IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 107

Suit No 917 of 2016

Between

Abhilash s/o Kunchian Krishnan

… *Plaintiff*

And

(1) Yeo Hock Huat
(2) JCS-Vanetec Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Companies] — [Oppression] — [Minority Shareholders] — [Share valuation]

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v
Yeo Hock Huat and another

[2018] SGHC 107

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30 April 2018

Valerie Thean J:

Introduction

1 The plaintiff, Mr Abhilash s/o Kunchian Krishnan ("Mr Abhilash"), is a minority shareholder of the second defendant, a company incorporated in Singapore called JCS-Vanetec Pte Ltd ("JCS-Vanetec"). Mr Abhilash brought this action against JCS-Vanetec and its majority shareholder, Mr Yeo Hock Huat ("Mr Yeo"), alleging that Mr Yeo had conducted the affairs of JCS-Vanetec in a manner oppressive to Mr Abhilash and in disregard of his interests as a shareholder within the meaning of s 216(1)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"). The principal remedy that Mr Abhilash sought was a court order for Mr Yeo to purchase his shares in JCS-Vanetec on a fair market valuation.[1]

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[1] Statement of Claim at p 20.

2 On the first day of trial, the parties came to an agreement that Mr Yeo would purchase Mr Abhilash's shares, and that there was therefore no need for a trial on Mr Yeo's liability for oppression under s 216(1)(*a*) of the Act. As expert evidence had been adduced by both sides on the value of JCS-Vanetec, the trial needed to proceed only for the purpose of testing the expert evidence to determine how much JCS-Vanetec was worth, and consequently to determine the price which Mr Yeo should be ordered to pay for Mr Abilash's shares. The parties therefore recorded a consent order to this effect and the hearing proceeded on the basis of the consent order.

3 On 14 February 2018, after giving the parties brief reasons, I accepted the defendants' case that JCS-Vanetec should be valued on a net assets basis, and that the valuation of the defendants' expert, Mr Thio Khiaw Ping ("Mr Thio"), should be accepted. I therefore ordered Mr Yeo to purchase Mr Abhilash's 76,500 shares in JCS-Vanetec, being 13.91% of the company's total shareholding,[2] at the price of $15,242.83. Mr Abhilash now appeals against my decision, and I therefore set out my grounds of decision in full.

Background

4 Mr Abhilash is in the business of manufacturing machines for the aerospace industry.[3] He ran his business through two companies, one of which was called Vanilla Aviation Pte Ltd ("Vanilla Aviation"). Near the end of 2003, he met Mr Yeo, who was, at that time, running a successful business manufacturing and selling industrial washing machines to international clients.[4] Mr Yeo operated his business through a number of companies with the "JCS"

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2 Abhilash s/o Kunchian Krishnan's AEIC at para 86.

3 Abhilash s/o Kunchian Krishnan's AEIC at paras 3 and 7.

4 Yeo Hock Huat's AEIC at p 68.

namesake, one of which was called JCS-Echigo Pte Ltd ("JCS-Echigo"). With the hope of expanding his business into manufacturing for the aerospace industry, Mr Yeo formed a business partnership with Mr Abhilash for that purpose and set up a company called JCS-Vanilla Pte Ltd. The company was later renamed JCS-Vanetec, who is the second defendant in this action. For convenience, I shall refer to it by its existing name.

5 At JCS-Vanetec's inception, its 10,000 shares were held in the proportion of 50.99%, 0.01%, and 49% by Mr Yeo, Ms Elise Hong (who was an officer of JCS-Echigo), and Mr Abhilash through Vanilla Aviation respectively. JCS-Vanetec later issued more shares and the proportions of its shareholding also changed as a result. At present, JCS-Vanetec has issued 550,000 shares. Mr Yeo holds 433,500 shares, which is 78.8% of JCS-Vanetec's shareholding. One of Mr Yeo's companies, JCS Group Co Ltd ("JCS Group"), holds 40,000 shares, which is 7.3%. Mr Abhilash holds 76,500 shares, which is 13.9%.[5]

6 The reason Mr Abhilash's shareholding was reduced from 49% to 13.9% was a contested issue in the context of the question of whether Mr Yeo had acted oppressively as a majority shareholder towards Mr Abhilash's minority interest. Mr Abhilash had alleged that Mr Yeo had diluted his shares as part of his attempt to cut him out of the company,[6] whereas Mr Yeo had contended that he and JCS Group had been issued shares in return for capital they had injected into JCS-Vanetec to keep its business afloat.[7] It was not necessary for me to resolve this dispute because Mr Yeo's liability for minority oppression was no longer in issue. Under the consent order, there was no dispute that Mr Abhilash

5 Yeo Hock Huat's AEIC at para 64.

6 Statement of Claim at para 58(a).

7 Defence at para 58.

was entitled to 13.9% of JCS-Vanetec's shares, which is 76,500 shares, and that my task was to determine the value of those shares.[8]

Consent order and issues to be determined

7 Prior to trial, Mr Yeo made an offer to purchase Mr Abhilash's shares at a fair market value to be determined by the court. On the first day of trial, Mr Abhilash decided that he would accept Mr Yeo's offer. They agreed that this would be effected by an order for Mr Yeo to buy Mr Abhilash's shares at a price determined by the court, and so the parties recorded a consent order to this effect, as I have mentioned. Before proceeding further, it is useful at this juncture to clarify the jurisdiction upon which I have made the buy-out order in this case and its relationship with the parties' consent order.

