

In the Matter of FARINA NINJAYA SDN BHD (“the Company”)

AND

**In the Matter of the Insolvency Act (Chapter 247)
And Insolvency (Winding Up) Rules**

(Companies (Winding Up) No 5 of 2018)

**Ministry of Religious Affairs
(On behalf of the Government of His Majesty The Sultan
and Yang Di Pertuan of Brunei Darussalam)**

... Applicant

AND

The Deputy Official Receiver

... Respondent

**(High Court of Brunei Darussalam)
(Originating Motion No. 4 of 2025)**

Muhammed Faisal bin PDJLD Kol(B) DSP Haji Kefli, J.C.

Date of Judgment: 19th March, 2026.

Headnote: Insolvency — Provable debts — LAD accruing post-liquidation — Cut-off at date of winding-up — Post-liquidation accrual excluded — Application dismissed.

Deputy Senior Counsel Hjh Norismahfazidah binti Haji Ismail for Applicant.

Mr Ali Amani bin Nokman and Mr Leney Andrew Albert (M/S AIP Law) for Respondent.

JUDGMENT

Muhammed Faisal, J.C.:

I Introduction

This is an application by the Ministry of Religious Affairs (“MORA”), acting on behalf of the Government, seeking to reverse the decision of the Deputy Official Receiver (“DOR”) dated 19 July 2025 in respect of its Proof of Debt lodged in the liquidation of Farina Ninjaya Sdn Bhd (“the Company”).

The dispute concerns the admissibility of Liquidated and Ascertained Damages (“LAD”) referable to the period after the making of the winding-up order.

II Background Facts

On 22 September 2014, MORA entered into a construction contract (the “contract”) with the Company for upgrading and sustaining works at Sekolah Ugama Jalan Bedil.

The contract contained provisions governing delay and termination. Clause 30¹ provided for Liquidated and Ascertained Damages in the event the contractor failed to complete the works by the stipulated completion date. Clauses 32² and 33³ provided for termination in the event of breach and for the recovery of additional costs incurred by the Government following termination.

The Company failed to complete the works within the contractual period. On 9 August 2016, a Certificate of Non-Completion was issued. Pursuant to Clause 30, LAD began to accrue at the contractual rate of BND1,250 per day from that date.

The delay persisted through 2016, 2017 and into 2018. The contractual relationship remained subsisting and the works were not completed.

On 9 June 2018, a winding-up order was made against the Company in Companies Winding Up No. 5 of 2018. The Company thereby entered compulsory liquidation. The winding-up order was duly published in the Government Gazette.

Notwithstanding the making of the winding-up order, the works remained incomplete. As a matter of contractual calculation, LAD continued to accrue daily after 9 June 2018.

On 18 February 2019, the contract was terminated pursuant to Clause 33(a)⁴ on the basis of the Company’s breach. Following termination, the Government incurred additional costs

¹ “If the Contractor fails to complete the Works by the date in the Appendix or within any extended time under Clause 31 hereof and the Superintending Officer certifies in writing that in his opinion the same ought reasonably so to have been completed the Contractor shall pay or allow to Government a sum calculated at the rate stated in the Appendix as liquidated and ascertained damages for the period during which the said Works shall so remain or have remained incomplete and the Superintending Officer may deduct such damages from any monies due to the Contractor.”

² “If the Contractor, after receipt of a written notice from the Superintending Officer requiring compliance within seven (7) days, fails to comply with such further drawing and/or Superintending Officer’s Instructions, the Superintending Officer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect thereto and all costs incurred in connection therewith shall be recoverable from the Contractor by the Superintending Officer as a debt or may be deducted by him from any monies due or become due to the Contractor.”

³ See “TAB C” Applicant Bundle of Document and Authorities,

⁴ Id

in completing and rectifying the works. Those additional costs were claimed pursuant to Clauses 32⁵ and 33⁶ of the contract.

In August 2024, MORA lodged a Proof of Debt in the liquidation claiming:

1. LAD calculated from 9 August 2016 to 18 February 2019 (923 days at BND1,250 per day); and
2. Additional costs incurred pursuant to Clauses 32 and 33.

