IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 22

Suit No 253 of 2017

Between

Darcet Pte Ltd

… *Plaintiff*

And

(1) Schweizer Energy Production Singapore Pte Ltd
(2) Maren Celine Christine Schweizer
(3) Pang Yoke Lee

… *Defendants*

GROUNDS OF DECISION

[Contract] — [Misrepresentation] — [Inducement]

TABLE OF CONTENTS

Darcet Pte Ltd
v
Schweizer Energy Production Singapore Pte Ltd and others

[2020] SGHC 22

High Court — Suit No 253 of 2017
Mavis Chionh JC
19–22, 25–29 March, 1 April; 21 May 2019

30 January 2020

Mavis Chionh JC:

1 The plaintiff in this case is a Singapore company in the business of (*inter alia*) producing machines and equipment for water treatment and the semi-conductor industry. Its managing director – and its chief witness in this trial – was one Soh Boon Wah ("Soh"). The 1st defendant is another Singapore company set up to carry out business in (*inter alia*) the solar energy industry, whose registered business activities include the manufacture of solar modules and the generation of electricity *via* solar power. During the time periods relevant to the present dispute, the 1st defendant's largest shareholders were a Singapore company named Schweizer Pte Ltd and a German company named Gebrueder Schmid GmbH ("Schmid"). Schweizer Pte Ltd's parent company is Schweizer Electronic AG, which is listed on the German stock exchange. The 2nd defendant (Maren Schweizer, formerly Marc Schweizer) and the 3rd defendant Pang Yoke Lee (also known as "Alfred") were both managing

directors of the 1st defendant at the material time, with the 2nd defendant also holding the position of Chief Executive Officer ("CEO") of Schweizer Electronic AG.

Background

2 Between 2013 and 2015, the plaintiff and the 1st defendant were involved in discussions about setting up a solar cell production line at a factory in the city of Jiangyin in Jiangsu Province in China ("the Jiangyin Factory"). The extent of each party's involvement in these efforts was a matter vigorously disputed by both sides in the course of these proceedings. In gist, the plaintiff claimed in the present suit that the 3rd defendant had made various representations to Soh, in order to induce the plaintiff to enter into an oral agreement ("the Oral Contract") with the 1st defendant in September 2013. It was the plaintiff's case that it had taken a number of actions following the Oral Contract in order to fulfil its obligations under the agreement. It was also the plaintiff's case that that it had agreed to vary the Oral Contract on 30 January 2014 by entering into an agreement to subscribe for shares in the 1st defendant; and that it had entered into this Share Subscription Agreement ("the SSA") on the basis of further representations made to Soh by both the 2nd and 3rd defendants. The plaintiff alleged that it had made various payments – but that the 1st defendant had subsequently refused to proceed with the arrangements agreed under the Oral Contract. According to the plaintiff, it also discovered the falsity of the representations made to Soh by the 2nd and 3rd defendants.

3 According to the plaintiff's narrative, therefore, the defendants had basically hoodwinked Soh into committing the plaintiff to the Oral Contract and the SSA, causing him to make numerous payments before Schweizer Electronic AG pulled the plug on the 1st defendant's participation in the solar energy

business and left the plaintiff high and dry. The plaintiff's claims in the present suit were based primarily on the defendants' alleged liability for fraudulent or negligent misrepresentation or on s 2 of the Misrepresentation Act. Alternatively, the plaintiff claimed that the 1st defendant had committed "repudiatory breaches" of the Oral Contract by refusing to perform its obligations under the said contract, which repudiatory breaches the plaintiff said it had accepted. As another alternative, the plaintiff claimed that the 1st defendant had been unjustly enriched due to "failure of consideration and/or basis" in respect of certain monies received by it under the Share Subscription Agreement. The plaintiff sought the return of the monies paid to the 1st defendant under the Share Subscription Agreement and of monies paid to Schmid under a contract with the latter for the purchase of equipment. It also sought damages related to the acquisition and maintenance of the Jiangyin Factory.

4 The defendants denied having made the representations pleaded by the plaintiff. They also denied any oral contract having been entered into between the plaintiff and the 1st defendant in September 2013. According to the defendants, Soh was the one who had expressed interest in investing in the solar energy business after finding out about the 1st defendant's efforts to develop a solar cell production plant. Prior to Soh coming on the scene, the 1st defendant had been working on developing a solar cell production line in Nantong, another city in Jiangsu Province. To this end, the 1st defendant had entered into a contract with its wholly-owned subsidiary in Nantong – a company called Schweizer Energy Nantong Co Ltd ("PNT") – in Nov 2012, to supply the latter with a production line for the production of solar cells. The 1st defendant had also entered into a separate contract with Schmid to purchase the equipment needed for PNT's production line. Soh sought to convince the 1st defendant to

start its solar cell production line in Jiangyin (where Soh was based), by offering to rent the 1st defendant a factory he claimed to own in Jiangyin and to provide US$18 million in financing for the purchase of equipment.

5 Although the defendants did engage in discussions with Soh on potential partnership models, they did not ultimately enter into any contract for the rental of the Jiangyin Factory or for equipment purchase financing. The only binding contract which resulted from these discussions was the SSA. Soh was the one who decided of his own accord that the plaintiff should contract to subscribe for 40% of the shares in the 1st defendant at a total contract price of US$9 million in several tranches. However, the plaintiff was constantly late in making the share subscription payments and ended up paying only a total of US$2 million. There was subsequently a capital reduction of US$1.25 million of the plaintiff's shares. Soh was also the one who decided to enter into a contract with Schmid for the purchase of equipment for the development of a solar cell production line at the Jiangyin Factory. Soh used a company named Darcet Jiangyin as the nominee in the Schmid contract even though Darcet Jiangyin had not been incorporated at the time he purported to sign the contract on its behalf. In March 2014, the plaintiff paid US$1.5 million to Schmid under this contract, but no equipment was ever delivered because the payment fell far short of the 40% of the purchase price which was required before the contract would come into effect. It was also around this time that the plaintiff experienced financial difficulties and borrowed a total of US$1.2 million from the 1st defendant.

6 According to the defendants' narrative, therefore, Soh was the one who had been actively interested in getting his companies into the solar energy business and who had made big promises which the plaintiff was financially

unable to fulfil. The present suit was really his attempt to foist the blame for his own poor business decisions on the defendants.

7 At the conclusion of the trial, I dismissed the plaintiff's action as I found that it had failed to make out its claims on the basis of the evidence adduced. As the plaintiff has appealed against my decision, I have set out below my reasons. I will start by summarising the evidence led by each side.

Summary of the evidence led by the plaintiff

8 As mentioned earlier, Soh was the main witness for the plaintiff. Soh testified that he first met the 3rd defendant sometime in August 2013 for the purpose of marketing a de-ionised water treatment plant to the 1st defendant. Soh claimed that at this first meeting, the 3rd defendant told him about the set-up and the business of the 1st defendant, including the fact that the 1st defendant had a wholly-owned subsidiary in Nantong – PNT – which was slated to take on the operation of the 1st defendant's intended solar cell production line in Nantong. According to Soh, the 3rd defendant also revealed that in light of the advanced technology which Schmid (one of the shareholders of the 1st defendant) had developed for the production of high-efficiency solar cells, the local Nantong government – or more precisely, the Nantong Economic and Technological Development Area Administrative Committee ("NETDA-AC") – had given PNT incentives valued at US$13 million, in the form of a land lease and cash grants[1]. The 3rd defendant further informed Soh that PNT had requested to return the first piece of land which it had received via the land lease. The 3rd defendant explained that this was because firstly, this piece of land was not in the Nantong free-trade zone; and secondly, also because changes in the

[1] [7] of Soh's Affidavit of Evidence-in-Chief ("AEIC").