8 In the present case, the form and basis of the parties' consent order takes direct reference from the Court of Appeal's decision in *Hoban Stevens Maurice Dixon v Scanlon Graeme John and others* [2007] 2 SLR(R) 770 ("*Hoban (CA)*"). Similar to the parties in the present case, the parties in *Hoban (CA)* indicated that they did not desire for the court to determine the defendants' liability for minority oppression. They therefore agreed, by way a consent order, the terms of reference for an expert to determine the fair market value of the plaintiffs' shares, which the defendants had agreed to purchase. Accordingly, the trial judge, V K Rajah J (as he then was), appointed an expert valuer to value the defendant company's shares. In the event, the expert valuer valued the company at nil. The plaintiffs then attempted to persuade the Rajah J to adjust that valuation in favour of the plaintiffs in exercise of his power to make a buy-out order under s 216(2)(*d*) of the Act. Rajah J declined to exercise that power, on the basis that on a proper construction of s 216(2), that power was enlivened

[8] Consent order in S 917/2016 dated 19 October 2017 at para 2.

only upon a determination the defendant was liable for minority oppression under s 216(1): *Hoban Steven Maurice Dixon and another v Scanlon Graeme John and others* [2005] 2 SLR(R) 632 ("*Hoban (HC) (No 1)*") at [12] and [17].

9 The plaintiffs appealed, and the Court of Appeal, without issuing grounds, held that the issue of the defendants' liability for minority oppression could no longer be litigated, and that the expert's valuation was final: *Hoban (CA)* at [12]. The Court observed, however, that Rajah J had failed to exercise the discretion provided specifically in the parties' consent order to adjust the valuation after hearing evidence on what the order had referred to as "non-pecuniary material circumstances": *Hoban (CA)* at [12]. In the circumstances, the Court remitted the matter to Rajah J for him to consider exercising that discretionary power. Rajah J then convened a new trial for that purpose and, having examined the evidence, concluded that there still was no basis to vary the nil valuation: *Hoban Steven Maurice Dixon v Scanlon Graeme John* [2006] SGHC 136 ("*Hoban (HC) (No 2)*") at [15].

10 From this decision, the plaintiffs brought the appeal in *Hoban (CA)*. The Court of Appeal in *Hoban (CA)* allowed the appeal and set aside the nil valuation. This was because on a proper interpretation of the consent order, the parties had contemplated an actual purchase of shares, and a nil valuation had made that impossible. This in turn rendered the consent order inoperable and the valuation liable to be set aside: *Hoban (CA)* at [42] and [44] *per* Chan Sek Keong CJ.

11 The aspect of the *Hoban* decisions which is key and relevant to the present case is that the Court of Appeal when dealing with *Hoban (HC) (No 1)* and again when considering *Hoban (HC) (No 2)* considered it entirely appropriate for the parties to argue and the trial judge to determine the value at

which the plaintiffs' shares would be bought by the defendants even though no finding of liability for minority oppression had been made. Indeed, much of the court's reasoning in *Hoban (CA)* was built on the premise that parties are entitled to compromise a s 216 action by agreeing that one party will buy out the other party's shares, and by proceeding to trial on only the issue of the valuation of those shares. Had the court not accepted the legitimacy of this approach, it would not have held that liability for minority oppression by virtue of the parties' consent order could no longer be litigated, and it would not have analysed the parties' intentions behind the consent order in question to determine whether the order had become inoperable by reason of the Rajah J's nil valuation of the shares in question: *Hoban (CA)* at [12] and [35].

12 This approach is permissible for unfair prejudice claims in England as well. *In re A Company (No 003324 of 1979)* [1981] 1 WLR 1059 ("*In re A Company*"), the plaintiff sought an order to compel the defendants to purchase his minority shareholding on the ground that they had conducted the company's affairs in an oppressive way within the meaning of s 210 of the Companies Act 1948 (c 38) (UK), which is *in pari materia* with s 216 of our Act. In the event, the parties settled their differences and the petition was compromised. They then sought a determination on whether a consent order in Tomlin form setting out a scheme for purchase of the plaintiff's shares was appropriate when a s 210 action was compromised. The English High Court held that it was appropriate. The minority oppression action in England has since become the action for unfair prejudice, but *In re A Company* is still cited for the proposition that such an action may be so compromised and the compromised terms will be given effect by the court: see Sir David Foskett (gen ed), *Foskett on Compromise* (Sweet & Maxwell, 8th Ed, 2015) at para 23-12.

13 It follows from this analysis that the basis of my jurisdiction, to order

Mr Yeo to buy Mr Abhilash's shares at the price I have determined, is the parties' consent order of 19 October 2017. It is important to note that this type of jurisdiction is distinct from another (more commonly exercised) type of jurisdiction to make a buy-out order, which is predicated on the fulfilment of conditions imposed by statute. There are two instances of this latter type of jurisdiction. First, a court has the jurisdiction to make a buy-out order under s 216(2)(*d*) of the Act when liability for minority oppression has been established: *Hoban (HC) (No 1)* at [12] *per* Rajah J. Second, a court has the jurisdiction to make a buy-out order under s 254(2A) of the Act, as an alternative to winding up the company, when the court is satisfied that either the directors have acted in the affairs of the company unfairly towards other members (s 254(2)(*f*)) or that it is just and equitable to wind up the company (s 254(2)(*i*)): *Ting Shwu Ping (administrator of the estate of Chng Koon Seng, deceased) v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 ("*Ting Shwu Ping*") at [40] *per* Prakash JA.

14 The philosophy which undergirds the ss 216(2) and 254(2A) jurisdiction is the idea that the buy-out order is not a "free-standing remedy", in the sense that the Act does not allow an aggrieved member to "exit at will": see *Ting Shwu Ping* at [46] *per* Prakash JA and *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [31] *per* Chan Sek Keong CJ. As the buy-out order is essentially a forced sale, and considering that in ordinary circumstances the sale of shares is a voluntary transaction, the court will not force a sale unless there are good reasons for doing so. In this context, those good reasons are provided for in the Act, in particular, by the criteria specified in ss 216(2) and 254(2A).

15 This philosophy does not apply to a consent order. By such an order, both parties agree that one will buy the other's shares. Hence, by the very nature of such an arrangement, that other party will not be exiting the company "at

will", that is, on a unilateral whim. He will be doing so on the footing of a bilateral arrangement. There is therefore no reason why the court should not give effect to such an arrangement in so far as it is just and equitable to do so. Applying *Hoban (CA)*, the court needs simply to ensure that a valuation greater than nil is returned so that the agreed buy-out scheme will not be rendered inoperable.

