IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 229

Originating Summons No 449 of 2018

Between

APBA Pte Ltd

… *Plaintiff*

And

(1) Seah Shiang Ping
(2) Seah Chee Wan
(3) Connectus Group Pte Ltd

… *Defendants*

JUDGMENT

[Companies] — [Members] — [Meetings] — [Lack of quorum]

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APBA Pte Ltd
v
Seah Shiang Ping and others

[2019] SGHC 229

High Court — Originating Summons No 449 of 2018
Ang Cheng Hock J
13, 20 August, 26 September 2018; 6 May 2019

25 September 2019 Judgment reserved.

Ang Cheng Hock J:

Introduction

1 This is an application under s 182 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Act") by a company's shareholder for leave of court for an Extraordinary General Meeting ("EGM") of the company to be convened without the necessary quorum so that resolutions can be passed for the removal of two directors, who are also shareholders of the company.[1] The application is resisted by the two shareholder-directors who claim that they have a right to remain as directors of the company as long as they remain shareholders.[2]

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1 Plaintiff's Skeletal Submissions ("PSS") at paras 1 – 2.

2 1st and 2nd Defendants' Skeletal Submissions ("DSS") at paras 16 – 33.

2 This dispute arises in the context of a split between two factions of shareholders of the company, where multifarious allegations have been made by each side against the other, and where there is a separate application in Companies Winding Up No 78 of 2018 ("CWU 78/2018") to wind up the company on the bases that it is just and equitable to do so and also that it is insolvent. CWU 78/2018 is the subject of a separate judgment, although the material facts in relation to that winding up application are essentially the same as that for the present application.

Background to the dispute

3 The plaintiff in these proceedings is APBA Pte Ltd, who holds 29.8% of the shareholding of the company in question,[3] Connectus Group Pte Ltd ("Connectus Group"), which has been joined as the third defendant in these proceedings. The plaintiff is owned and controlled by one Ng Sing King, also referred to as Paul Ng ("PN"). PN is a director of Connectus Group.[4]

4 The first and second defendants are the two directors who are the subjects of the proposed resolution for removal. They are Seah Shiang Ping, also referred to as Stacey Seah ("SS"), and Seah Chee Wan, also referred to as Alex Seah ("AS"). The Seahs are siblings. Each of them owns 23.4% of the shareholding in Connectus Group.[5] Since Connectus Group is a defendant in name only, the Seah siblings shall collectively be referred to as the defendants in this judgment.

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3 Ng Sing King's Bundle of Affidavits Vol 1 of 5 ("ABAF1") at para 5.

4 ABAF1 at para 7.

5 ABAF1 at para 5; 1st and 2nd Defendants' Bundle of Affidavits (Vol 1) ("DBOA1") at para 13.

5 The remaining shareholder is one Lim Meng Foo ("LMF"). He holds 23.4% of the shareholding in Connectus Group.[6] His daughter-in-law, one Sharon Ong ("SO"), is his nominated director on the board of the company.[7] Whether LMF is the beneficial owner of the shares registered in his name or whether he simply holds them on trust for his son, one Edwin Lim ("EL"), is the subject of other legal proceedings.[8]

6 In late 2017, the plaintiff and LMF convened an EGM under s 176(3) of the Act to pass the following resolutions:[9]

(a) the removal of the defendants as directors of Connectus Group; and

(b) the appointment of one Ng Siew King, or a suitable candidate with Certified Public Accountant ("CPA") qualifications, to the board of Connectus Group.

7 Ng Siew King is the sister of PN.[10]

8 An EGM was duly convened on 10 January 2018, with the plaintiff's representative and LMF attending. The defendants absented themselves from that meeting.[11] The articles of association of Connectus Group require three

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6 ABAF1 at para 5; Lim Meng Foo Affidavit (11 April 2018) ("LMF") at para 1.

7 ABAF1 at para 7; Ong Poh Suan Sharon Affidavit (11 April 2018) ("OPS") at para 1.

8 DBOA1 at para 18.

9 ABAF1 p 261.

10 Ng Sing King's Bundle of Affidavits Vol 4 ("ABAF4") Tab at para 5(b).

11 ABAF1 p 275.

members of the company to form a quorum.[12] This left the meeting inquorate and incapable of transacting any business of the company.

