IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 57

Civil Appeal No 115 of 2017

Between

MUKHERJEE AMITAVA

… *Appellant*

And

(1) DYSTAR GLOBAL HOLDINGS (SINGAPORE) PTE LTD
(2) RUAN WEIXIANG
(3) XU YALIN
(4) YAO JIANFANG

… *Respondents*

EX TEMPORE JUDGMENT

[Companies] — [Directors] — [Section 199 of the Companies Act (Cap 50, 2006 Rev Ed)] — [Director's right to inspect company's records]

Mukherjee Amitava
v
DyStar Global Holdings (Singapore) Pte Ltd and others

[2018] SGCA 57

Court of Appeal — Civil Appeal No 115 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Steven Chong JA
6 September 2018

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 This appeal concerns an application for access to and inspection of documents ("the Inspection Application") pursuant to s 199 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"). It was brought by the appellant, Mr Mukherjee Amitava, in respect of documents of DyStar Global Holdings (Singapore) Pte Ltd ("the Company"), of which he was a director. The respondents resisting the Inspection Application are the Company and three of its five directors, Mr Ruan Weixiang, Mr Xu Yalin and Mr Yao Jianfang (collectively, "the Longsheng directors").

2 The Inspection Application was issued less than three months after the commencement of a minority oppression suit against the Company's *de facto* majority shareholder, a company incorporated in China known as Zhejiang

Longsheng Group Co Ltd ("Longsheng"). Longsheng holds its interest through its subsidiaries, Senda International Capital Limited ("Senda") and Well Prospering Limited ("Well Prospering"). The minority shareholder that brought the minority oppression suit is Kiri Industries Ltd ("Kiri Industries"), which is also the shareholder that appointed the appellant as director of the Company. The matter came before a High Court judge ("the Judge") whose primary finding was that the Inspection Application had been made for the ulterior purpose of obtaining information to support Kiri Industries' case in the minority oppression suit (which was ongoing at the time he heard the Inspection Application). He therefore denied the appellant's request.

3 The minority oppression suit was heard before the Singapore International Commercial Court ("the SICC") and it has since concluded. The SICC found that minority oppression was made out, and ordered Senda to purchase Kiri Industries' shareholding in the Company (see *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] SGHC(I) 06 ("*DyStar SICC*")). An appeal has been filed against the decision of the SICC and is pending.

Background

The structure of the Company

4 The Company is an investment holding company incorporated in Singapore. It has three shareholders: (a) Senda which owns about 62% of the company; (b) Well Prospering which owns a single share in the company; and (c) Kiri Industries Ltd ("Kiri Industries") which owns about 38% of the company. Senda and Well Prospering are both wholly-owned subsidiaries of Longsheng; in effect, therefore, Longsheng is the company's ultimate majority shareholder. The Company has five directors, and under the Company's

shareholder agreement, three were to be appointed by Longsheng and two by Kiri Industries. Kiri Industries appointed the appellant and Mr Manishkumar Pravinchandra Kiri. Longsheng appointed the Longsheng directors. Mr Ruan was appointed as the chairman of the board of directors.

Concerns about related party loans

5 Sometime before July 2014, concerns were raised over loans that had been made by the Company to entities related to Longsheng. The directors of the Company got round to discussing borrowing conditions for such related party loans, and in October 2014, the directors of the Company agreed on a set of such conditions ("the Borrowing Conditions"). These conditions, in essence, stipulated that related party loans would only be approved if the total amount loaned was no greater than the cash margins that Longsheng had provided to guarantee the Company's bank borrowings; in addition, the interest rates charged by the Company for the related party loans were not to be lower than the Company's own borrowing costs. In short, the Company should not be subsiding the borrowing costs of the related parties; nor should the Company be granting loans to related parties to an extent greater than that to which Longsheng was securing the Company's bank borrowings.