16 The mandate contained in the consent order in the present case was to determine the fair market value of Mr Abhilash's shares in JCS-Vanetec and, in line with *Hoban (CA)*, it was specified at para 6 that the valuation shall not be nil. By para 3, the valuation was to be on a pro-rata basis without any discount being made for a minority interest. Para 4 scoped the assessment to include issues between the parties as to whether the purchase of equipment, various payments to and from JCS-Vanetec, a contract with a Chinese original equipment manufacturer ("OEM"), and a proposal from a Chinese company should be taken into account for the purposes of the valuation. I found no reason not to give effect to these terms, and I therefore allowed the trial to proceed on only the issue of valuation and later heard the parties on that issue. On this note, I turn to summarise the parties' positions.

Parties' positions

17 Mr Abhilash's principal submission was that JCS-Vanetec should be valued on an income basis, specifically, through the discounted cash flow method, by which JCS-Vanetec's future cash flow may be used to calculate the present value of the company.[9] Mr Abhilash argued that the income basis of valuation was appropriate because JCS-Vanetec was a going concern, and also because it had a significant amount of goodwill, which was evidenced by

9 Plaintiff's Reply Submission at paras 37–38.

existing contracts, past investment offers, and certifications which qualified JCS-Vanetec to manufacture aerospace components for well known companies.

18 Mr Abhilash's valuation expert, Mr Sridhar Rao ("Mr Rao"), produced two main estimations of JCS-Vanetec's value. The first was performed on an income basis, and the value of JCS-Vanetec was determined to be $39,649,308.[10] The second was performed on an investment basis, and the value of JCS-Vanetec was determined to be $75,699,572.[11] Mr Abhilash submitted that the true value of the company was in between these two figures, and that therefore, the value of his 13.9% shareholding in the company should correspondingly be between $4,963,697 and $9,476,829.[12]

19 The defendants' principal submission was that JCS-Vanetec should be valued on a net assets basis.[13] The defendants rejected Mr Rao's valuation of JCS-Vanetec on the investment basis because that was not the basis of valuation that the parties agreed upon according to the consent order. The defendants also rejected the income basis of valuation because JCS-Vanetec was a historically loss making company. They submitted that Mr Rao's projection of JCS-Vanetec's future cash flows was predicated on speculation, and therefore could not be relied upon to arrive at an accurate valuation. Properly performed, a valuation on the income basis, according to the defendants' expert, Mr Thio, showed that JCS-Vanetec had a negative equity value. Accordingly, the net assets basis was the only sensible basis for determining the company's fair market value. That value was $109,589,[14] and it followed that Mr Abhilash's

10 Sridhar Rao's AEIC at p 31.

11 Sridhar Rao's AEIC at p 43.

12 Plaintiff's Closing Submissions at para 649.

13 Defendants' Closing Submissions at para 18.

14 BAEIC Vol 5 at p 532.

13.9% shareholding should be valued at $15,242.83.

Issues

20 Having regard to the terms of the consent order, the parties' submissions and the evidence before me, I considered that there were two main issues for determination:

(a) Which of the primarily three methods of valuation suggested by the parties' experts was applicable: the investment basis, the income basis or the net assets basis?

(b) Bearing in mind the proper accounting basis of valuation, what should be the valuation adopted? In this regard, should any adjustment be made to that valuation for various matters specified at para 4 of the consent order?

21 In summary, my view was that the net assets basis was the applicable basis of valuation, rather than the other two bases suggested. Mr Thio's valuation was the only valuation conducted on that basis. As there was no basis for any modification, Mr Thio's valuation was accepted. I turn now to explain my views.

Issue 1: Valuation methods

The investment basis

22 I start with the highest valuation in evidence which was made of JCS-Vanetec. As I have mentioned, Mr Rao arrived at it on the investment basis. Counsel for the defendants, Mr Divyanathan, disagreed with using an investment basis because the consent order states at para 2 that it is the "fair

market value" of JCS-Vanetec which should be assessed. He argued that since my jurisdiction is derived from the parties' consent order, I must exercise it according to the terms of that order, and that would rule out any assessment of the investment value of the shares. For ease of reference, I reproduce para 2 in full:

> The determination of the Honourable Court at the trial of this action shall be confined to the fair market valuation of the 2nd Defendant as at 30.4.16 ("Valuation") for the purposes of the sale and purchase of the Plaintiff's 76,500 ordinary shares in the 2nd Defendant ("Subject Shares") by the Plaintiff and the 1st Defendant respectively. The Plaintiff shall sell and the 1st Defendant shall buy the Subject Shares at the said fair market valuation.

23 Counsel for Mr Abhilhash, Mr Liew, responded by highlighting that under s 216(2) of the Companies Act (Cap 50, 2006 Rev Ed), the court in making a buy-out order has an unfettered discretion to consider all facts and circumstances to come to a valuation that is fair, just and equitable between the parties: *Koh Keng Chew and others v Liew Kit Fah and others* [2017] SGHC 52 at [5] *per* Chua Lee Ming J, referred to with approval in *Poh Fu Tek and others v Lee Shung Guan and others* [2017] SGHC 212 ("*Poh Fu Tek*") at [31] *per* Vinodh Coomaraswamy J; see also the Court of Appeal's decision in *Yeo Hung Khiang v Dickson Investments (Singapore) and others* [1999] 1 SLR(R) 773 at [72] *per* M Karthigesu JA.