9 Undeterred, the plaintiff and LMF convened another EGM to pass substantially the same resolutions, save that there was a named alternative to Ng Siew King as the director to be appointed and that a further resolution was to be passed to the effect that Connectus Group's cheque books would be kept in the joint custody of PN and SO.[13]

10 This second EGM was convened on 26 March 2018. Again, the defendants were absent, causing the meeting to be inquorate.[14] Thus, the resolutions could not be considered and passed.

11 The plaintiff filed this application under s 182 of the Act for the court to order the convening of an EGM without the need to satisfy the quorum requirements under the company's articles in order that the aforesaid resolutions can be considered and passed for the removal of the defendants as directors (Originating Summons No 449 of 2018 ("OS 449/2018")).[15]

12 AS and SS then filed CWU 78/2018 seeking to wind up Connectus Group on the grounds (i) that the company is unable to pay its debts, and (ii) that it would be just and equitable for the company to be wound up. APBA opposed that application.

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12 ABAF1 p 54, clause 68.

13 ABAF1 p 283.

14 ABAF4 Tab 6 at para 14.

15 Originating Summons No 449 of 2018.

13 Both matters were fixed to be heard before me. I heard parties' arguments in OS 449/2018 over several hearings. I reserved judgment until after I heard CWU 78/2018. The parties agreed that the evidence in CWU 78/2018 could be used in OS 449/2018 and *vice versa*. This is because the factual background to both applications is the same.

14 The full details of background to the various disputes between the parties are set out in my judgment issued in CWU 78/2018.

15 However, I should point out that several matters relevant to these present proceedings are not in dispute. First, even though he is not a party to the present proceedings, LMF has expressed his support for the proposed resolutions.[16] Together with the plaintiff, they hold 53.2% of the shareholding of the company.[17] The articles of association of the company provide that a director can be removed or appointed by an ordinary resolution of the shareholders.[18] Thus, the proposed resolutions would have been passed if the EGMs had been quorate.

16 Second, it is not in dispute that the defendants' absences at the EGMs were deliberate. The defendants' solicitors had written to state that the defendants were exercising their "right" not to attend the EGM because the

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16 LMF para 3.

17 ABAF1 at para 5.

18 ABAF1 p 62, clause 107.

plaintiff and LMF were attempting to remove them as directors and this would be contrary to their entitlement to remain as directors of Connectus Group.[19]

The parties' cases

The plaintiff's case

17 The plaintiff's case is that the will of the 53.2% majority of Connectus Group is that the defendants be removed as directors of the company. The defendants have deliberately tried to frustrate the will of the majority by failing to appear at the EGMs to consider and pass the ordinary resolutions for their removal. As a result of their absence, the EGMs have been inquorate. This constitutes an impracticability to call a meeting to transact business in the manner as prescribed by the articles of association of the company.[20]

18 As such, the plaintiff argues that the court should exercise its discretion under s 182 of the Act to order a meeting to be called where a quorum of two members would be sufficient. That would allow them to pass the resolutions to remove the defendants and also appoint a director of the plaintiff's and LMF's choosing.

19 The plaintiff submits that the court should exercise its discretion in its favour because there are good reasons to do so. First, the resolution to remove the defendants is supported by the majority of the shareholders, that is, the

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19 Ng Sing King's Bundle of Affidavits Vol Tab 3 at para 40; Ng Sing King's Bundle of Affidavits Vol 3 p 623 at para 9.

20 PSS paras 18 – 22.

plaintiff and LMF.[21] Second, the plaintiff cites instances where it is alleged that the defendants have been "actively acting against" the interests of Connectus Group.[22] As an example, it alleges that the defendants have deliberately failed to take steps to repatriate the company's share of profits earned by a joint venture in China to Singapore so that Connectus Group can pay off its debts.[23] In fact, the plaintiff goes further to claim that the defendants' conduct has jeopardised Connectus Group's claim to such profits from the joint venture in China.[24]

20 Another instance cited by the plaintiff of the defendants' conduct is their alleged complicity in permitting EL, then the Chief Executive Officer ("CEO") of Connectus Group, to take numerous advances on his salaries and commissions from the company. This caused the company's finances to deteriorate.[25]

21 The plaintiff also claims that the company is deadlocked at the board and shareholders level because there are now two roughly equal factions of directors and shareholders who cannot agree as to the way forward for the company.[26] As such, it is argued that the court needs to intervene to break that deadlock.