6 In January 2015, Mr Manishkumar wrote to the Longsheng directors, requesting them to declare dividends for the preceding financial year, 2014, on the basis that the Company had made profits after making provisions to clear past year losses. The Longsheng directors replied a couple of days later, informing Mr Manishkumar that it would not be appropriate to declare dividends because the Company had a high level of expenses and required large sums of working capital.

7 On 14 February 2015, the appellant e-mailed Mr Xu to find out about a reference to related party loans exceeding $90m in "Board papers" presented at a previous board meeting, further noting that the cash margins for the last quarter of 2014 had not been confirmed. After exchanging a number of e-mails with Mr Xu and his representative, the appellant discovered that two related party loans for US$20m and US$80m had been granted without the prior knowledge and approval of the appellant and Kiri Industries.

8 In April 2015, the appellant also discovered that the Borrowing Conditions had been breached for the months between September and December 2014. Subsequently, the appellant made a series of requests for documents and information, but these efforts were blocked as Mr Ruan had instructed the management of the Company to route the appellant's requests through the board instead.

The commencement of the minority oppression suit

9 On 26 June 2015, Kiri Industries commenced proceedings against Senda and the Company in the High Court, seeking relief on the ground of minority oppression. In turn, counterclaims were brought by Senda against Kiri Industries and their related parties for conspiracy and contractual breach, including the alleged breach of a non-competition clause. Subsequently, the suit was transferred to the SICC.

The lead-up to the Inspection Application

10 On 18 July 2015, the appellant wrote to the Company and the Longsheng directors in his capacity as a director of the Company and as a member of the Audit Committee and the Compensation/Remuneration Committee of the Company. In his letter, he complained that his past requests for information had

not been properly addressed. He noted that it was important for board members to be kept apprised of the financial affairs and management of the Company, and requested documents relating to the Company's and its subsidiaries' accounts (including profit and loss statements, balance sheets, loan documentation, investments, *etc*).

11 On 1 August 2015, the appellant received replies from Senda, the Company's Chief Executive Officer, Mr Eric Hopmann, and the Longsheng directors. Both Senda and Mr Hopmann deferred to the decision of the board of directors. The Longsheng directors refused to comply with the appellant's requests, taking the position that the appellant's requests were made in furtherance of the minority oppression suit, and that the information sought could be used to commit further possible breaches of the non-competition clause (see [9] above). The Longsheng directors also told the appellant that they were willing to meet to discuss the requests for information and sought responses from the appellant in respect of any wrongful competition that Kiri Industries was engaging in. It should be noted, however, that the Judge formed the view that the Longsheng directors in fact had no intention of acceding to any part of the appellant's request in the 18 July 2015 letter (*Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd* [2017] SGHC 314 ("Judgment") at [95]).

12 The appellant filed the Inspection Application on 15 September 2015, about six weeks after the Longsheng directors' reply. The requests listed in the schedule appended to his Application was identical to those set out in the schedule appended to his letter dated 18 July 2015. The first hearing of the Inspection Application took place on 17 August 2016, and the Judge granted an adjournment to let the parties attempt to reach an agreement on the scope of inspection. The Judge commented, in his Notes of Argument, that it appeared

as though the real issue between the parties was the scope of the plaintiff's right to inspect rather than the question of the entitlement to exercise that right.

13 The parties were not able to come to an agreement on the scope of the requests that could properly be made in the context of the Inspection Application. The appellant then appointed a public accountant, Mr Chan Yee Hong. As stated in Mr Chan's affidavit, his mandate was to assist the appellant in identifying and reviewing the accounting and records of the Company, with a view to enabling him to understand "the transactions and financial position of [the Company] as recorded in its consolidated financial statements, having regard to concerns that he has on the same (particularly on related party transactions entered into by [the Company]". According to the appellant, Mr Chan was engaged to "provide his independent and objective views on identifying the accounting and other records that *he would expect to be kept by the company*, focusing on the areas that have been (and remain) of particular concern to [the appellant]" [emphasis added].