24 Mr Liew's submission was not persuasive. As I have mentioned earlier at [13] above, the jurisdiction by which I conducted the valuation exercise was derived from the parties' consent order, and not from the jurisdiction under s 216(2) of the Act. I was therefore guided by the terms of the consent order, which had been framed with some precision. By para 2, the consent order identified a specific accounting standard, *ie*, "fair market value", for the valuation of JCS-Vanetec. In contrast to that standard, the investment value is

an entity-specific basis of value which shows the value of an asset to a particular owner or prospective owner for individual investment or operational objectives.[15] Market value, the measure dictated by the consent order, refers to the most probable price reasonably obtainable in the market on the valuation date.[16]

25 At the same time, however, the consent order itself envisaged that I had a discretion to make adjustments to the experts' valuation in arriving at my final determination. I therefore did not take a strictly literal approach to the consent order because that, too, would have created problems. Para 4 sets out a specific list of matters that the court should consider in deciding whether to adjust the valuation arrived at by the experts in order to determine the true fair market value of JCS-Vanetec. If para 2 were read literally, then there would be no need for the inquiry stated at para 4.4 – "Whether the Chinese proposal [referring to a proposal to buy JCS-Vanetec's shares put forward by a company called Shanghai Ossen] has any effect on the Valuation of the Subject Shares." This is because the Chinese proposal was evidence of investor sentiment, which is strictly speaking irrelevant to the company's fair market value, on a technical definition of that term. It was therefore clear to me, on a fair reading of the order as a whole, that the parties intended that the court value the company based on all the evidence proffered, which included Mr Rao's suggestion of the investment basis and Mr Abhilash's evidence of the offer from Shanghai Ossen. What Mr Yeo's submissions proposed was to use Mr Thio's valuation as a base, and make such adjustments as necessitated by the other components of the consent order.[17]

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15 Exhibit P1 at IVS 104 Bases of Value at paras 60.1–60.2; Thio Khiaw Ping's AEIC para 40.2.

16 Exhibit P1 at IVS 104 Bases of Value at paras 30.1 and 30.2(a); Thio Khiaw Ping's AEIC para 40.1.

26 Nevertheless, I found, that there was no factual basis for adopting the investment approach. While Shanghai Ossen did make an initial proposal in 2015 to invest in JCS-Vanetec, the offer was subject to a due diligence check which was never carried out,[18] arising from Mr Abhilash's failure to cooperate in accepting the proposal. The offer has evaporated, and it is entirely speculative as to whether another company may have similar interest. There are other methods of producing vanes and, even in respect of the particular method being used by JCS-Vanetec, there may well be other businesses capable of using the same method. In this regard, it was Mr Abhilash's evidence that JCS-Vanetec's first machine was purchased second-hand from the Netherlands, [19] it was not designed by him or custom-built to his unique specifications.

Income basis or net asset basis for fair market valuation

27 On the premise that JCS-Vanetec's fair market value was the basis of my assessment, I turn then to explain the accounting method upon which I assessed the fair market value of the shares.

28 I begin with the possible bases of determining the fair market value of a minority shareholding. In *Poh Fu Tek* ([23] *supra*), Coomaraswamy J at [36] cited *CVC/Opportunity Equity Partners Ltd and another v Demarco Almeida* [2002] 2 BCLC 108 at [37] *per* Lord Millett for the three main ways of doing so. In short, a minority shareholding may be valued (a) as a rateable proportion of the total value of the company as a going concern without any discount for the fact that the holding in question is a minority holding; (b) as before but with such a discount; or (c) as a rateable proportion of the net assets of the company

17 Defendants' Closing Submissions at para 28.

18 DBOD Vol 5, p 3496 at para 2.1; Certified Transcript, 31 October 2017, p 63 at lines 3–18.

19 Plaintiff's AEIC para 7.

at their break up or liquidation value. Option (b) was ruled out by para 3 of the consent order in the present case: the parties had agreed that no discount would be made for Mr Abhilash's interest being a minority shareholding. Mr Rao proposed option (a), while Mr Thio's view was that it must be option (c).

29 Mr Thio accepted at the hearing that generally, the income approach is preferred to the net assets approach for a company which is going concern, such as JCS-Vanetec. His rationale for using the net assets basis of valuation was that this was the most appropriate for a loss-making company. He reiterated the point made at para 2.1.1 of his expert report that the net assets approach is suited to loss-making businesses.[20] This was because, using an income basis of valuation, specifically in the form of the discounted cash flow method of valuation, yielded a negative value for JCS-Vanetec. He attempted a valuation of JCS-Vanetec using this method, and at para 3.3.1 of his report, he explained:

> … since JCS has had a negative EBITDA [*ie*, earnings before interest, tax, depreciation and amortisation] except for FY2015 (due to a one-off order from JCS Technologies Pte Ltd) and a [*sic*] since JCS is expected to generate a negative EBITDA until FY2020, *we do not find that it is possible to meaningfully apply the market approach as this will result in a negative value based on EV/EBITDA, EV/EBIT and P/E multiples*. [emphasis added]

30 In coming to his conclusion, Mr Thio had projected an increase in revenues for JCS-Vanetec. May to December 2016 revenues were projected to increase by 125.3% in FY2017 to account for potential new business and then revenues were projected thereafter to increase steadily by 20% per annum.[21] He also projected an increase in gross margin from 22.6% in FY2017 to 39% in FY 2021. Despite this, JCS-Vanetec was expected to become profitable only in FY2021 after cumulative losses of $2.7m from FY2016 May to FY2020 in

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20 BAEIC Vol 5, p 531 at para 2.1.1.

21 Thio Khiaw Ping's 22 March 2017 Report, AEIC at p 535.

December.

31 Mr Abhilash argued for an income approach on two grounds: first, that JCS-Vanetec is a going concern; and second, that JCS-Vanetec possesses intangible assets which not only have inherent value but also have the potential to generate future revenue. The first argument was tenuous. The common understanding of a "going concern" is a company that is operating with a turnover that enables the company to be self-sustaining: see, for example, *Poh Fu Tek* at [37] where Coomaraswamy J discusses how an income valuation may be based either on a company's profits or future cash flows. In the present case, it is not disputed that JCS-Vanetec is historically a loss-making company that has been kept afloat by Mr Yeo's capital injections and various bank loans. Barring a record of sufficiently strong historical revenue upon which to project future profits, there was no basis upon which to adopt an income basis valuation. It was not disputed that, without more, the company must be attributed a negative value. Accordingly, it was the second argument that was important to the analysis: it was crucial for Mr Abhilash to establish that JCS-Vanetec's intangible assets could generate future revenue for the company. On this hypothesis, JCS-Vanetec would cease to be loss-making, and the income expected to be generated would make the income basis plausible.