Chinese Government's policy on the solar cell industry had led to China Construction Bank ("CCB") withdrawing the promised financing for PNT's working capital, thereby leading to a lack of funds for the construction of a factory on the first piece of land. Soh was told that pending the allocation by NETDA-AC of a second piece of land, the 1st defendant planned to rent a shell factory "temporarily" so as to commence solar cell production and testing.

9 According to Soh, the 3rd defendant also told him at their first meeting that "the return on investment ("ROI") for the solar cell production line is very high at 20.3% and it would only take 1.5 years for the production line to be profitable"[2]. Soh claimed that he then saw a "potential business opportunity to work with [the 1st defendant]"[3]. At his second meeting with the 3rd defendant in August 2013, Soh suggested that his company could acquire a factory in Jiangyin which he thought would be suitable for solar cell production and "sub-lease parts" of this factory to the 1st defendant for it to "set up a solar cell production line". The property Soh had in mind was actually owned by a company known as Jiangsu Changjiang Electronics Technology Company ("JCET"), which was his customer: JCET had offered it to him two or three years ago but he had thought it too big for his own business at that time[4]. In addition to the factory lease, Soh also suggested that he could "be a financier to [the 1st defendant] to buy the equipment needed for the solar cell production line"[5].According to him, the provision of the US$18 million in financing was to

---

2 [8] of Soh's AEIC.

3 [9] of Soh's AEIC.

4 See transcript of 19 March 2019 at p 50 line 31 to p 51 line 18.

5 [10] of Soh's AEIC.

be conditional on Darcet Jiangyin (his Jiangyin company) being "completely set up" and certain regulatory licences being obtained[6].

10 Soh claimed that the 3rd defendant was interested in his suggestions as he thought the 1st defendant could set up a second production line in the Jiangyin factory – rather than at the Nantong shell factory – to pilot-test Schmid's technology. According to Soh, it was at this meeting that the 3rd defendant made the first set of representations pleaded by the plaintiff in its statement of claim[7] (referred to by the plaintiff collectively as "the Representations"). These were –

(a) That the 1st defendant "had made a capital injection of around SGD 10 million into PNT ("the Capital Injection Representation");

(b) That "PNT had been granted incentives… from the Chinese government" which were valued at US$13 million and which comprised the following:

(i) Around US$3 million, which had been received by PNT and used to purchase the first piece of land;

(ii) Further cash incentives of around US$10 million which "the Nantong government had committed that PNT would receive… upon the production line being set up".

11 According to Soh, he believed that the Representations were true. On 3 September 2013, he emailed the 3rd defendant a set of PowerPoint slides setting

---

6 See transcript of 19 March 2019 at p 69 line 7 to p 70 line 13.

7 [11] of Soh's AEIC.

out his proposal for collaboration between the 1st defendant and a company he referred to as "Darcet (Singapore)"[8]. Darcet (Singapore) turned out to be the plaintiff – but it should be noted that the plaintiff was not yet incorporated at the time Soh sent his proposal. Soh incorporated the plaintiff in Singapore on 3 October 2013[9]. In Soh's slides of 3 September 2013, two proposals were presented. One proposal related to "Factory Rental": it was stated that "the Darcet Group…led by [Soh] was "forming a new company to take over" the Jiangyin Factory and proposed that one of the two plants on the factory premises be leased to the 1st defendant "at a token rental of 12 RMB month / m^2 and a token percentage of revenue share from [the 1st defendant]"[10]. The other proposal related to "Equipments Leasing", whereby four financing options were presented[11].

12 On 5 September 2013, Soh discussed his slide presentation with the 3rd defendant. This was when according to Soh the Oral Contract was entered into, although on the defendants' part, approval for it was given by the 2nd defendant one week later. The terms of this Oral Contract – as pleaded in the statement of claim – [12] were as follows:

> (a) The plaintiff would, firstly, rent the Jiangyin Factory to the 1st defendant (the "Factory Rental Arrangement"), for the purpose of the 1st defendant's production of solar cells in Jiangyin; and secondly, act as a

---

8 Tab 1 of Soh's AEIC.

9 [15] of Soh's AEIC.

10 p 91 of Soh's AEIC.

11 p 93 of Soh's AEIC.

12 [9] of the statement of claim (Amendment No. 1) at Tab B of the Set Down Bundle, Volume II.

financier for the 1st defendant's purchase of equipment from Schmid for the production line (the "Buy and Leaseback Arrangement");

(b) Under the Factory Rental and Buy and Leaseback Arrangements:

(i) The plaintiff would incorporate a Chinese company to be named JiangYin Darcet Energy Technology Co Ltd ("Darcet Jiangyin");

(ii) The Jiangyin Factory would be rented to the 1st defendant for RMB 12 per m^2 per month;

(iii) The Jiangyin Factory would be rented on an "as is" basis: the plaintiff would not need to make any modifications to it;

(iv) The plaintiff would provide the 1st defendant with US$18 million in financing by purchasing the equipment for the solar cell production line from Schmid;

(v) The 1st defendant would lease the said equipment from the plaintiff and, in consideration for the financing so provided, pay for the leasing of the equipment at a yearly compound interest rate of 9% per annum over 5 years, with such payments to be made monthly. After 5 years, the 1st defendant would have the right to take over the equipment;

(vi) Darcet Jiangyin would open two bank accounts, one of which was to be controlled by the 1st defendant (the "PSG Bank Account") and the other of which was to be controlled by the plaintiff (the "Darcet Bank Account");

(vii) The 1st defendant would operate the Jiangyin Factory and advance working capital into the PSG Bank Account for the cost of production in the Jiangyin Factory;

(viii) Where the working capital advanced by the 1st defendant into the PSG Bank Account was insufficient, Darcet Jiangyin would obtain a bank loan to finance production;

(ix) Darcet Jiangyin would produce and send the finished products to the 1st defendant's customers;

(x) Darcet Jiangyin would issue an invoice to the 1st defendant for the costs of production borne by Darcet Jiangyin, the rental fees for the Jiangyin Factory, and the equipment lease payments;

(xi) The 1st defendant would receive the proceeds of sale of the goods and remit the proceeds of sale to the PSG Bank Account;

(xii) The 1st defendant would pay the amounts invoiced by Darcet Jiangyin into the Darcet Bank Account;

(xiii) The plaintiff would be responsible for obtaining the four licences necessary to operate the production line in the Jiangyin Factory. These were the licenses for environment, workplace safety hazards, safety and feasibility, and energy (the "Four Licences"); and

(xiv) Once Darcet Jiangyin was incorporated, and the Four Licenses were obtained, parties would formalise the terms of the Oral Contract in Writing.

