

No Standing To Intervene: The Court Of Appeal Settles Rights Of Unsecured Creditors In Judicial Management Proceedings

12 June 2026

For more information, please contact:

Datuk D P Naban

naban@rdslawpartners.com

Austen Emmanuel Pereira

austen@rdslawpartners.com

Bahari Yeow Tien Hong

bahari@rdslawpartners.com

Farah Shuhadah Razali

farah@rdslawpartners.com

Tan Sri Datuk Harmindar Singh Dhaliwal

harmindar@rdslawpartners.com

Kenny Lam Kian Yip

kenny@rdslawpartners.com

Lim Zhi Jian

jian@rdslawpartners.com

Michael Soo

michaelsoo@rdslawpartners.com

Rosli Dahlan

rosli@rdslawpartners.com

Steven Perian KC

speriankc@rdslawpartners.com

Vinayak Sri Ram

vinayak@rdslawpartners.com

From an early stage, a practical question arose: where an unsecured creditor objects to a judicial management (JM) application, does such creditor have the right to appear and oppose the application before the Court? Neither the Companies Act 2016 (CA 2016) nor the Companies (Corporate Rescue Mechanism) Rules 2018 (CRM Rules) expressly address this issue, and differing approaches had emerged at the High Court level.

The position at the appellate level was subsequently considered in *Desa Tiasa Sdn Bhd v CME Group Bhd & Anor* [2026] 1 MLJ 431 (the *Desa Tiasa* case), decided on 15 December 2025, where the Court of Appeal answered the question in the negative.

That said, the position is not yet finally settled. As discussed further below, leave to appeal to the Federal Court has since been obtained by Bellajade, and the appeal remains pending.

Two provisions in the CRM Rules lie at the centre of this issue, namely Rules 13 and 2.

Rule 13 sets out the categories of parties entitled to appear and oppose a JM application at the hearing. The rule is limited to two classes of persons:

- (a) A person entitled to appoint a receiver or receiver and manager over the company's assets (typically a debenture holder); and
- (b) A secured creditor. Unsecured creditors are notably absent from the list.

Meanwhile, rule 2 operates as a gap-filling provision. It provides that where the CRM Rules do not prescribe a specific procedure, the general Rules of Court 2012 (ROC 2012) shall apply. Relying on this provision, some courts had taken the view that the general right of intervention under the ROC 2012 could be imported into JM proceedings, thereby permitting unsecured creditors to participate on the basis that their legal interests may be affected by the outcome of the application.

The tension between these two provisions formed the central issue before the Court in the *Desa Tiasa* case.

On one hand, the High Court in *Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd* [2020] MLJU 723 took the view that Rule 13 was inconsistent with the Companies Act 2016 (CA 2016), which does not expressly prohibit creditors from being heard in JM proceedings. On that basis, the court held that Rule 13 was void to the extent of such inconsistency.

On the other hand, an earlier High Court decision had reached the opposite conclusion, although that decision was subsequently overturned on appeal by the Court of Appeal without written grounds being issued. This left the legal position in a state of considerable uncertainty prior to the *Desa Tiasa* case.

Decision Of The Court of Appeal

The facts in the *Desa Tiasa* case illustrate why this issue carries significant practical implications.

Bellajade Sdn Bhd (Bellajade), a creditor of CME Group Bhd (CME), had obtained judgment against CME for the sum of RM6,364,256.85 and subsequently filed a winding-up petition against the company. However, before the winding-up petition could proceed, *Desa Tiasa Sdn Bhd* (*Desa Tiasa*) applied to place CME under judicial management. The filing of the JM application effectively stayed or suspended the progress of the winding-up proceedings.

In response, Bellajade applied to intervene in the JM proceedings in order to protect its interests as a judgment creditor and petitioner in the winding-up proceedings. The High Court allowed Bellajade's intervention. *Desa Tiasa* then appealed.