32 I focused, therefore, on the intangible assets which were foundational to Mr Rao's valuation. These assets comprised: (a) JCS-Vanetec's contract with a Chinese original equipment manufacturer ("OEM") called Aviation Industry Corporation of China ("AVIC"); (b) JCS-Vanetec's certifications with various other OEMs; and (c) JCS-Vanetec's patent application for a specialised industrial process it applies, referred to as the "cold-roll forming process".

JCS-Vanetec's intangible assets

33 It is appropriate, before I set out my analysis of these assets, to explain the standard of proof to which I held Mr Abhilash. In so far as Mr Abhilash submitted that the three intangible assets I have set out above represent sources of future revenue for JCS-Vanetec, he need only have shown that it was *reasonable* for his expert, Mr Rao, to regard them as such. That is because, as Coomaraswamy J highlights in *Poh Fu Tek* at [42], there is "no provable truth with regard to the future", and that "where an expert makes an assumption as to a future event, the court must consider both qualitatively whether the expert's assumption is reasonable in the light of the evidence and also quantitatively the likelihood of the assumed event actually materialising". However, it should go without saying that insofar as Mr Abhilash relied on *present facts* to make good those reasonable assumptions, those facts had to be proved on a balance of probabilities.

(1) The AVIC contract

34 The first of the three intangible assets is a contract between JCS-Vanetec and AVIC ("the AVIC contract"). This is a contract for JCS-Vanetec to manufacture a product called the S3001 HPC Airfoil Assembly, which is essentially a ring component used for the manufacture of aeroplane engines, for AVIC.[22] For convenience, I will call these products Engine Rings. There are essentially two aspects of the AVIC contract which were in dispute for the purpose of determining the value which the contract is likely to bring to JCS-Vanetec in the future:

(a) What is the nature of the deal contemplated in the AVIC contract?

[22] Yeo Hock Huat's AEIC at para 44.

(b) Does the AVIC contract represent a potential for future sales with AVIC?

35 I examine each question in turn.

(a) Nature of the deal contemplated in the AVIC contract

36 I accepted Mr Yeo's evidence that the AVIC contract contemplates a project in which JCS-Vanetec will design and manufacture a *prototype* ring to be used in the manufacture of aeroplane engines.[23] I also accepted his evidence that such contracts are awarded to other vendors, with the OEM having the final decision as to which vendor it will engage to manufacture that specific component for the engine that the OEM produces.

37 I accepted Mr Yeo's evidence because it is consistent in my view with the objective documentary evidence before me, which include the following:

(a) First, the terms of the AVIC contract itself specify the delivery of a fixed number of initial articles for submission as part of a "project",[24] instead of stipulating unit prices and expected volumes in the manner characteristic of a manufacturing and supply contract.

(b) Second, timelines in a presentation slide by Aero Engine Corporation of China, a government-owned corporation in the business of aerospace engineering which is related to AVIC, shows that the initial design stage for the engine development is scheduled to run from 2016 to 2020 and that airworthiness is expected to be completed only in

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23 Yeo Hock Huat's AEIC at para 44.

24 DBOD Vol 5 at pp 3333 and 3336.

2027.[25] These slide correspond with Mr Yeo's testimony on the timelines.

(c) Third, external media articles confirm that the AVIC engine development project is still in the initial development stage and is not expected to complete airworthiness certification until 2025.[26] While these articles, without more, do not conclusively prove the truth of their contents, they nonetheless provide support for Mr Yeo's testimony.

38 Accordingly, I found that the AVIC contract was for the manufacture by JCS-Vanetec of a prototype ring component which AVIC may or may not eventually select for the manufacture of its engine. Mr Abhilash led no evidence on the likelihood of AVIC accepting JCS-Vanetec's product, or on the value of the contract itself. All he could suggest was that JCS-Vanetec is "on the brink" of being AVIC's "supplier" for the Engine Rings[27] – not even that it *has become* AVIC's supplier – and in any case, there was no evidence to show that JCS-Vanetec is in fact close to securing such a deal. Therefore, there was no means by which I could measure the value of any future business with AVIC.

(b) Potential for future sales with Chinese OEMs

39 As the AVIC contract was for a prototype ring only, it did not indicate that there would be a stream of future revenue for JCS-Vanetec through business with AVIC, let alone with other Chinese OEMs.

40 Further, Mr Abhilash produced no documentary evidence to persuade me that sales of Engine Rings to Chinese OEMs are to be reasonably expected

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25 DBOD Vol 5 at p 3431.

26 DBOD Vol 5 at pp 3169, 3185, 3202 and 3204.

27 Plaintiff's Closing Submissions at para 481.

any time before 2025 or 2027. This is only to be expected, given that the AVIC project, as the evidence shows, is still in its developmental stage. Mr Abhilash also produced no documentary evidence on the sale price of the Engine Rings, as the defendants correctly observed.[28] While his valuation expert, Mr Rao, assumed that Engine Rings may be sold to AVIC at a constant price of $50,170,[29] there was simply no objective evidence for such a price. Mr Rao admitted in cross-examination that this was his own estimate;[30] and clearly, I could not give any weight to this estimate because Mr Rao was here as an expert in the valuation of companies, not as an expert in the sale and manufacture of aircraft components.

41 In my judgment, Mr Abhilash had no reasonable basis to show that the AVIC contract reasonably represented a source of future revenue for JCS-Vanetec such that the income basis would be more appropriate for valuing the company.

42 In this regard, Mr Abhilash argued that any such uncertainty should not mean that the AVIC contract should be entirely excluded from an expert's projection of JCS-Vanetec's future earnings but instead needs only to be taken into account, under the income basis, by increasing the applicable discount rate on a discounted cash flow analysis. Mr Abhilash stated that this was how the court in *Poh Fu Tek* accounted for the fact that there might be no future sales relationship between the company being valued in that case and a client of that company called Roxol.[31]

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28 Defendants' Closing Submissions at para 48.

