be considered is whether this Court has the power to grant a stay of proceedings or adjourn the same sine die pending the disposal of the civil suit in the High Court.

This issue has been well considered by the Learned Chairman Y.A. Puan Ong Geok Lan in the case of *Misran Tamam v. Pembangunan Pertanian Melaka Sdn. Bhd.* [2007] 4 ILR 553. After considering numerous cases decided by the Federal Court and the Court of Appeal, she concluded that,

*“Having given this application due consideration this Court finds that it has no inherent jurisdiction to stay or adjourn sine die its own proceedings. The Court is, however, bound to proceed and determine the reference with a sense of urgency according to the spirit and intendment of the Act. Accordingly, the application by the Company to stay or adjourn sine die this proceedings pending the disposal of its suit against the Claimant in the High Court is dismissed”.*



The Learned Chairman's reasons as to why she dismissed the Company's application can be summarised as follows:-

- i) The Industrial Court is the creature of the Industrial Relations Act, 1967. It is not a civil court. It has no inherent jurisdiction, therefore its powers must be discovered only from the four corners of the Act expressly or by necessary implications.
- ii) There is no express provision in the Act which gives power to the Industrial Court to adjourn or to stay its own proceeding sine die.
- iii) It was duty bound to proceed to hear and determine the reference with a sense of urgency, in accordance with the spirit and the intent of the Act.
- iv) The Industrial is not strictly confined to the administration of justice in accordance with the law, but is an instrument for the dispensation of social justice according to equity and good conscience. Social justice and legal justice are 2 different concepts, although their common object is to ensure that justice is done. It is to free workmen from contracts and obligations there were unfair and inequitable that the concept of social justice has been evolved. Therefore no issue as to inconsistent finding of facts by the High Court and the Industrial Court as one involves legal justice and the other social justice.

This Court totally concur with the grounds of decision given by the Learned Chairman above and hereby dismissed the Company's application.

**HANDED DOWN AND DATED 6 OCTOBER 2009**

**(GULAM MUHIADDEEN ABDUL AZIZ)**  
CHAIRMAN  
INDUSTRIIL COURT, MALAYSIA  
KUALA LUMPUR