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21 PSS paras 29 – 30.

22 PSS paras 34 – 101.

23 PSS para 40.

24 PSS paras 44 – 50.

25 PSS para 94.

26 PSS para 104.

22 Finally, the plaintiff rejects the defendants' assertions that Connectus Group is essentially a quasi-partnership.[27] Hence, the defendants have no legitimate expectation to be entitled to remain as directors of the company just because they are shareholders. If the defendants believe that their interests have been disregarded or that the plaintiff is acting unfairly or in bad faith, they have recourse to other remedies in law for minority oppression.[28]

The defendants' case

23 The defendants describe the plaintiff's application as an abuse of the process of the court because it has allegedly been brought for collateral purposes. This is because, according to the defendants, the plaintiff wants the court's assistance to take over control of the board of Connectus Group.[29] It is argued that s 182 of the Act is not intended for such a purpose.

24 It is argued that the substantive rights of the shareholders cannot be overridden by s 182 of the Act, which is procedural in nature.[30] The defendants made some reference to a Shareholders Agreement signed between the parties on 12 November 2012 ("the SHA"), which grants them rights to each appoint a director to the board of Connectus Group, subject to certain qualifications which are not relevant here.[31] However, it became clear from the submissions and evidence that the defendants accept that the SHA is no longer in force.

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27 PSS paras 109 – 146.

28 PSS para 146.

29 Notes of Argument (26 September 2018), p 8, lines 25 – 29.

30 DSS at para 19.

31 ABAF1 pp 89 – 90, clause 5.2.

25 The defendants submit that Connectus Group is essentially a quasi-partnership, and hence they are entitled to participate in the management of the company.[32] In support of this, the defendants cite a letter written by the plaintiff dated 5 August 2015 ("the August 2015 letter") where, when faced with a proposed resolution at an upcoming EGM of Connectus Group for the removal of PN as a director, it is claimed that the plaintiff's right to board representation is inextricably tied to its shareholding in the company.[33] The plaintiff also indicated in that letter that it was prepared to sell its stake in the company to the other shareholders.[34] In apparent response to the August 2015 letter, the proposed resolution to remove PN was withdrawn at the EGM.[35] The defendants rely on the letter as an admission by the plaintiff that Connectus Group is in truth a quasi-partnership.

26 The defendants also argue that LMF is holding the shares registered in his name on trust for EL, his son.[36] He had paid for these shares and gifted them to EL, so that EL could participate in this venture with the defendants and the plaintiff by being appointed as the CEO of Connectus Group. As such, the fact that LMF is supportive of the proposed resolutions to remove the defendants is irrelevant. Now that EL has been declared a bankrupt, it is the views of his trustee-in-bankruptcy that are relevant, and these views are not before the Court.[37]

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32 DSS at para 20.

33 DSS at para 30; ABAF4 Tab 6 p 126 at para 8(a)(ii).

34 DSS at para 30; ABAF4 Tab 6 p 126 at para 8(a)(ii).

35 ABAF4 Tab 6 p 135.

36 DSS para 34.

37 DSS para 35.

Issue before the Court

27 The sole issue in the present action is whether leave of court ought to be granted for the plaintiff and LMF to convene an inquorate EGM, with the concomitant result that the defendants would be removed from their directorships of Connectus Group.

Applicable principles for s 182 of the Act

28 The empowering provision to grant such leave is s 182 of the Act, which provides that:

> If for any reason *it is impracticable to call a meeting* in any manner in which meetings may be called or to conduct the meeting in the manner described by the constitution or this Act, the Court *may*, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at that meeting. [emphasis added]

29 The word "may" in s 182 of the Act shows that an order under the section is not granted as of right, but is a matter of the court's discretion: *Naseer Ahmad Akhtar v Suresh Agarwal and another* [2015] 5 SLR 1032 ("*Naseer Ahmad*") at [40].