14 On 11 November 2016, the appellant wrote to the solicitors for the respondents, attaching a new schedule of items (henceforth referred to as the "amended schedule") which focused on "(i) related party transactions entered into by the DyStar Group and (ii) remuneration and bonuses paid by the DyStar Group to its directors and management." In the letter, the appellant noted that these were areas of particular concern and that such information was required to enable him to carry out his duties as a director as well as a member of the Company's Audit and Remuneration Committee.

The conclusion of the minority oppression suit

15 On 3 July 2018, the SICC issued its decision in respect of the minority oppression suit. Among other findings, the SICC found that related party loans

in October 2014 and January 2015 exceeded the applicable cash margins, and the Borrowing Conditions were accordingly breached (*DyStar SICC* at [52]). Loan agreements had also been signed by Mr Ruan and Mr Xu acting on behalf of both lender (the Company) and borrower (for other Longsheng related entities), and that they were plainly in positions of conflict of interest when executing these agreements (*DyStar SICC* at [55]). The SICC also found that there had been no breach of the non-competition clause in the shareholders' agreement (*DyStar SICC* at [355]).

The decision below

16 The Judge heard the parties again in May 2017, before dismissing the Inspection Application in its entirety.

17 His main finding was that the weightiest purpose for the Inspection Application was an ulterior one: the Inspection Application was intended to be "a fishing expedition to gather information to be deployed to advance Kiri Industries' interests in the ongoing minority oppression suit" (Judgment at [128]). He premised this finding on three pieces of circumstantial evidence (Judgment at [130]):

(a) **first**, the proximity in time between the filing of the Inspection Application and the filing of the minority oppression suit;

(b) **second**, the request for access to documents that was made by the appellant was thought to be so excessively wide and to extend so far beyond the ambit of s 199(3) as to invite an inference of an ulterior motive; and

(c) **third**, the amended schedule was closely reflective of the documents that had been sought by the appellant's appointing party, the

> minority shareholder of the company, pursuant to a specific discovery application in the minority oppression suit ("the Discovery Application") which had failed. (Prior to its transfer to the SICC, on 9 September 2016, the Judge had heard and dismissed an appeal against the assistant registrar's decision to dismiss the Discovery Application in its entirety.)

18 The Judge rejected the other "ulterior purpose" suggested by the respondents, which was that the appellant in fact sought to inspect the company's records in furtherance of the ulterior purpose of breaching the non-competition obligation in the shareholders' agreement (Judgment at [129]).

19 In respect of his finding that the requests in the amended schedule exceeded the scope contemplated by s 199 of the Act, the Judge noted that in the ordinary case, this could and likely would be addressed by reforming the request to remove its excesses (Judgment at [124]). But in this case, the Judge decided not to carve out a narrower subset of records because the width of the schedule of requests went towards the finding of an ulterior purpose of aiding the minority oppression suit and this ulterior purpose tainted the entire application. Furthermore, the narrowing would "amount to rewarding the overreach", and directors should not be allowed to "expect the court to sort, wash and fold the laundry for him so that it comes within s 199(3)" (Judgment at [193]). This led the Judge to dismiss the Inspection Application in its entirety.

20 In respect of the issue of joinder, the Judge tentatively concluded that the Longsheng directors were wrongly joined based on his construction of s 199 of the Act, though he thought that he did not need to decide on this particular

point given his finding that the Inspection Application was brought for an ulterior purpose (Judgment at [123]).

21 The Judge also addressed one final point. He noted that the appellant and Kiri Industries were willing to give undertakings to limit the use of the documents so as to quell any concerns the respondents might harbour as to the appellant's ulterior purpose. However, he found that such undertakings would be hard to police and enforce; it would also not address the concern that the documents inspected might be used covertly for other ulterior purposes (Judgment at [194]).

Our decision

22 Three issues arose for our determination:

(a) Whether the appellant brought the Inspection Application for an ulterior purpose;

(b) Whether the scope of the amended schedule was too wide; and

(c) Whether the Longsheng directors had been correctly joined.