13 Soh testified that after the Oral Contract was entered into, the plaintiff had taken several actions to comply with its obligations under the Oral Contract. On 18 October 2013, the plaintiff entered into a joint venture agreement (the "JVA") with a company known as Jiansu Changjiang Electronics Technology Company ("JCET") and another company known as Jiangsu Glory Technologies Co Ltd ("Jiangsu Glory"), with a view to acquiring the Jiangyin Factory[13]. Pursuant to the JVA, Darcet Jiangyin was to be incorporated as the joint venture company: the plan was that JCET would transfer the lease for the Jiangyin Factory to Darcet Jiangyin. JCET was at that point the owner of the Jiangyin Factory. The parties to the JVA agreed that JCET's investment was the value of the Jiangyin Factory; further, that if Darcet Jiangyin did not produce profits within one year after its incorporation, the plaintiff would be obliged - under the terms of the JVA - to purchase JCET's shares in Darcet Jiangyin for the value of the Jiangyin Factory[14].

14 The plaintiff also took steps to apply for the Four Licences needed for the operation of the Jiangyin Factory. The last of these Four Licences was granted on 1 September 2014[15]. The process for the incorporation and registration of Darcet Jiangyin took considerably longer, and was eventually completed on 19 November 2014[16].

15 On 18 December 2013, Soh – acting on behalf of Darcet Jiangyin – signed an agreement with Schmid for the purchase of equipment at the price of

---

13 [16]-[18] and Tab 2 of Soh's AEIC.

14 [15] of Soh's AEIC.

15 [76] of Soh's AEIC.

16 [106] of Soh's AEIC.

€ 12.975 million (the "Schmid Contract")[17]. Soh claimed that he signed the Schmid Contract because the 3rd defendant told him he needed to do so to demonstrate the plaintiff's commitment to perform the obligations under the Oral Contract. He also did not think he was taking any big risk in signing the Schmid Contract because the 3rd defendant told him that the contract would not come into effect until the downpayment amounting to 40% of the contract price had been paid (per clause 29.10), and also because he himself was aware that Darcet Jiangyin – despite being named as a contracting party – had not even been set up as at 18 December 2013.

16 On 30 January 2014, Soh had a meeting with the 2nd and the 3rd defendants during which the 2nd defendant allegedly expressed concern that the 1st defendant's position was "not secure" under the Oral Contract. Because the Oral Contract left the plaintiff in physical possession of the Jiangyin Factory and the equipment to be purchased from Schmid, the 2nd defendant suggested that they should vary the Oral Contract by having the plaintiff enter into a Share Subscription Agreement ("SSA"). The plaintiff would subscribe for 40% of shares in the 1st defendant at the price of US$9 million, such that half of the promised US$18 million in equipment financing would be "routed through [the 1st defendant] in the form of share subscription monies" before being "returned to [the plaintiff] in the form of loans from [the 1st defendant]". The plaintiff would then use the loans to purchase the Schmid equipment. According to Soh, the 2nd and 3rd defendants also suggested that the plaintiff pay interest on these loans at the 12 month SIBOR rate, while the 1st defendant would pay the plaintiff interest on the US$9 million share subscriptions at the 12 month SIBOR rate. According to Soh, in other words, insofar as US$9 million of his

---

17 [22]-[23] of Soh's AEIC.

US$18 million equipment financing was concerned, "the interest to be paid by [the 1st defendant] to [the plaintiff] would be offset by the interest payable by [the plaintiff] to [the 1st defendant]" for the loans. As for the remaining US$9 million, the 1st defendant would continue to pay compound interest of 9% per annum.

17 Soh said that he decided to sign the SSA because he regarded the proposed variations as being "advantageous" to the plaintiff in providing it with "some form of security through its shareholdings in [the 1st defendant]"[18]. Moreover, he was swayed by the 2nd and 3rd defendants' repetition of the Representations: they told him that with the US$13 million incentives from the Nantong government and the 1st defendant's paid-up capital of S$10.6 million, "the value of [the 1st defendant] was around USD 22 million"[19]. The 2nd defendant also allegedly told Soh not to worry as Schweizer "are honest people"[20]. When Soh expressed reservations about meeting the schedule for payment of share subscriptions stated in the SSA, the 2nd and 3rd defendants allegedly assured him that the plaintiff could postpone payment and/or choose not to subscribe for further shares under the SSA at any time without penalty[21]. Soh thus proceeded to sign the SSA on behalf of the plaintiff[22].

18 The SSA provided for the plaintiff to pay its share subscriptions to the 1st defendant in the following tranches:

---

18 [30] of Soh's AEIC.

19 [33] of Soh's AEIC.

20 See transcript of 20 March 2019 at p 42 lines 4 to 25.

21 [35]-[36] of Soh's AEIC.

22 Tab 8 of Soh's AEIC.

(a) The first tranche on 7 February 2014: US$250,000 for 137,352 shares;

(b) The second tranche on 28 February 2014: US$1.75 million for 961,642 shares;

(c) The third tranche on 30 April 2014: US$2 million for 1,098,813 shares;

(d) The fourth tranche on 31 July 2014: US$5 million for 2,747,033 shares.

19 The plaintiff did not actually make payment in accordance with the SSA schedule. There were delays in the payments made; and on 19 May 2014, Soh sent the 2nd and 3rd defendants an email attributing the delay *inter alia* to the fact that his company's funds "are from China and these investment funds have to go through the company under the China company registration requirements"[23]. In addition, instead of the US$9 million envisaged, the plaintiff paid only a total of US$2 million in the following manner:

(a) US$ 250,000 paid on 17 February 2014;

(b) US$ 700,000 paid on 7 March 2014;

(c) US$ 500,000 paid on 20 March 2014; and

(d) US$ 550,000 paid on 6 May 2014.

---

[23] Tab 17 of Soh's AEIC.

20 In return, the plaintiff was issued 1,098,813 shares in the 1st defendant. In the same period, the 1st defendant made loans totalling US$1.25 million to the plaintiff: one for US$700,000 on 12 March 2014[24] and the other for US$550,000 on 6 May 2014[25].

21 Shortly after the first loan of US$700,000 from the 1st defendant, the plaintiff made a payment of US$1.5 million to Schmid on 14 March 2014. According to Soh, he made this payment after the 3rd defendant had on 12 March 2014 responded to Schmid's chaser for "update" by telling Schmid's representative[26]:

> We are arranging a USD 1.5M from Darcet Singapore [the plaintiff] to pay to Schmid by this Friday…

22 Soh claimed that although he was copied in the 3rd defendant's email, he was "caught offguard" by it. Instead of raising objections, however, he arranged for the US$1.5 million payment because the 3rd defendant told him that Schmid was "pressing them for payment" of this amount. To make up the US$1.5 million, Soh even remitted a sum of US$270,000 from his personal account to Schmid in addition to the US$1.23 million transferred directly by the plaintiff to Schmid[27]. The payment of US$1.5 million did not result in any equipment being delivered because it was substantially less than the 40% downpayment (€5.19 million[28]) required for the Schmid Contract to come into effect.

---

24 Tab 12 of Soh's AEIC.

25 Tab 15 of Soh's AEIC.

26 Tab 13 of Soh's AEIC.

27 [47] of Soh's AEIC.