29 Sridhar Rao's AEIC at p 25.

30 Certified Transcript, 3 November 2017, p 71 at lines 15 to p 75 at line 19.

31 Plaintiff's Reply Submissions at paras 108–114.

43 In my view, Mr Abhilash's reliance on that aspect of *Poh Fu Tek* was misplaced. In that case, there was clear evidence that the company being valued had *past sales* with Roxol, which the court held to be a sufficient basis for the expert to project future similar sales despite the uncertainty of such sales actually materialising: *Poh Fu Tek* at [89]. In contrast, in this case, it is not disputed that JCS-Vanetec has never sold any goods to AVIC prior to the AVIC contract. There is no evidence that these two companies have a prior business relationship.

(2) JCS-Vanetec's certifications

44 Next, Mr Abhilash suggested that JCS-Vanetec's future sources of revenue may also be estimated by its business relationships with other OEMs, who have certified it to be their supplier. In this regard, Mr Abhilash relied on (a) a certificate of approval issued by Rolls Royce; (b) a certificate of registration issued by the United Registrar of Systems for fabricating components for aircraft engines; and (c) a certification to be a vane supplier to General Electric.[32]

45 I did not doubt that these certificates indicate that at the point of certification, the relevant OEM or certifier considered that JCS-Vanetec met the criteria which qualified it to manufacture aircraft components for the industry. But Mr Abhilash produced no evidence that these certifications have enabled or will enable JCS-Vanetec to sell any product to anyone. In so far as no sale has yet to be concluded, Mr Abhilash also produced no evidence on the likelihood of future sales on the footing of these certificates and of the present and future standing of JCS-Vanetec. If anything, the evidence indicated that no such sales were forthcoming. As Mr Yeo testified, in the case of Rolls Royce, JCS-Vanetec

[32] Plaintiff's Closing Submissions at paras 67–69.

obtained vendor approval on 26 January 2010 but, after 7 years of obtaining such approval, JCS-Vanetec has still received no purchase orders from Rolls Royce.[33] Mr Abhilash produced no evidence to contradict this – not even a single purchase order or invoice.

46 Accordingly, I found that the certificates Mr Abhilash relied upon are an insufficient basis to make any reasonable assumption about JCS-Vanetec's future sales.

(3) Patent application for cold-roll forming process

47 Next, Mr Abhilash in his evidence made much of JCS-Vanetec's possession of an ostensibly valuable technology called the "cold-roll forming process".[34] This is an industrial process that allows JCS-Vanetec to produce vanes used in aircraft turbines at low cost and high efficiency.[35] He also said that JCS-Vanetec had submitted an application for the process to be patented, and that the application was now pending approval.[36]

48 Again, while I did not doubt that this technology may well be put to good use, Mr Abhilash produced no evidence to help me estimate its worth in enabling JCS-Vanetec to generate future sales. Moreover, Mr Abhilash did not deny that no patent has been obtained for this technology; and the defendants point out that no patent has been obtained even though the patent application was made four years ago in 2013.[37] Moreover, JCS-Vanetec is not the only company in the world that has the cold-roll forming technology.[38] It is contained

33 Certified Transcript, 31 October 2017, p 130 at lines 12–19.

34 Plaintiff's Closing Submissions at para 165.

35 Certified Transcript, 31 October 2017, p 114 at lines 19–22.

36 Plaintiff's Closing Submissions at para 166; BAEIC Vol 1 at pp 378–384.

37 Defendants' Closing Submissions at para 67.

in a machine that on Mr Abhilash's evidence was purchased *second-hand* from the Netherlands. It was therefore also not clear that the technology sought to be patented was novel. Without expert evidence on how an in-progress patent application should be valued, I had no basis upon which to draw any conclusion on the value that the cold-roll forming process contributed to JCS-Vanetec without reference to the sales it may generate.

Conclusion on basis for valuation

49 Accordingly, none of the intangible assets that Mr Abhilash referred to – the AVIC contract, the certifications and the cold-roll forming process – could reasonably be said to be sources of future revenue for JCS-Vanetec, in large part because he did not produce a single piece of evidence that would assist me in the determination of the existence, likelihood and size of such revenue.

50 In this context, I observe that, as I alluded to at [29], Mr Thio in his expert report performed an assessment of JCS-Vanetec's value not only on a net assets basis but also on an income basis. Mr Thio's income basis assessment does not (for good reason, as I have found) take into account future revenue from sales to AVIC, unlike Mr Rao's valuation. Importantly, on Mr Thio's assessment, JCS-Vanetec would remain loss-making until the financial year ending 31 December 2018, with a small profit in 2019 and 2020. The valuation of JCS-Vanetec, on the income approach, thus adjusted, still remained at zero.[39] Accordingly, it was in my judgment correct for the defendants to say that Mr Rao's income projections were "tainted by his completely wrong basis of projecting sales" to AVIC, and that since these projections form a "core part" of Mr Rao's valuation, his valuation should be rejected.[40] Mr Rao's valuation

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38 Certified Transcript, 20 October 2017, p 11 at line 23 to p 11 at line 6.

39 Thio Khiaw Ping's AEIC, para 62.

was premised on factual assumptions which are not supported by the evidence and it would not be apposite to accept his valuation.

51 I was therefore left with a company with an undisputed loss-making record. There was therefore no good accounting reason to apply the income approach. A further reason not to apply that approach was that I accepted the evidence of Mr Thio that such an approach would yield a nil valuation and the parties had agreed at para 6 of the consent order that the value of the company would not be set at nil. Accordingly, Mr Thio's conclusion, that the applicable method in such a situation is the net assets basis of valuation, was therefore sensible and principled, and I accepted this basis of valuation.

Issue 2: Valuation to be used

52 Mr Thio's net assets value ("NAV") valuation was the only available NAV valuation of the company in evidence, and was therefore my starting point. Critically, Mr Rao did not offer a counter-valuation on the NAV basis, and so Mr Abhilash had no viable basis upon which to impugn Mr Thio's valuation. I also found no basis for adjusting the valuation that Mr Thio had reached. I shall now elaborate.