23 We allow the appeal against the company. We find for the appellant on the first issue: we are satisfied that the Inspection Application was not brought for an ulterior purpose. However, as regards the second issue, we find that the amended schedule was too wide and we therefore issue further directions which we set out below. Finally, we dismiss the appeal insofar as it related to the Judge's observation that the Longsheng directors had been incorrectly joined. In our judgment, they should not have been joined. We now elaborate on our reasons.

Whether the appellant brought the Inspection Application for an ulterior purpose

24 Mr Dinesh Dhillon, who appeared on behalf of the appellant, submitted that the Inspection Application was not brought for an ulterior purpose, but to satisfy the appellant's fiduciary obligations to the Company as a director. The Inspection Application was filed against the backdrop of concerns over related party transactions (and whether these had been entered into at arm's length), and the disbursement of loans without board approval. Borrowing conditions that were put in place also appeared to have been breached. In these circumstances, it seems to us that there were good reasons to be concerned as to whether Longsheng was causing loss to the Company and whether its financial position was being presented correctly. Further, although there was an overlap between his duties as a director of the Company and Kiri Industries' concerns as a shareholder, the appellant had deposed in an affidavit that the Inspection Application was brought separately and independently in his capacity as a director and pursuant to his own direct statutory rights and obligations.[1] Mr Dhillon also pointed out that in a situation where value is being extracted from the company to a majority shareholder, both the minority shareholder and the directors of the company will face similar concerns. As against this, Mr See Chern Yang, who appeared on behalf of the Company, adopted and reiterated the reasons given by the Judge.

25 In our judgment, a director has an almost-presumptive right to inspect the documents of the company to the extent these fall within the ambit of s 199 of the Companies Act. To exercise this right, the director would not have to demonstrate any particular ground for inspection. ***Instead, the burden is on the company, if it resists the application to inspect, to show that such access***

[1] ACB Vol II Part 2, pp 16, 101–102.

should not be permitted because there is some abuse of process or privilege that underlies the request, such as when the director intends to use the right to inspect for purposes that are largely unconnected to the discharge of the director's duties (*Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd and another (Hau Tau Thong, non-party) and another matter* [2011] 3 SLR 1128 ("*Sanur Indonesian Restaurant*") at [34]). This is so because the director has fiduciary and statutory duties and obligations to the company and the director should not be placed in the position of having to carry out these duties and meet these obligations without being afforded access to the company's records and documents. This is also the position reflected in the case law: see, *eg*, *Wuu Khek Chiang George v ECRC Land Pte Ltd* [1999] 2 SLR(R) 352 at [26]–[27], [33]–[34] and *Sanur Indonesian Restaurant* at [15], [22], [34]–[35]. In the latter case, the director in question was held to be entitled to such access even though he was concerned with proving that he had not acted in breach of his duties. Yet, the court found a sufficient nexus between the director's exercise of his right to inspect and the discharge of his duties as a director (*Sanur Indonesian Restaurant* at [43]–[44]).

26 Turning to the present case, we first note that any concern that the Judge might have had over the purposes underlying the request has since been displaced by the fact that the minority oppression suit has concluded, at least at first instance. To that extent, the material relevant to the disposal of that set of proceedings has been settled.

27 In any event, even if we were to leave aside developments in the minority oppression suit, we are respectfully of the view that the Judge erred in his analysis. Quite clearly, it was conceivably within the scope of the appellant's duties as a director of the Company (for example, his duties of reasonable care and diligence pursuant to s 157(1) of the Act: see *Sanur Indonesian Restaurant*

at [22]) to find out about the related party loans and to understand the financial health of the Company. The burden then shifted to the Company to show that the Inspection Application bore no relation to any of the appellant's duties as a director. Mr See was content to rely on the reasoning of the Judge below, and we turn now to address the three pieces of circumstantial evidence that the Judge relied on (see [17] above).