28 Clause 13.1 of the Schmid contract, p 136 of Soh's AEIC.

23 As early as October 2013, Erich Wang ("Wang", the 1st defendant's financial controller) had sent Soh spreadsheets setting out the business case for a 35 MW production line[29]. However, it would appear that the parties never came to a final landing on setting up a 35 MW production line. From March 2014 up to November 2014, Soh had numerous discussions with the 3rd defendant and Erik Greger ("Greger"), the then Sales and Marketing Director of the 1st defendant) about the projected profitability of a 35 MW production line versus that of production lines with larger capacities[30]. Various profit and loss plans were drawn up by Greger, and clarification was given by him on a number of points raised by Soh. At some point in September 2014, "it was acknowledged that a 35MW production line would not be financially viable or attractive enough as the profit level of 5% was too low and it would take 3 years to produce any returns"[31]. Thereafter, the discussions between the parties shifted to the issue of providing for a scalable function in the 35 MW line to allow for scaling up to 100 MW; whether, for example, they should ensure any 35 MW production line they put in could be scaled up to 100 MW. According to Soh[32]:

> All of us agreed to seriously consider the possibility that the production line which was scalable to 100 MW be acquired instead of the original 35 MW line.

24 In April and May 2014, the parties also had a number of discussions on other matters. As stated in an email sent on 15 May 2014 by Vivian Zhang Wei

---

29 [19] of Soh's AEIC.

30 [57]-[64], [77]-[92] of Soh's AEIC.

31 [83] of Soh's AEIC.

32 [84] of Soh's AEIC

Wei ("Vivian Zhang", a director of the plaintiff's) to Wang and copied to Soh as well as the 3rd defendant[33], these included the following:

> 1. How should the work for Jiangyin's subsequent operations be divided?
>
> …
>
> 2. How would the various costs be paid?
>
> …
>
> 3. Management of the various certificates, licences, seals
>
> …

25 It would appear that by November 2014, these matters had not yet been finalised. In an action item list forwarded by Greger to various persons including Soh and the 3rd defendant on 13 November 2014, it was recorded for example that action to draw up a "Management / Logistics agreement" and a "Distribution agreement" between the 1st defendant and the plaintiff had "not started"; and other matters such as the "org chart", "staffing" and "material readiness" still needed "further discussion"[34].

26 In the meantime, at a meeting on 27 July 2014, Greger presented a proposal that Schweizer Pte Ltd reduce its shareholding in the 1st defendant so as to bring a new investor into the company[35]. Greger explained that this was because a new shareholder in the parent company (Schweizer Electronic AG) was not interested in the energy business. However, Soh raised objections to the proposal; and in the end, nothing came of it and no new investor was brought in.

---

33 pp 288-290 of Soh's AEIC.

34 p 565 of Soh's AEIC.

35 [68]-[70] of Soh's AEIC.

27 Subsequently in August 2014, Soh allegedly approached the 3rd defendant to ask that the Oral Contract be put down in writing so as to give him "assurance". According to Soh, he felt that things "had come to a point where the allocation of responsibilities between [the plaintiff], [the 1st defendant] and Schmid should be penned down clearly"[36]. Soh claimed that the 3rd defendant's response was to suggest that the plaintiff "take over the Jiangyin Project" so as "to take all the profits of the Jiangyin Project instead of only earning interest from the Financing Arrangement"[37]. The 3rd defendant also told Soh that if the capital of US$5 million, to be made up of US$2 million from a bank overdraft and US$3 million in cash. The 1st defendant would then only earn a sales commission of 5% of selling price from sales and marketing activities.

28 Soh claimed that he had reservations about the 3rd defendant's suggestion since the plaintiff had no expertise in solar cell production, and the projected profit margin was also "not attractive enough"[38]. However, it appeared that no further steps were taken by either side in respect of the 3rd defendant's suggestion, as parties continued their discussions on the profitability of production lines of different capacities and various business cases. As at October 2014, Soh claimed that his impression was that the 1st defendant "would still carry on with the Jiangyin Project" because it "needed to test the production line in preparation for production at PNT in order to make use of the Nantong incentives"[39].

---

36 [72] of Soh's AEIC.

37 [73] of Soh's AEIC.

38 [74] of Soh's AEIC.

39 [87] of Soh's AEIC.

29 On 3 November 2014, Soh signed the 1st Amendment Agreement to the Schmid Contract which incorporated changes that he had requested[40]. Firstly, he had wanted the contracting party changed to another of his companies (Darcet Energy Pte Ltd), although it was understood that the plaintiff would be the party actually making payments. Secondly, he had also wanted the payment terms changed such that a letter of credit would be required only for 50% of the contract price instead of the original 60%.

30 On 3 December 2014, Soh signed a 2nd Amendment Agreement to the Schmid Contract. This came about because at a meeting between the parties on 26 November 2014, it was agreed that they should acquire higher-capacity plasma tools which would allow for the option of upgrading the production line from 35 MW to 100 MW[41]. The 2nd Amendment Agreement provided for the revision of the contract price in the Schmid Contract from € 12.975 million to € 15.075 million and also amended the payment terms.

31 It is not disputed that apart from the US$1.5 million paid to Schmid on 14 March 2014, no other payments were made by the plaintiff to Schmid whether under the original Schmid Contract or the 2nd Amendment Agreement. It is also not disputed that according to the payment schedule under the SSA, the plaintiff was to have paid up the aggregate amount US$9 million by 31 July 2014 in return for 40% of the shares in the 1st defendant – but that as at 6 May 2014, the plaintiff had paid only US$2 Million.

---

40 [99]-[103] of Soh's AEIC.

41 [111]-[115] of Soh's AEIC.

32 According to Soh, following the signing of the 2nd Amendment Agreement to the Schmid Contract, he ran into "issues with the bank" when he sought to obtain financing for the € 2.1 million increase in the contract price. On 10 December 2014, Soh sent the 3rd defendant the following email[42]:

> Let me put this in writing so that it would be clearer for you and to see that my request is reasonable. Currently, I still facing lot of issues after the registration of the company. E.g the opening of foreign currency account. The so call the new regulation. However, all these issues can still be solved by taking extra effort and a few more days of work to solve it. But the core issues is the bank guarantor for my additioal source of financin for 100MV line, which is supposed to be provided by JCET but now having technical problems as other event making it not a right time for JCET to do it now. I will need more times to look for alternative which will cause further delay to the project.
>
> With the current down of oil price and unstable solar market situation, JCET feel that it is not in the right time to ask the board and the shareholder to provide the bank guranttee of the project, as it could affect the acquisition process. Bearing in mind that, JCET also feels that there is a risk of the Schmid production line not able to hit above 20% efficiency or taking a long time to achieve it.
>
> … i will need more time or long time to get JCET to proceed with the bank gurranttee for the project as it need shareholder approval and now is not the right time for JCET to do so.
>
> On the other hand, I have already got the bank funding ready just short of a guarantor. Getting this financing can be consider my special ability as it will not be possible for other to get finance for solar project right now. For me to get such financing showing my creditable treak record in the market. Further, the need of a guarantor is only a normal procedure for normal financing arrangement.
>
> To expedite the process, i need the help for the bank to release the funding if Schmid can help to provide such guarantee as an interim measures. Such guarantee can only be provided by Schmid Related company in China with assets in China. Can this be arranged?