30 In determining whether the court's discretion ought to be exercised, the court proceeds on a holistic assessment, which "entails an assessment of whether there is indeed impracticability and whether such impracticability is of a sufficient degree as to call for the intervention of the court": *Lim Yew Ming v*

Aik Chuan Construction Pte Ltd and others [2015] 3 SLR 931 ("*Lim Yew Ming*") at [23]. Impracticability is not a threshold requirement, as "matters going to impracticability and the exercise of discretion will overlap considerably": *Lim Yew Ming* at [23]. Hence, rather than a two-step assessment, which would require proof of impracticability as a precursor to the exercise of discretion, the appropriate approach to be taken is a holistic one, with impracticability forming part of the overall assessment as to whether the court's discretion ought to be exercised in favour of calling a meeting under s 182 of the Act.

Prima facie case for relief

31 In *Naseer Ahmad* at [41]–[42], Hoo Sheau Peng JC (as she then was) observed that, where a s 182 application is brought by a majority shareholder in an attempt to break a deadlock caused by "the refusal of minority members to attend meetings with a view towards blocking the passage of resolutions unfavourable to them", even where a director may otherwise be removed by such a resolution, a *prima facie* case for relief under s 182 is presented. This "majority rule principle" flows from two propositions (*Naseer Ahmad* at [40], citing *Re Woven Rugs Ltd* [2002] 1 BCLC 324 with approval):

> (a) *Majority shareholders normally have the right to appoint and remove directors* and this is an important consideration that must be borne in mind when considering the exercise of the court's discretion. In the UK, this right is statutorily enshrined in s 168(1) of the Companies Act 2006 (c 46) (UK) ("UK CA 2006"). In Singapore, s 152 of the [Act] confers majority shareholders of public companies the statutory right to remove and appoint directors by ordinary resolution notwithstanding anything which may be found in the companies' memoranda or articles of association. In the case of private companies, there is no equivalent statutory provision though Art 69 of Table A (which applies to all companies unless specifically excluded: see s 36(2) of the [Act]) states that the company may b[y] ordinary

> resolution remove any director before the expiration of his period of office.
>
> (b) *Quorum provisions cannot be regarded as conferring on the minority a form of veto in relation to company business.* The rights of the majority in this regard cannot be stultified by minority members absenting themselves in order to prevent resolutions unfavourable to them from being passed (see [*Re Opera Photographic Ltd* [1989] 1WLR 634] at 637B–637C).
>
> [emphasis added]

32 Similar observations about the importance of utilising s 182 of the Act to prevent the use of the quorum requirement by minority shareholders to defeat the will of the majority were made in *Lim Yew Ming* by Aedit Abdullah JC (as he then was) at [51]:

> What is required is that the court should make a holistic assessment, considering whether the events, omission or other actions require its intervention. As a matter of principle, impracticability is made out in the present case as the refusal of members to attend meetings perverts the point of membership and the meeting process. As has been emphasised in the English cases discussed above, a minority shareholder or member cannot use the quorum provision as a *de facto* veto mechanism, allowing him to obstruct the desires of the majority shareholder. A meeting is a mechanism to allow decisions to be made. Proposals are meant to be put, debated and voted upon. The quorum is to ensure only that there is at least a minimal opportunity to debate and convince**.** It is part of the structure of a proper meeting. On the other hand, allowing the minority to cause the meeting to fail by staying away gives them a *de facto* veto, allowing them to scupper the mechanism of decision-making. The proposal is not defeated through persuasion and tallying of those empowered to decide, as it should be; instead, it is defeated by the minority by their refusal to allow the matter to go to a vote at all. ***Veto by lack of quorum is nothing more than the imposition of the will of the minority on the majority.*** In my view, such impracticability justifies the court exercising its powers under s 182 of the [Act]. [emphasis added in bold italics]

33 In this case, the defendants, representing the minority shareholders, have refused to attend the EGMs convened by the plaintiff and LMF with a view to

prevent the passage of the resolutions to remove them from their positions as directors of the company. Hence, a *prima facie* case for relief under s 182 of the Act has been established.