28 First, the strongest factor suggestive of an abuse of process or the pursuit of an ulterior purpose was the similarity in the requests in the Discovery Application and in the amended schedule. But as Mr Dhillon submitted, it is unsurprising, if not common, for the reasons underlying the complaints of a minority shareholder in an oppression action and that of a director appointed by that shareholder to be aligned. He drew our attention to the case of *Berlei Hestia (NZ) Ltd v Fernyhough* [1980] 2 NZLR 150, where the Supreme Court of New Zealand observed at 166, that:

> The stage has already been reached… where nominee directors will be absolved from suggested breach of duty to the company merely because they act in furtherance of the interests of their appointors, provided that their conduct accords with a bona fide belief that the interests of the corporate entity are likewise being advanced.

29 Mr Dhillon did not dispute the Judge's finding that the amended schedule tracked the requests made in the failed Discovery Application (see [17] above), but submitted that this was unsurprisingly so because there was overlap and commonality in the interests of the minority shareholder and the director in this case. We agree; both Kiri Industries and the appellant would have overlapping concerns in relation to both the related party transactions as well as the remuneration and bonuses paid by the DyStar group to its directors and management. It seems to us that the Judge might have overlooked this commercial reality and this might have affected the lens through which he

looked at the other aspects of the factual matrix and came to his conclusion that the Inspection Application had been made for an ulterior purpose. The question in the end is whether the documents are relevant to the director to enable him to perform his duties as a director, and we think that is the case here. The overlap between the requests made by the minority shareholder and by the appellant was insufficient in and of itself to establish an ulterior purpose.

30 Secondly, the respondents rely on the synchronicity in timing between the minority oppression suit and the Inspection Application but we think this was a matter of happenstance. The Discovery Application was made on 5 July 2016, and dismissed by the assistant registrar on 16 August 2016. The appeal against the assistant registrar's decision was dismissed on 9 September 2016. The amended schedule was then raised by the appellant on 11 November 2016. The Judge found that the amended schedule tracked the requests made in the Discovery Application very closely (Judgment at [177]), and concluded that it would stretch credulity beyond breaking point to suggest that the schedule had been reframed independently of Kiri Industries and the minority oppression suit (Judgment at [181]). But in our judgment, this overlooks the fact that the Inspection Application had been filed on 15 September 2015, nearly ten months *before* the Discovery Application was filed. The original schedule did not bear these similarities to the requests made in the Discovery Application. What did transpire late was the amendment of the schedule of requested documents after the appellant appointed Mr Chan but we see nothing sinister in this.

31 Thirdly, while the scope of requests in the amended schedule was wide, in our judgment, this did not point clearly to any inference being fairly drawn as to the true purpose or intention of the appellant but raised questions as to scope instead, to which we will turn in the next section.

32 In these circumstances, we do not think that the Company has shown that appellant had brought the Inspection Application for an ulterior purpose. Instead, it seems to us that the Inspection Application went towards the discharge of his obligations as a director of the Company.

33 On a final note, the appellant indicated that he was willing to undertake that he would not disclose, use, and rely on information obtained through the Inspection Application without the leave of court, which extended to "not disclosing any such information individually or personally to other directors of [DyStar] or of Kiri, and also not disclosing it in a corporate sense to Kiri". While this would have put to rest any lingering concern about ulterior purposes, we do not impose any such undertaking on the appellant. This is so firstly because the minority oppression suit has concluded; and secondly, it seems to us that there is no such basis for any such undertaking to be imposed in any event. Mr See suggested that the information obtained through the Inspection Application could be used for the purpose of valuing the Company to facilitate the buyout of Kiri Industries' share of the Company and that that would be an ulterior purpose. We disagree. Just as Longsheng would have access to the Longsheng directors when dealing with the issue of valuation, Kiri Industries too should be able to rely on the input of the appellant should the minority oppression suit progress to the stage of valuation. Moreover, to the extent that the documents uncovered are relevant and necessary for the valuation of the Company, compelling the appellant to give an undertaking at this point, only to have Kiri Industries apply for discovery at the valuation stage would simply add an unnecessary layer of costs.