---

42 [121] and p 655 of Soh's AEIC.

33 The 3rd defendant replied on the same day[43], stating that he had discussed with Schmid and the 2nd defendant. While Schmid was ready to guarantee an efficiency rate of more than 20% for its equipment and also to commit to building a 100 MW line, it was not possible for Schmid to act as guarantor for the plaintiff's bank loan. The 3rd defendant added that Schmid was still "speculating" about the plaintiff's "set-up" and "financial situation"; further, that the plaintiff's "100%" dependence on bank loan was worrying because the "bank facility… could fail any point of time especially for China bank". He suggested instead that a "certain down payment" be made to Schmid before 15 December 2014 to "serve as security", on the understanding that Schmid would not spend the money while the plaintiff sought to secure a guarantor for its bank financing.

34 Soh alleged that apart from sending the above email, the 3rd defendant also called him and disclosed that both Schmid and the 1st defendant were facing financial difficulties. Soh became concerned upon hearing of these issues: he worried that if the plaintiff "paid Schmid for the equipment through subscription of shares in [the 1st defendant] just for show to [the 1st defendant's] and Schmid's banks, and in the event that there was nothing in writing about the Jiangyin Project, [the plaintiff] might not be able to recover the amounts paid"[44].

35 On 15 December 2014, Soh sent the 3rd defendant another email in which he stated:

> … we are at a special timing of Chinese addministrative tranformation period. As such, we are still having many unexpected problemin the seting up process, e.g. the foreign currency account opening due to the new restriction on the

[43] p 654 of Soh's AEIC.

[44] [131] of Soh's AEIC.

> shareholder in Singapore company. Further, site survey is required to be conducted on the the land and building of the factory before it could be transfered to Darcet. There are the land valuation need to be carried out again and pariticulars need to be verified etc. We are not able to do the fund transfer till all these are complete and verified.
>
> The good thing is that we have got the additional funding from the bank ready, just required to find a guarantor before the release of fund. We atre now arranging for the guarantor for the financing.
>
> We see that we may need 2 month to solve the administrative hurdles, taking into the fact that the Chinese new year is in Feb 2014 and will cause delay in the process, we hope that the funding will be able to be back to plan in March 2014 and LC can be ready.
>
> In view of the unexpected delay with the addiministrative procedure, I plan to arrange for a sum of USD 3M from Singapore by end Jan to help to lessen the impact.

36 The 3rd defendant replied on the same day to inform Soh that the 1st defendant was "not comfortable" with the "uncertainty to wait one more month" and to urge Soh to arrange for payment by the beginning of January 2014.

37 As it turned out, no payments were eventually made by Soh and/or the plaintiff. Soh claimed that the reasons were as follows.

38 On 24 December 2014, according to Soh, he accompanied the 3rd defendant to a meeting with representatives of the Nantong government – and it was there that he discovered for the first time "the Nantong government's withdrawals of the incentives given to [the 1st defendant]"[45]. In his view, this "revelation" was contrary to the 2nd and 3rd defendants' representations that "there was a commitment by the Nantong Government to give USD 13 million incentives which made [the 1st defendant] worth USD 22 million".

---

45 [131] of Soh's AEIC.

39 There are no emails or other documented communications between Soh and any of the defendants following his alleged discovery of the "truth" on 24 December 2014. However, Soh claimed that he did have a verbal discussion with the 3rd defendant two days later, in which the latter tried to persuade him again that the plaintiff should take over the operations of the Jiangyin Factory. Soh claimed that during this discussion, he had asked "that all the promises given by [the 1st defendant] such as the financing of USD 5 million from [the 1st defendant], the selling price of the solar cells and the warranty from Schmid on the performance and capabilities of the machine regarding the new arrangement be put into writing in an agreement"[46] – but the 3rd defendant demurred, saying that these details could be finalised after the plaintiff had "put up USD 3 million to Schmid as an indication of Darcet Singapore's commitment towards the Jiangsu Project"[47].

40 Soh claimed that by then he had become "more and more uncomfortable with the state of affairs"[48]. However, during the period after 15 December 2014 up to mid-February 2015, there were apparently no documented communications of any substantive nature regarding the withdrawal of the Nantong incentives and its effect on the plaintiff's shareholding in the 1st defendant. Soh claimed that sometime in January 2015 (he did not specify the date), he was admitted to hospital for a head injury. It appears that towards the end of January 2015, when the defendants did not receive the US$3 million transfer promised by Soh, they attempted to contact him but got no response[49].

---

46 [133] of Soh's AEIC.

47 [134] of Soh's AEIC.

48 [134] of Soh's AEIC.

49 Tab 53 of Soh's AEIC.

On 30 January 2015, the 3rd defendant emailed Soh stating that they had heard he was unable to travel to Singapore to sign the documents necessary for the funds transfer and offering to arrange for the documents to be couriered instead.

41 Soh did not respond to the 3rd defendant's offer to arrange for a courier. Instead, on 2 February 2015, he emailed the 3rd defendant to say that he planned to come back to Singapore "by end of the week to do the transaction" and that with this plan, the US$3 million "can be TT out before end of next week"[50]. As 2 February 2015 was a Monday, "end of next week" would presumably have meant Friday 13 February 2015. In the same email, Soh also forwarded to the 3rd defendant an email from his (Soh's) bankers stating that "the transaction of 3 million is available as of Friday evening 30th Jan".

42 The 3rd defendant wrote back to Soh on 3 February 2015 to alert him to "the mood now in both Schweizer and Schmid"[51]. According to the 3rd defendant, he had spoken with the 2nd defendant and Christian Schmid: as he put it[52] –

> They both felt that they are again left to deal with own situation with your delay in execution. There is no faith and trust anymore and they could only hope and pray that you make this happen as soon as possible.

43 Soh did not reply immediately to the above email. However, on 12 February 2015 (a day before the date when the US$3 million was supposed to be transferred), Soh sent the 3rd defendant an email[53] in which he stated that the

---

50 Tab 55 of Soh's AEIC.

51 p 677 of Soh's AEIC.

52 Tab 55 of Soh's AEIC.

53 Tab 56 of Soh's AEIC.

plaintiff had invested in 40% of the 1st defendant's shares "with the understanding that there is a value of USD 13 Millions incentive"; that the "loss" of the US$13 million incentives meant that the 1st defendant's market value had also been "reduced" by US$13 million; and that there was "a need for Schweizer to make up the difference".

44 On 13 February 2015, Soh sent a further email[54], this time to the 2nd defendant. This was an email which Soh had sought the 3rd defendant's help in drafting[55]. In this email, Soh assured the 2nd defendant that he was "presently preparing the USD 3 million transaction for PSG [the 1st defendant] share allotment" and that "the money should be TT to PSG account not later than 17th Feb 2015". He then proceeded in the same email to raise two "concerns" with the 2nd defendant. The first related to "recent change of China policy" which he said had "affected the foreign investment requirement" and led to "the delay of the project". In this connection, Soh asked the 2nd defendant for her "commitment in writing … to confirm the support from Schweizer to Darcet to make this project a success". As to the second concern, he stated that in light of the 1st defendant's inability "to withhold the incentive agreement and also the land", and the risks involved to the plaintiff, he proposed to "reduce the [plaintiff's] share allotment in [the 1st defendant] to keep it below USD 4 Millions".