Section 182 of the Act is a procedural section which cannot be used to override substantive rights of shareholders

34 That having been said, it has been observed that s 182 of the Act is a "procedural section", which is only intended "to enable company business which needs to be conducted at a general meeting of the company to be so conducted": *Union Music Ltd and another v Watson and another* [2003] 1 BCLC 453 at [32]. Being a procedural section, it cannot be used to override the substantive rights of shareholders: *Naseer Ahmad* at [48].

35 The procedural nature of the section is illustrated in *Harman v BML Group Ltd* [1994] 1 WLR 893 ("*Harman*"). There, one Mr Blumenthal held all 190,000 B shares in the company. Apart from the B shares, there were 310,000 A shares, of which 260,000 were collectively held by the applicants, Mr Harman and Mr Mills. Two other minority shareholders held the remaining 50,000 A shares. The A and B shares ranked *pari passu* in all respects, save as to certain pre-emption rights. The company's articles provided that Mr Blumenthal was entitled to remain in office as a director of the company so long as he owned the B shares. The articles also provided that a shareholders' meeting would not have a quorum unless a B shares shareholder or proxy was present. Mr Blumenthal and the other minority shareholders made certain allegations against Mr Harman and Mr Mills about their misappropriation of the company funds. Following which, Mr Harman and Mr Mills took out an application under s 371 of the Companies Act 1985 (c 6) (UK), the English equivalent of

s 182 of the Act, to convene a meeting by any two members of the company. The judge allowed the application.

36 On appeal, the English Court of Appeal unanimously reversed the judge's decision, holding that the class rights attached to Mr Blumenthal's B shares, which entitled him to be represented in the quorum, could not be overridden by the English equivalent of s 182 of the Act (*Harman* at 898):

> … it is not right … to invoke section 371 to override class rights attached to a class of shares which have been deliberately — in this case by the shareholders' agreement — imposed for the protection of the holders of those shares, although they are a minority. It is not the case that the overriding position is that the majority shareholders must prevail on everything. Class rights have to be respected and I regard the right of [Mr Blumenthal], as the holder of the B shares, to be present in the quorum as a class right for his protection which is not to be overridden by this machinery.

37 In summary, "the *substantive* rights of shareholders (whether for equal management participation or a guaranteed directorship or otherwise) cannot be abrogated by s 182" [emphasis in original]: *Naseer Ahmad* at [48].

38 From my analysis of the parties' submissions, the answer to the issue of whether the court should grant leave for an inquorate meeting to be held boils down to a determination of the following issue – whether the defendants have a *substantive* right to participate in the management of the company by remaining as directors. If such a right to management is indeed shown to exist, then the court should grant not leave to convene the inquorate EGM, as such would enable the majority shareholders to remove the defendants as directors of the company, thereby overriding their expectation and right to participate in the management.

The defendants have a substantive right to participate in the management

39 For the reasons I have set out in full in my judgment to CWU 78/2018, I find that Connectus Group is a quasi-partnership between AS, SS, APBA and LMF (or the Lim family), such that AS and SS have a right to involvement in the management of the company as directors. In summary, my reasons are as follows.

40 Connectus Group was established as a joint venture by a collection of individuals who had come together to build a human resources services business. Each of them had an active role to play in the building of the business and it was intended that, in so far as AS, SS and Lim Tien Ho ("LTH") were concerned, they were to be full-time employees who would make their livelihood from the company's business.[38] As for APBA, its role entailed providing accounting and consultancy services to the company,[39] while its controller, PN, was appointed to the board of directors to contribute his know-how and experience for building the company's human resource services business.[40] For these services, APBA was paid fees by the company.[41]

41 When LTH left, he was replaced as a shareholder by SO, who represented the Lim family.[42] But, there was no change to the nature of the parties' association with each other. SO was appointed as a director of the

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38 1st and 2nd Defendant's Bundle of Affidavits Vol 3 ("PBAF3") p 9, para 19; p 32 – 33, para 87; Transcripts (1 March 2019), p 29 lines 7 – 18; p 30 lines 2 – 9.