Should Mr Thio's valuation be adjusted?

53 Mr Rao did not prepare a counter-valuation of JCS-Vanetec on the net assets basis. His principal criticism against Mr Thio's valuation was that it failed to take into account the value of JCS-Vanetec's intangible assets.[41] As I had concluded that those assets did not provide good reason for adopting the income basis of valuation, the issue was how that criticism should affect the NAV

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40 Defendants' Closing Submissions at paras 52–53.

41 Plaintiff's Closing Submissions at para 156.

analysis. On this question, Mr Rao had no view. During the trial, I asked Mr Rao what his valuation of the company would be on the net assets basis if I were to find the income basis unsuitable. He was unable to give an answer, responding: "I wouldn't know right off the cuff".[42] Indeed, he was unable even to comment on how in concrete terms he would *differ* from Mr Thio's NAV valuation of JCS-Vanetec. When I asked him whether he had taken a look at Mr Thio's report and whether he had a view on it, he said, "I would think you should ask Mr Thio, since he is here".[43] The result is that Mr Abhilash had no expert evidence with which to critique the specific assumptions and calculations that went into Mr Thio's valuation.

54 I also observed that Mr Abhilash's submission here was premised on the idea that JCS-Vanetec's intangible assets each have an inherent value that is independent of the asset's income-generating potential, and that this value is what Mr Thio failed to take into account in his NAV valuation. Mr Abhilash further submitted that Mr Thio, by his omission to include goodwill in his valuation, failed to make a proper NAV valuation.[44] This submission was not correct. Mr Thio expressly stated that he did consider the value of JCS-Vanetec's intangible assets[45], including the AVIC contract. However, Mr Thio's evidence was that such assets are "as valuable as the sales that they can generate".[46] This is a logical view to take. Given that the AVIC contract consisted only of "one order",[47] and that it was a prototype contract (as I have found), its value to the company was accordingly limited. I accepted this

42 Certified Transcript, 2 November 2017, p 148 at line 5.

43 Certified Transcript, 2 November 2017, p 146 at lines 7–8.

44 Plaintiff's Reply Submissions at para 41.

45 Certified Transcript, 2 November 2017, p 115 at lines 19–20.

46 Certified Transcript, 2 November 2017, p 117 at lines 20–22.

47 Certified Transcript, 2 November 2017, p 120 at line 6.

approach, especially having considered that despite Mr Abhilash's assertion that these assets have inherent value, he produced no evidence to assist me in determining that value.

55 Two more submissions made by Mr Abhilash remain to be dealt with. The first was that JCS-Vanetec cannot be worth only $109,589 because a Chinese company called Shanghai Ossen expressed interest in 2015 to purchase all of JCS-Vanetec's shares for $50m.[48] In the event, the investment did not proceed, but the suggestion was that the mere fact of this investment shows that JCS-Vanetec must be worth more than Mr Thio's valuation. Mr Abhilash said that Shanghai Ossen "would not have thrown up the figure of S$50 million … if they did not reasonably carry out background checks and were reasonably satisfied that it was justified".[49]

56 As I have mentioned at [26] above, I rejected the related submission that there was a factual basis for valuing JCS-Vanetec on an investment basis. I also rejected any idea that Mr Thio's valuation should be adjusted in any way because of this offer, for three reasons. First, the contention that Shanghai Ossen would not have suggested the figure unless they had done their checks is speculation: no evidence on this was led by Mr Abhilash. Second, the offer was subject to a due diligence check which was never carried out.[50] Third, the price offer of $50m is an offer which a specific entity proposed at a particular time. No evidence was led on their particular reasons for so doing, and there is also no evidence that any other entities value JCS-Vanetec in the same way.

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48 Plaintiff's Closing Submissions at paras 86 and 91; Certified Transcript, 31 October 2017, p 59 at lines 16–18.

49 Plaintiff's Closing Submissions at para 309.

50 DBOD Vol 5, p 3496 at para 2.1; Certified Transcript, 31 October 2017, p 63 at lines 3–18.

57 Mr Abhilash's other submission was based on the undisputed fact that Mr Yeo in November 2015 arranged for 40,000 new shares in JCS-Vanetec, valued at $37.50 each (and thus having a total value of $1.5m) to be allotted to one of his other companies, JCS-Group Pte Ltd.[51] Accordingly, it was said that JCS-Vanetec's total shares cannot be worth only $109,589.

58 I rejected this submission for two reasons. First, as the defendants correctly submit, Mr Rao did not challenge Mr Thio's view that the share price for a share allotment does not necessarily reflect the value of every share in the company, especially where the company is a private company.[52] Second, Mr Yeo provided a positive explanation for the price of $37.50, and it is an explanation that I found sensible. His evidence was that the $1.5m transaction was an injection of capital into JCS-Vanetec, which was then in need of funds. Consideration for that transaction of $1.5m was provided in the form of JCS-Vanetec's shares, and the number of shares issued was calibrated to ensure that the value of Mr Abhilash's shareholding after the capital injection would neither be inflated nor diluted excessively.[53] I accepted this evidence. I should make clear that, in coming to this finding, I did not (and it was unnecessary for me to) draw any conclusion about whether Mr Yeo had or had not acted oppressively towards Mr Abhilash's minority interest: see [6] above.

59 For the reasons above, I accepted Mr Thio's NAV valuation of JCS-Vanetec as the proper valuation to be adopted.

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51 Plaintiff's Closing Submissions at para 288; DBOD Vol 1 at p 104.

52 Defendants' Closing Submissions at para 12.

53 Yeo Hock Huat's AEIC at paras 53–66; Certified Transcript, 1 November 2017, p 48 at line 18 to p 49 line 13.

Should any adjustment be made for transactions challenged by Mr Abhilash?