An Amended Proof of Debt was filed on 14 May 2025.

On 19 July 2025, the DOR admitted LAD only up to 9 June 2018, being 669 days. LAD referable to the period after the winding-up order was rejected on the basis that it constituted post-liquidation accrual and was not provable in the liquidation.

The DOR admitted the claim for additional costs under Clauses 32 and 33.

MORA now seeks to reverse the DOR's decision insofar as it disallowed LAD accruing after 9 June 2018.

III Issues for Determination

There is no dispute that:

- LAD accrued from 9 August 2016;
- A winding-up order was made on 9 June 2018;
- The contract was terminated on 18 February 2019; and
- Additional costs under Clauses 32 and 33 have been admitted.

The sole issue is whether LAD accruing after 9 June 2018 constitutes a provable debt in the liquidation, or whether such sums represent post-liquidation accrual which insolvency law does not permit to be proved.

IV Analysis

(1) The Insolvency Cut-Off Principle

It is a fundamental principle of insolvency law that upon the making of a winding-up order, the rights of creditors are fixed as at that date. The estate is constituted at that moment. Liabilities provable in the liquidation must exist, or be contingent, as at the commencement of winding up.

⁵ Supra at n.2

⁶ Supra at n.3

The liquidation process does not permit a creditor's claim to expand by reason of events occurring after the winding-up order.

This principle ensures certainty and underpins the pari passu distribution of assets.

(2) The Nature of LAD Under Clause 30

Clause 30 provides for LAD at a daily rate for each day the works remain incomplete after the completion date.

The Certificate of Non-Completion was issued on 9 August 2016. From that date, LAD accrued daily.

However, LAD is not a fixed lump-sum triggered once and for all by breach. It is a continuing mechanism. Each day of delay generates a fresh contractual accrual at the agreed rate.

While the failure to complete occurred prior to liquidation, the days of delay after 9 June 2018 had not yet occurred at the time the winding-up order was made.

Those additional days depended upon the continued passage of time after liquidation. The fact that the contractual mechanism had already been engaged does not convert post-liquidation days of delay into pre-liquidation liabilities.

In insolvency law, the question is whether the liability had accrued or was contingent as at the cut-off date. The sums referable to days of delay after 9 June 2018 depended upon future events and had not yet arisen.

To permit their proof would allow post-liquidation events to enlarge the estate's liabilities. That would be inconsistent with the cut-off principle.

(3) Distinguishing Clauses 32 and 33

The contract was terminated on 18 February 2019 under Clause 33(a). Upon termination, the Government became entitled to recover additional costs incurred in completing the works pursuant to Clauses 32 and 33.

The DOR admitted those termination-based costs.

There is no inconsistency in that approach.

Termination represents the exercise of a contractual right arising from the pre-liquidation contract. The resulting claim stems from that contractual relationship.

By contrast, LAD increases daily by reference to continued delay. It depends upon the occurrence of additional time after liquidation.

The two are conceptually distinct.

(4) Notice and Equitable Considerations

MORA contends that it was unaware of the winding-up order at the material time.

Even if that is so, insolvency operates by law upon the making of the winding-up order.

It does not depend upon actual notice to each creditor.

The publication of the order in the Gazette satisfies statutory requirements. The absence of subjective awareness cannot displace the legal effect of liquidation.

Equitable considerations cannot override the statutory cut-off.

V Conclusion

The Applicant's argument is understandable when viewed from a purely contractual perspective. It may appear logical that LAD should continue until termination.

However, insolvency law imposes its own framework.

The winding-up order of 9 June 2018 fixed the rights of creditors. LAD accruing after that date depended upon days of delay that had not yet occurred at the time the estate was constituted.

To admit such sums would permit post-liquidation events to enlarge the pool of provable debts. That would be inconsistent with established insolvency principle and the *pari passu* regime.

The Deputy Official Receiver correctly admitted LAD up to 9 June 2018 and correctly rejected the balance.

Accordingly, the application is dismissed.

No order as to costs.

MUHAMMED FAISAL BIN PDJLD DSP KOL(B) HJ KEFLI
Judicial Commissioner