45 The 2nd defendant's response on 16 February 2015[56], according to Soh, did not give him the "commitment in writing" he had sought. Instead, she stated

---

54 Tab 58 of Soh's AEIC.

55 [141] of Soh's AEIC.

56 Tab 59 of Soh's AEIC.

that "Schweizer has never let down any partners at any time"; that they "prefer to do business that are based on friendship and trust"; and that the transfer of the US$3 million "would be a signal from [Soh's] side" that he shared their "way and thoughts".

46 The plaintiff did not transfer the US$3 million to the 1st defendant on 17 February 2015. On 20 February 2015, Soh was notified via an email from the 2nd defendant[57] that the 3rd defendant would "not be in charge anymore" and that he was "not authorised to execute any negotiations" between "Schweizer and Darcet". Instead, the 2nd defendant suggested that she would be open to a "personal meeting".

47 On 24 February 2015, Soh had a meeting with the 2nd defendant, during which the latter told him that the plaintiff was at fault for failing to remit the funds[58]. It was then suggested by the 2nd defendant that the plaintiff's investment so far of US$2 million be diverted to a project which Schmid had in Mexico. Soh was shocked at this suggestion, which he rejected. On the same day, he sent the 2nd defendant an email[59] stating that he felt it was "an appropriate time for both sides to nail down a JV agreement with the appropriate terms and condition" before they proceeded "to the next stage". He also requested "greater clarity over the roles" that the plaintiff would be "taking over as a major investor" as he claimed that the "nature of [the plaintiff's] commitment" had "changed significantly over the course of [their] discussion, from an initial buy and leaseback arrangement to becoming a shareholder in [the

---

57 Tab 60 of Soh's AEIC.

58 [146] of Soh's AEIC.

59 Tab 61 of Soh's AEIC.

1st defendant] with potentially greater liabilities". This email apparently did not elicit any response from the 2nd defendant.

48 In the months that followed, there were email and phone communications as well as meetings between Soh and the 2nd defendant[60], in which – according to Soh – he sought to get the defendants to put up the working capital of US$5 million which the 3rd defendant had allegedly promised, while the 2nd defendant sought to confirm the plaintiff's willingness to "continue with the Jiangyin Project on its own". Neither side appeared to make much headway.

49 On 17 April 2015, Soh signed a shareholders' resolution for a capital reduction of US$1.25 million of the plaintiff's shares in the 1st defendant[61]. He claimed that the 2nd defendant had informed him verbally that it was "not fair for [the plaintiff] to hold shares in [the 1st defendant] and to pay interest on the loans from [the 1st defendant] to [the plaintiff]", because although the plaintiff "had entered into the SSA to pay USD 9 million for 40% of [the 1st defendant's] shares based on the value of USD 22 million", the 1st defendant was "no longer worth USD 22 million due to the loss of the cash and land incentives in Nantong"[62]. The 2nd defendant had allegedly also promised Soh that the plaintiff would not have to pay the interest incurred on the loans from the 1st defendant and that its obligations to make the remaining share subscription payments under the SSA were "terminated".

50 On the same day (17 April 2015), Soh sent the 2nd defendant an email in which he claimed that the plaintiff had considered itself "as the role of financer"

---

60 [149]-[152] of Soh's AEIC.

61 Tab 62 of Soh's AEIC.

62 [153] of Soh's AEIC.

from the outset, and that it had been "doing the equipment purchasing contract, paying of deposits etc… on behalves of [the 1st defendant] and Schweizer"[63]. He went on to say that given "the current state of [the 1st defendant] losing the USD 13 million incentive from Chinese government and given that Schweizer is understandably showing no keen interest in keeping [the 1st defendant] going", parties would "have to re-look at the current arrangement". He therefore proposed three options to the 2nd defendant while adding that a "formal written document" would be needed to record the option chosen. The three options he presented to the 2nd defendant were as follows. "Option 1" was to "stick to original plan" whereby the plaintiff would be "a financer for equipment purchase and factor rental". Under this option, the 1st defendant was to provide a total of US$5 million in working capital. "Option 2" was for the plaintiff to "take over the role as investor", with the 1st defendant providing support in the form of US$5 million in working capital. "Option 3" was for the 1st defendant to "go ahead" with the project without the plaintiff's participation; and for the 1st defendant and Schmid to return the plaintiff the aggregate amounts it had paid so far (the US$1.5 million paid to Schmid in March 2014 and the balance US$750,000 of the plaintiff's shares in the 1st defendant following the capital reduction in April 2015).

51 The 2nd defendant did not respond to Soh's suggested "three options". Instead, at a meeting on 4 June 2015, she told Soh that the 1st defendant "would like [the plaintiff] to consider taking over the Jiangyin project completely"[64]. In an email dated 10 June 2015[65], Soh replied *inter alia* that the plaintiff was "not

---

63 Tab 63 of Soh's AEIC.

64 [153] of Soh's AEIC.

65 Tab 65 of Soh's AEIC.

familiar with solar industry", that it was taking a "big risk" in "changing the role of a vendor and financer to become investor", and that it would "need the support from both Schweizer and Schmid".

52 In a subsequent email on 27 July 2015[66], Soh further asserted that it would be too much of a deviation from "the original intent" for the plaintiff to take over the role of investor for the production line, and that his joint venture partner JCT would "not be able to approve such change". He then put forward another two options. Option (a) – which he described as the plaintiff's "preferred option" – was for the 1st defendant to "continue" as "the original investor" in the production line while the plaintiff played the role of "vendor and financier". Option (b) was "to invest as a team" – which appeared to harken back to his earlier request that the 1st defendant commit to providing US$5 million. Again, however, the 2nd defendant did not respond.

53 On 11 August 2015, Soh signed a shareholder's resolution to approve a capital reduction of US$3 million in the value of Schmid's shareholding in the 1st defendant.[67] According to Soh, he signed the resolution after the 2nd defendant explained to him that the capital reduction was being made "to set off a payment of USD 3 million by [the 1st defendant] to "Schmid".

54 Soh alleged that it was only afterwards that he realised that the defendants had been paving the way for Schmid's exit from the 1st defendant and Schweizer Electronic AG's withdrawal from the solar energy business. On 16 September 2015, according to Soh, the 2nd defendant informed him that

---

66 pp 2051-2058 Agreed Bundle of Documents ("ABD") Vol VII.

67 [161] and Tab 67 of Soh's AEIC.

Schweizer Pte Ltd had decided to withdraw from the energy business and would be terminating its production line contract with Schmid. Indeed, the 1st defendant planned to obtain from Schmid the refund of a US$3 million deposit it had paid Schmid under the said contract, via the mechanism of the US$3 million capital reduction exercise approved by its shareholders on 11 August 2015.

55 On 17 September 2015, Soh sent the 2nd defendant an email stating that the plaintiff was not agreeable to Schweizer Pte Ltd's decision; also, that the plaintiff "wants to continue with a 100MW line" and "wants Schweizer, PSG [the 1st defendant] to stick to the original plan of loan on equipment lease back arrangement"[68]. There is no evidence of any substantive reply by the 2nd defendant to Soh's email. Instead, in November 2015, Soh discovered that Schweizer Electronic AG (Schweizer Pte Ltd's parent company) had already announced – via a press release on 7 August 2015 – its withdrawal from the solar energy business.