39 Transcripts (1 March 2019), p 28 lines 10 – p 29 line 6.

40 PBAF3 p 12 paras 31 – 32; p 33, para 87(d).

41 PBAF3 pp 35 – 36, paras 94 – 95.

42 PBAF3 p 21, paras 59 – 60.

company[43] but she did not participate, unlike the other directors and EL, in any decisions about the affairs of the company.[44] She also drew no benefits or pay as a director.[45] Instead, EL was appointed as the CEO of the company and made his livelihood from that; LMF's unchallenged evidence was also that he would not have paid for the shares in Connectus Group on EL's behalf *if* the other shareholders had not agreed that EL would be appointed as the CEO of the company.[46]

42 Hence, even with the change in shareholding, there was no change in the nature of the arrangement between the shareholders – each was to continue contributing to the business and to be allowed to appoint a director to the board of the company, and also to derive remuneration for their services.

43 As for the SHA, which grants each shareholder the right to appoint a director to the board of Connectus Group,[47] it was treated by the parties as having no legal effect after the departure of LTH.[48] However, this did not change the fact that the nature of AS, SS and APBA's association with each other was still in the nature of a quasi-partnership, with each having the right to participate in the management of the company as directors. It was just that the Lim family was now a party to this arrangement. This is shown by APBA's

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43 PBAF1, Tab 1, p 27; Transcripts (8 March 2019), p 165 lines 10 – 12.

44 PBAF3 p 38 para 106 and pp 219 – 261.

45 PBAF3 p 142, para 362.

46 Transcripts (8 March 2019), p 160 lines 9 – 16.

47 ABAF1 pp 89 – 90, clause 5.2.

48 APBA Closing Submissions at para 38(b); Transcripts (1 March 2019), p 59 line 9 – p 60 line 16; APBA Core Bundle ("ACB") p 411.

admission in the August 2015 letter where it states that its right to appoint a director is inextricably bound up with its shareholding in the company.[49]

44 In this regard, I do not accept the submission made by the plaintiff that the August 2015 letter ought not to be taken at face value, because APBA was desperate to survive the attempt to remove PN as a director, and thus was prepared to say anything in that letter.[50] The August 2015 letter was drafted with legal advice,[51] and was thus a considered response, which reflects APBA's (and PN's) admission that the understanding between the shareholders, notwithstanding the termination of the SHA, was that the shareholders would have a role to play in managing Connectus Group.

Conclusion

45 As I find that the defendants have a right to participate in the management of the company as directors, I am unable to agree with the plaintiff that I should exercise my powers under s 182 of the Act to sanction the calling of an EGM for the passing of resolutions for their removal as directors. In principle, it is irrelevant in my view that the defendants' rights arise from the informal arrangement between the parties rather than being recorded in the articles or an effective shareholders' agreement, as in the case of *Harman*.

46 Given my conclusion above, there is no need for me to express any views in this judgment as to the other allegations raised by the plaintiff

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49 ACB p 428, para 8(a)(ii).

50 APBA Closing Submissions at para 77(b).

51 ABAF4 Tab 6 at para 40.

concerning the defendants' conduct. But, these are dealt with in my judgment in CWU 78/2018. In a nutshell, I find that the plaintiff has not established on the evidence before me that AS and SS had acted against the interests of Connectus Group or otherwise breached their duties as directors. In any event, if the plaintiff was honestly of the view that AS and/or SS had indeed breached their directors' duties and caused loss to the company, it was always open to the plaintiff to have sought leave to bring a derivative action under s 216A of the Act in the name of the company against the defendants. The procedural remedy under s 182 of the Act is not the appropriate one to pursue on the facts of the present case: see also *Naseer Ahmad* at [84]–[86].

47 For the reasons set out above, and which are spelt out in more detail in CWU 78/2018, I am dismissing the plaintiff's application. I should add that, even if I was of the view that the plaintiff had made out its case under s 182 of the Act, I would not have granted the plaintiff relief given my decision in CWU 78/2018 that AS has established his case that the company should be wound up on just and equitable grounds. Given those circumstances, there would have been no point in making any order under s 182 of the Act.

48 I will hear parties separately on the question of costs.

Ang Cheng Hock
Judge

Khoo Ching Shin Shem and Teo Hee Sheng, Christian (Focus Law Asia LLC) for the plaintiff;

Rajiv Nair (GKS Law LLC) for the first and second defendants;
The third defendant absent and unrepresented.