60 It remained for me to deal with a number of transactions concerning JCS-Vanetec. Mr Abhilash impugned the propriety of those transactions, and he also said that they should be taken into account in any valuation of JCS-Vanetec. For this purpose, para 4.2 of the consent order lists ten transactions. Mr Abhilash in his submissions focused on three of these transactions and accepted that "for the other smaller items, the experts are on common ground that they have no material impact on the overall accounts".[54] The three transactions are as follows:

(a) the payment of $53,500 by JCS-Vanetech to Grant Thornton Advisory Services;

(b) the payment of $535,000 by JCS-Vanetec to JCS Greentech Pte Ltd ("JCS Greentech"), another one of Mr Yeo's companies, for a washing machine; and

(c) the payment of $780,000 to JCS-Vanetec to JCS Group.

61 During their concurrent evidence, Mr Rao and Mr Thio agreed that transaction (a) had no material effect on the valuation of JCS-Vanetec.[55] There was therefore no need for me to consider it further.

62 Regarding transaction (b), it was not disputed that a quotation for $535,000 to be paid to JCS Greentech was issued in July 2014, and that the quotation was issued *before* JCS Greentech was actually incorporated, in 2015. Mr Abhilash claimed that the quotation must therefore have been a fabrication.

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54 Plaintiff's Closing Submissions at para 601.

55 Certified Transcript, 2 November 2017, p 105 at line 17 to p 108 at line 1.

However, the defendants had an explanation for this, and it is one that I accepted. First, it was not disputed that the defendants did obtain for JCS-Vanetec an industrial washing machine from JCS Greentech for that price. Second, JCS-Vanetec paid for the machine only *after* JCS Greentech was incorporated, and this is evidenced by an invoice for that transaction – relating to the same order for which the earlier quotation was issued – dated April 2016.[56] Mr Thio accepted on the basis of that invoice that this was a sensible explanation[57] and this explanation was not challenged. Most importantly, Mr Thio explained candidly that the issuance of that quotation was an irregularity attributable to the fact that the defendants' "internal controls are not that strong" and that there were "quite a few errors here".[58] Mr Thio testified nevertheless that he had reviewed these errors and found that no loss had been caused to the company. It accordingly should have no effect on JCS-Vanetec's valuation.

63 Finally, transaction (c) is related to the capital injection of $1.5m that I have mentioned at [57] above. It was not disputed that after JCS Group transferred $1.5m to JCS-Vanetec on 20 November 2015, a Friday, Mr Yeo just three days later on 23 November 2015 withdrew $780,000 to the benefit of JCS Group. Mr Abhilash's contention, based purely on the short duration within which that substantial sum was withdrawn, was that Mr Yeo was "simply manipulating the accounts and the shareholding of [JCS-Vanetec] to his benefit instead of allowing [JCS-Vanetec] to be able to rely on the funds to continue or even to increase its production capacity".[59]

64 I rejected this submission for two reasons. First, Mr Thio's evidence,

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56 BAEIC Volume 4 at p 790; DBOD Vol 4 at p 2703.

57 Certified Transcript, 2 November 2017, p 51 at lines 9–16.

58 Certified Transcript, 2 November 2017, p 50 at lines 1–2.

59 Plaintiff's Closing Submissions at para 643.

which was not challenged, was that even if the $780,000 was paid out improperly, that would not affect the NAV valuation of JCS-Vanetec.[60] That was sufficient to dispose of the issue. Second, and in any event, I found that Mr Abhilash had failed to show on a balance of probabilities that the transaction was in some way improper. As the defendants observe, the loan agreement underlying the capital injection of $1.5m – which was signed by Mr Abhilash himself[61] – provides that the JCS-Vanetec is liable to repay the loan on demand.[62] Mr Abhilash's forensic accounting expert, Mr Low See Lien, accepted that if the payment of $780,000 was a repayment of a loan "vis-à-vis the terms and contracts of a loan", then there is no impropriety in the repayment.[63] Against this factual context, Mr Abhilash failed to persuade me that there was on a balance of probabilities anything improper about the repayment.

Conclusion

65 For the reasons above, I entered judgment for Mr Yeo to buy Mr Abhilash's shares in the JCS-Vanetec at $15,243.83 within 21 days of the date of my judgment. This timeframe was envisaged by para 7 of the consent order.

66 On the issue of costs, I note that in *Hoban (No 1) (HC)* at [20], Rajah J ordered each side to bear its own costs. In principle, this must be the usual order in cases where parties have settled on the issue of liability for minority oppression. In this case, however, there was an offer to settle dated 16 May 2017 which remained open up to the time I gave my decision. After hearing parties, I

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60 Certified Transcript, 2 November 2017, p 98 at lines 8–16.

61 Yeo Hock Huat's AEIC at p 575.

62 Defendants' Closing Submission at para 78.2; Yeo Hock Huat's AEIC at p 575.

63 Certified Transcript, 1 November 2017, p 81 at line 10 to p 83 to line 20.

ordered Mr Abhilash to pay the costs of the trial. Upon Mr Liew's concession that Mr Divyanathan's requested sum of $99,000 (excluding disbursements) was reasonable, costs were fixed at that sum, with liberty to apply if disbursements could not be agreed. I also ordered Mr Abhilash to pay the costs of his application for an interlocutory injunction,[64] first obtained *ex parte* in August 2016 and later discharged in October 2016 after I considered parties' affidavits and arguments. I fixed those costs at $12,000 including disbursements. Finally, I ordered him to pay the costs of his application to change the order of witnesses at trial: while the application was not eventually pursued, it was, on point of principle, not correctly filed and wasted costs had arisen out of preparation and submissions. I fixed those costs at $3,000 including disbursements.

Valerie Thean
Judge

Liew Teck Huat, Christopher Yee, Kanapathi Pillai Nirumalan, Anand George and Sean Lee (Niru & Co LLC) for the plaintiff;
Suresh Divyanathan, Koh Hui Lynn Kristine and Chow Chao Ping, Clarissa (Oon & Bazul LLP) for the defendants.

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[64] Summons No 4145 of 2016.