Whether the scope of the amended schedule was too wide

34 The amended schedule was prepared by an accountant appointed by the appellant, Mr Chan with a view to assisting the appellant in understanding "the transactions and financial position of [the Company] as recorded in its consolidated financial statements, having regard to concerns that he has on the same (particularly on related party transactions entered into by [the Company]", and in "identifying the accounting and other records that he would expect to be kept by the company, focusing on the areas that have been (and remain) of particular concern to [the appellant]". Though it might all have been well-intentioned, the difficulty with accepting this amended schedule is that it was drafted without any or sufficient effort having been made to ensure that the requests were all within the scope of s 199 of the Act. It should be noted that the relevant enquiry in this context is not what an *accountant might wish for*, but what a *director in fact requires* in order to be able to discharge his duties as a director.

35 In the present case, the primary contentions made against the amended schedule are **first**, that it included documents that are not in existence; and **second**, that the categories of documents sought extend to documents belonging to subsidiaries, parent companies and other third-party companies related to the Company.

36 We begin by setting out ss 199(1) and 199(3) of the Act for convenience:

> **Accounting records and systems of control**
>
> 199.— (1) Every company shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

> …
>
> (3) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors.

The material phrase is "accounting and other records", and the question is what the company's "accounting and other records" in this context should entail.

37 As regards the first contention, we agree that the right to inspection would extend only to "accounting and other records" that are, at the material time, kept by the company and are therefore *in existence*. That is to say, the provision does not contemplate or call for the *generation and creation* of new documents. In fact, the appellant, during the proceedings before the Judge, accepted that this was the correct position to take (Judgment at [167]).

38 As regards the second contention, Mr Nandakumar Ponniya, counsel for the Longsheng directors, noting the dearth of local authority on this point, brought forward a number of Hong Kong authorities for our consideration.

39 The first is the Hong Kong Court of First Instance decision in *Terence Ho Pui Tin v Wah Nam Group Limited* [1999] HKCFI 811, which stands for the proposition that a director may inspect the documents of a company, including the consolidated balance sheet and consolidated profit and loss accounts even if they disclose the positions of the subsidiaries (at [22]). This we find to be uncontroversial, insofar as such documents can clearly be said to be the records of the said company.

40 As for records of related companies, the position under Hong Kong law is that at least as a general rule, such records, being records of third parties, are not the records of a given company and cannot be subject to inspection because

the director only has a right to inspect records of the company of which he or she is a director: *Yueng Man Loong Maxly and another v Tsang Sau Hing Beatrice and others* [2007] HKCFI 360 at [7]. One possible exception to this is where the documents sought to be inspected are owned by the company against which the application is brought. This finds support in the Hong Kong Court of Appeal decision in *Hao Xiaoying v Wong Yiu Lam William and others* [2016] HKCA 108 (although Mr Ponniya candidly acknowledged that the provision that applied there was not the Hong Kong equivalent of s 199 of the Act). The Hong Kong Court of Appeal held that "the mere possession by a corporation of a document which is not owned by or belong to it does not by itself make that document a record of that corporation" (at [3.20]). Instead, it preferred the touchstone of ***ownership***: "the Court should simply adopt a single test of whether the document is owned by or belongs to the corporation in deciding whether it is the record of the corporation without any reference to possession" (at [3.23]). This is arguably more stringent than the position that the appellant advocated for, which is that "accounting and other records" would extend to documents belonging to the Company's subsidiaries and other third parties, so long as they are in the ***possession*** of the Company (citing two Hong Kong first-instance decisions: *Tom Ming Chou v Pan Ping-Hu Antony and others* [2009] HKCFI 1008 ("*Tom Ming Chou*") and *Tan Beng Huat and another v Swisscelin Distribution Ltd and others* [2016] HKCFI 593).