56 Soh felt aggrieved at what he took "to be a repudiation of the Oral Contract"[69]. Soh's sense of grievance grew when he later discovered a series of agreements entered into between Schweizer Pte Ltd and Schmid in the period from 2015 to 2017 which – according to him – suggested that following Schweizer Pte Ltd's and Schweizer Electronic AG's decision to exit the exergy business, the 1st defendant had extricated itself from the production line contract with Schmid and managed to get back monies previously paid to Schmid under this contract. At the same time that it was doing this, the 1st defendant had also

---

68 pp 770-771 of Soh's AEIC.

69 [166] of Soh's AEIC.

allowed Schmid to withdraw as a shareholder through the capital reduction exercise[70]. Conversely, the 1st defendant had not helped the plaintiff to recover the monies it had paid pursuant to the Schmid Contract and the SSA.

57 Insofar as the truth (or otherwise) of the Representations was concerned, Soh alleged that the Capital Injection Representation was false because the 1st defendant did not actually inject S$10 million into PNT. Instead, Soh alleged that the 1st defendant had moved its funds around in such a way that it had used "funds injected into PNT to re-invest in PNT, giving the impression that [it] had invested SGD 10 million into PNT"[71]. He also claimed that the November 2012 contract between the 1st defendant and PNT was a "sham" contract. Both he and his fellow director Vivian Zhang alleged that PNT's Erich Wang had told them sometime in December 2015 that payments from PNT to the 1st defendant would be remitted back by the latter to PNT, to make it look like the "capital registered in the book of PNT shown at 7.5 million… (s)o with that milestone that PNT can go to Nantong Government to ask for the release of the first tranche of the incentive"[72].

58 As for the Land Incentive and Cash Incentive Representations, Soh claimed that the 1st defendant was actually "obliged to make a capital investment of USD 99.8 million in Phase 1 and 2 of the project at Nantong and needed to have a registered capital in PNT of US$ 50 million". Soh claimed that he had found this out only in December 2018; and had he known that the Nantong incentives were "contingent" on these two conditions being fulfilled,

---

70 [168]-[172] of Soh's AEIC.

71 [174]-[178] of Soh's AEIC.

72 See transcript of 21 March 2019 at p 70 line 26 to p 73 line 26; also [52] of Vivian Zhang's AEIC.

he would "have certainly considered any collaboration with [the 1st defendant] more carefully" and would have "asked more questions" about its "ability to make such investments"[73]. According to Soh and Vivian Zhang, they had managed to find out from an officer of the Nantong Government that "the main reason for the failure of the Nantong project was due to insufficient investment capital". This (Soh contended) was contrary to the impression the 3rd defendant had sought to give, which was that the incentives had been lost due to the Nantong government's policy changes[74].

Summary of the evidence led by the defendants

59 Although the two sides' narratives did not differ substantially insofar as the chronology and the bare facts of major events were concerned, they differed in their interpretation of and explanation for these events. I now set out below the summary of the defendants' account of events.

60 The defendants' interest in the solar energy business started as early as the first quarter of 2011, when the Executive Board ("EB") of Schweizer Electronic AG set up a project group to study the feasibility of venturing into this business. The 2nd and 3rd defendants were among the members of this group. It was the 3rd defendant who led the discussions with the NETDA-AC that led to the Investment Agreement being signed on 20 October 2011 between the NETDA-AC and Schweizer Energy Pte Ltd ("SEPL", a related company of the 1st defendant's). This Investment Agreement – and two other Supplementary Agreements – were novated from SEPL to the 1st defendant on 9 May 2012. PNT was incorporated as a wholly-owned subsidiary of the 1st

---

73 [181]-[186] of Soh's AEIC.

74 [185] of Soh's AEIC; also [54]-[55] of Vivian Zhang's AEIC.

defendant's, to focus on the production of solar cells in Jiangyin while the 1st defendant was to focus on the marketing and trading of the solar cells[75]. PNT entered into an agreement with the NETDA-AC to purchase a piece of land with the intention of constructing a factory on it; and various payments were made to the NETDA-AC pursuant to this land purchase agreement. Both the Schweizer supervisory board and the EB were aware that under the Investment Agreement, the total investment required into PNT over two phases was US$99.8 million, out of which US$50 million would be PNT's registered capital[76]. PNT also obtained from the CCB a letter of intent for the grant of a bank loan in relation to the construction of the factory. This CCB loan was meant to bridge the gap between US$50 million (the registered capital amount) and the aggregate investment amount of US$99.8[77].

61 PNT and the 1st defendant subsequently entered into a contract for the 1st defendant to supply PNT with a Production Line for the Production of Solar Cells, for the total contract sum of US$35.1 million. The 1st defendant in turn entered into a contract with Schmid to purchase the equipment. Pursuant to the Production Line contract, PNT made a downpayment of US$5.235 million to the 1st defendant and a further, partial payment of US$3.51 million in January 2013. The defendants asserted that the Production Line contract was a genuine contract. They rejected the plaintiff's suggestion that the contract was a vehicle for them to "round-trip" funds between PNT and the 1st defendant to simulate compliance with the requirement as to PNT's registered capital amount.

---

75 [14] of the 3rd Defendant's AEIC.

76 See transcript of 25 March 2019 at p 14 line 5 to p 16 line 9.

77 See transcript of 25 March 2019 at p 54 line 1 to 17.

62 In this connection, the defendants did not dispute that under PNT's Articles of Association and Chinese law, PNT's registered capital was to be US$50 million within 2 years from the issuance of its business licence (by 19 October 2014)[78]. The 2nd and 3rd defendants testified that between December 2012 and July 2013, PNT received from the 1st defendant cash injections totalling US$8.9 million. In February 2013, the CCB suspended bank financing for the Nantong solar cell project following changes in the Chinese Government's policy; and no further cash injections into PNT were made by the 1st defendant after July 2013. The 2nd defendant testified that this was because they were being careful about injecting capital "step by step" in accordance with "the policies in China" and were then evaluating "several options for contingency plans" before continuing with any capital injections[79]. The upshot was that although the EB decided against pulling out of China, a number of cost-saving measures were implemented. Instead of the 100 MW solar cell line originally envisaged, they decided to develop a 35 MW line which could later be upgraded to a 100 MW line if and when government policy shifted again. In addition, instead of proceeding with the construction of the factory, the 1st defendant rented an empty factory ("the shell factory") with the intention of using it as the premises for developing the 35 MW line[80].

63 The 3rd defendant agreed that he did meet Soh sometime in August 2013 when the latter sought to market his de-ionised water treatment plant to the 1st defendant. However, the 3rd defendant's evidence was that this first meeting was a casual one during which he had simply told Soh that Schmid had

---

78 See transcript of 25 March 2019 at p 43 lines 8 to 26.

79 See transcript of 28 March 2019 at p 5 lines 16 to 32.

80 [14]-[28] of the 3rd Defendant's AEIC.