The Court of Appeal allowed the appeal and set aside the High Court's decision permitting Bellajade's intervention. The Court of Appeal held, amongst others, as follows:

- Rule 2 operates merely as a gap-filling provision. It only applies where the CRM Rules are silent on a procedural issue. In the context of who may appear and oppose a JM application, the CRM Rules are not silent. Rule 13 expressly addresses the issue. Accordingly, there was no scope for Rule 2 to be invoked so as to import the general intervention principles under the ROC 2012 into JM proceedings.

- In relation to the argument advanced in *Goldpage Assets* that Rule 13 was ultra vires the CA 2016, the court applied the principle of harmonious construction. Whilst the CA 2016 does not expressly prohibit unsecured creditors from appearing at a JM hearing, it equally does not expressly confer such right. The restriction is instead found in Rule 13. As such, there was no inconsistency between the parent legislation and the subsidiary legislation. Rule 13 was therefore valid and had to be given effect according to its plain wording.
- The court further observed that if the exclusion of unsecured creditors from participation in JM hearings is considered undesirable or unjust, the remedy lies with Parliament or the Rules Committee, and not with the courts through judicial reinterpretation of the legislation.

Ultimately, the Court of Appeal decided in favour of Desa Tiasa. Bellajade was ordered to pay costs of RM10,000.00 each to Desa Tiasa and CME.

Practical Implications

For companies applying for judicial management, the Desa Tiasa Case brings greater procedural certainty to the JM process. A distressed company may now pursue a JM application without the risk of unsecured creditors intervening and opposing the application at the hearing stage. This is significant because, as the facts of the Desa Tiasa case illustrate, a creditor with a pending winding-up petition may have a strong commercial incentive to resist or delay the JM process. Following the Court of Appeal's decision, that avenue is presently closed to unsecured creditors.

That said, unsecured creditors are not left without recourse once a JM Order is granted. They remain entitled to participate in creditors' meetings and creditors' committees convened during the JM process and may, where appropriate, apply to Court in relation to the conduct of the judicial manager.

For unsecured creditors, however, the present position is clear. Where a company against whom they have a claim files for JM, they cannot appear at the hearing to oppose the application, regardless of the size of the debt or even if judgment has already been obtained. This remains the applicable position at the Court of Appeal level, although it may yet be revisited by the Federal Court. Practitioners should therefore qualify any advice given in reliance on the Desa Tiasa case pending the outcome of the appeal.

For secured creditors and lenders, the decision reinforces the veto rights accorded under Section 409 of the CA 2016. JM proceedings involving distressed borrowers are now less likely to be complicated by intervention applications from unsecured creditors at the application stage, thereby promoting a cleaner and more efficient restructuring process.

Commentary

The Desa Tiasa case is a significant decision which addresses an issue that had divided the courts since the introduction of the JM regime in 2017. By adopting a principled and text-based approach to the CRM Rules, the Court of Appeal has provided greater procedural clarity to the JM framework.

However, the matter is not yet finally settled.

Following the Court of Appeal's decision, Bellajade obtained leave to appeal to the Federal Court on four questions of law concerning the extent to which unsecured creditors possess rights of participation or audience in JM proceedings.

Broadly stated, the questions concern:

- Whether an unsecured creditor may intervene and be heard in JM proceedings initiated by another unsecured creditor pursuant to Section 405 of the CA 2016 read together with Rule 13;
- Whether an unsecured judgment creditor holding a final and non-appealable judgment may be heard in proceedings relating to the appointment of a judicial manager over its judgment debtor;
- Whether Rule 13 operates in a manner that gives preference to one unsecured creditor over another; and
- Whether Rule 13 excludes all unsecured creditors from participation in JM proceedings regardless of whether they support or oppose the application.

The Federal Court appeal will be closely watched by insolvency and restructuring practitioners alike. The issues raised extend beyond procedural standing and touch on broader questions of fairness and the treatment of unsecured creditors within the JM framework.

Until the Federal Court determines otherwise, the Desa Tiasa case remains the prevailing Court of Appeal authority on the rights of unsecured creditors in JM proceedings, although any advice given in reliance on it should be appropriately qualified to reflect the pending appeal.

www.rdslawpartners.com

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com