41 In our judgment, neither possession nor ownership are always necessary or sufficient conditions in themselves. Instead, the scope of the provision is to be ascertained by reference to the words of s 199(1) of the Act and that contemplates that the power is available in respect of records that "will sufficiently explain the transactions and financial position of the company and enable true and fair [financial statements] and any documents required to be attached thereto to be prepared from time to time". Indeed, we find support for

our position in *Tom Ming Chou*, where the court emphasised that what matters is whether the accounting documents in question are "necessary to give a true and fair view of the state of the Company's affairs" (at [28] and [30]).

42 In our judgment, the proper scope of the order to be made under s 199 of the Act may be framed as follows. First, it will include the documents belonging to the Company that fall within the terms of s 199(1). Second, we consider that it will also include the documents in the possession of the Company even if these belong to the ***subsidiaries*** of the Company (*but not other related companies*), if and to the extent that these documents can be shown to be relevant and necessary to explain (a) the transactions of the Company; (b) the financial position of the Company; or (c) to enable true and fair financial statements to be prepared.

43 As matters stand, the list appears to us to be too wide. To resolve this, we direct that counsel for the appellant and the Company are to meet and to endeavour within four weeks of today to agree on the proper scope for access. If such agreement is not possible, the parties are to prepare a schedule and to submit this within the said period of four weeks, showing, for each class of documents that cannot be agreed, each party's position and we will then give our directions, reserving to ourselves the right to call for an oral hearing, if we consider that this is necessary.

Whether the Longsheng directors were correctly joined

44 It remains for us to deal with that part of the appeal pertaining to the joinder of the directors. It seems to us wrong that the directors were joined in proceedings that were brought under s 199. That is a provision directed at the company. Pursuant to cl 114(a) of the Companies (Amendment) Act 2014 (No 36 of 2014), s 199 of the Act was amended to delete the phrase "and the directors

and managers thereof" from s 199(1). Prior to the amendment, the sub-section began with the words "Every company and the directors and managers thereof shall cause to be kept such accounting and other records…". The explanatory statement to the amendment bill (Companies (Amendment) Bill (Bill 25 of 2014)) made it clear that "the obligation to keep accounting and other records to explain the transactions and financial position of the company is imposed ***on the company only***".

45 The appellant's reliance on s 399 of the Act was also misplaced as that provision is merely meant to compel compliance from a "person in contravention of this Act". To come within that provision, the appellant would have to first establish there was a breach of s 199, but as we have just noted, that provision imposes an obligation only on the *company* to keep the records and to permit access. In our judgment, the directors ought not to have been joined and to this extent, we dismiss that part of the appellant's appeal.

Costs

46 We set aside the Judge's order for costs in favour of the Company, and award costs for the proceedings below and the appeal in favour of the appellant and against the Company in the aggregate sum of $30,000 plus reasonable disbursements to be taxed if not agreed. This would, however, exclude the costs relating to Mr Chan, the accountant, as his efforts did not help us to resolve the question of scope.

47 We do not disturb the Judge's order for costs in favour of the Longsheng directors. But we make no order for costs in favour of them in respect of the dismissal of the part of the appeal that pertains to joinder because it was evident to us that Mr Ponniya was presenting arguments on all aspects of the appeal. In fact, we were surprised when at the outset of his address to us, Mr See sought

our leave, which we denied, for Mr Ponniya to present arguments on behalf of the Company. There will also be the usual order for the release of security.

Sundaresh Menon	Judith Prakash	Steven Chong
Chief Justice	Judge of Appeal	Judge of Appeal

Dinesh Dhillon Singh, Lim Dao Kai, Margaret Ling, Ivan Lim, and Elyssa Lee (Allen & Gledhill LLP) for the appellant;
See Chern Yang and Teng Po Yew (Premier Law LLC) for the first respondent;
Nandakumar Ponniya Servai, Wong Tjen Wee, Lucas Lim, Liu Ze Ming, Daniel Ho and Nicolette Oon (Wong & Leow LLC) for the second, third and fourth respondents.