"advanced technology" for manufacturing solar cells, that Schmid was a "partner" of Schweizer's, and that they intended to "establish a manufacturing plant" in Nantong[81]. It was Soh who – upon learning of the 1st defendant's plans – became interested in being involved. Soh suggested that instead of using the shell factory which needed to be equipped with the necessary facilities for solar cell production, "it would make more commercial sense for PNT to set up the production line" in his (Soh's) factory in Jiangyin, Wuxi, because the Jiangyin factory already had the necessary facilities[82]. The 3rd defendant did not find this suggestion attractive because, as he informed Soh, "the 1st defendant could be at risk of losing the [Nantong] incentives…if it decided not to continue its production line in Nantong"[83]. Soh assured him, however, that the shift to Jiangyin could be a temporary one and that the production line, if successfully set up there, could later be shifted to or replicated in Nantong. Soh said he believed that the NETDA-AC would be open to such a proposal. To make his proposal of the shift to his Jiangyin factory more attractive, he also suggested to the 3rd defendant that he could provide the 1st defendant with financial assistance of US$18 million.

64 The Schweizer EB – when informed of Soh's proposals – was sceptical about his financial ability, especially given his lack of experience in the solar cell industry. Discussions between the parties went on for some three months. Eventually, Schweizer's proposal was for Soh to become a shareholder of the 1st defendant[84]; and the only contract which the parties signed was the SSA of

---

81 See transcript of 25 March 2019 at p 27 lines 12 to 24.

82 [33]-[34] of the 3rd Defendant's AEIC.

83 [35] of the 3rd Defendant's AEIC.

84 See transcript of 26 March 2019 at p 9 lines 31 to 32.

30 January 2014, pursuant to which Soh agreed to inject an investment sum of US$9 million into the 1st defendant by taking up 40% of its shares. As to Soh's suggestion of a shift to the Jiangyin Factory, the EB and the defendants decided to "try out" this suggestion only in the sense of being willing at that stage to "investigate" the option – but no final decision was made by the EB for the 1st defendant to rent the Jiangyin Factory. As for Soh's suggestion that he could provide financing, the defendants understood from Soh that he would not transfer funds directly to the 1st defendant. Instead, he or a company controlled by him intended to purchase directly from Schmid the equipment needed for solar cell production[85]. It was in this context that Soh signed the Schmid contract on 18 December 2013 on behalf of Darcet Jiangyin. No agreement was actually concluded as between Soh and the plaintiff on the one hand and the 1st defendant on the other, for the provision by the former of US$18 million financing for equipment purchase at 9% compound interest.

65 According to Greger, there were discussions between the parties on "a lot of partnership models… many models discussed and proposed back and forth", but "nothing was fixed"[86]. What was clear, however (according to Greger), was that neither Schweizer nor Schmid would be the ones running the operations at the Jiangyin Factory: Schweizer's focus was always on dealing with the "downstream" of marketing the solar cells and "securing the sales pipeline", while Schmid as the equipment manufacturer had no interest in doing production[87].

---

85 [39] of the 3rd Defendant's AEIC.

86 See transcript of 29 March 2019 at p 40 lines 9 to 32.

87 See transcript of 29 March 2019 at p 40 line 31 to p 42 line 25.

66 According to the 3rd defendant, the defendants did not conclude any agreement to rent the Jiangyin Factory or to borrow US$18 million from Soh / the plaintiff because ultimately they remained focused on Nantong: it was Soh who appeared "very interested in the solar business"[88]. Both the 2nd and 3rd defendants asserted that no Oral Contract was entered into between the parties in September 2013; further, that neither of them made the Representations to induce Soh to enter into an Oral Contract and/or to sign the SSA. They agreed that Soh was told about the Nantong incentives and about the 1st defendant's injection of capital into PNT, but asserted that this information was conveyed in October or November 2013 when parties were discussing the possibility of Soh taking up shares in the 1st defendant[89]. According to the 3rd defendant, he told Soh that the total value of the incentives under the Investment Agreement with NETDA-AC was about 95 million renminbi ("RMB")[90]. He also told Soh that PNT's registered capital was to be US$50 million and, as at November 2013, that the 1st defendant had invested capital of US$8.9 million in PNT.

67 The 3rd defendant also explained that with Soh / the plaintiff becoming a shareholder of the 1st defendant, they would "share the common interest"[91]; and it was in this context that the 1st defendant would support the plaintiff's efforts to set up a 35 MW production line at the Jiangyin Factory – for example, by allocating personnel such as Alan Huang to help the plaintiff[92]. As the 3rd defendant put it, with Soh / the plaintiff as a shareholder of the 1st defendant, he

---

88 See transcript of 26 March 2019 at p 36 line 17 to p 37 line 31.

89 See e.g. transcript of 26 March 2019 at p 8 line 20 to p 9 line 27.

90 See transcript of 26 March 2019 at p 11 line 17 to p 12 line 26.

91 See transcript of 26 March 2019 at p 37 lines 15 to 16.

92 See transcript of 26 March 2019 at p 73 line 4 to p 75 line 15.

would "share the same interest as [the 1st defendant]"; and assuming the 35 MW line at Jiangyin was successfully set up, the 1st defendant would be the "sales and marketing arm, to promote this technology of the cell", and "ultimately" to "move on to Nantong"[93].

68 As for the US$9 million price tag for the plaintiff's 40% shareholding in the 1st defendant, the 2nd defendant – who had discussed the SSA with Soh – testified that this was "an asking price" for the business based on the "brand and the efforts already put into developing these businesses"[94]. She disagreed that the 1st defendant's "value" was calculated to be US$22 million after adding the value of the Nantong incentives (US$13 million) and the aggregate amount of the 1st defendant's capital injections into PNT (US$8.9 million). As for the subsequent capital reduction of the plaintiff's shares, she was unable to recall the reasons why this was done[95]; nor was she able to recall the reasons for the capital reduction of Schmid's shares in the 1st defendant[96].

69 Both the 2nd and the 3rd defendants also disagreed with the plaintiff's claim that the SSA was entered into in order to provide a mechanism for US$9 million of the equipment purchase financing to be routed through the 1st defendant[97]. Insofar as the spreadsheet titled "Cash Flow Overview" which he had forwarded Soh on 18 February 2014[98], the 3rd defendant testified that he had planned the cash flow together with Soh so as to get the latter's input on the

---

93 See transcript of 26 March 2019 at p 75 lines 3 to 15.

94 See transcript of 28 March 2019 at p 33 lines 23 to 26.

95 See transcript of 28 March 2019 at p 94 lines 27 to 29.

96 See transcript of 28 March 2019 at p 100 lines 2 to 23.

97 See transcript of 26 March 2019 at p 92 lines 8 to 20.

98 Tab 9 of Soh's AEIC.

cash flow needed to support the production line at the Jiangyin Factory[99]. He asserted that he had not actually known the payment terms under the Schmid contract but agreed that he had pointed out to Soh that the 40% downpayment under that contract needed to be made so as not to lose time or Schmid's confidence[100].

70 In fact - according to the defendants - as things turned out, they had much to be concerned about in terms of delay caused by the plaintiff's financial issues. Insofar as the injection of investment capital into the 1st defendant was concerned, the plaintiff was to have paid in a total of US$9 million over four tranches by end-July 2014 – but he was unable to meet the timelines for each of the payments, and by May 2014, he had paid only a total of US$2 million. The plaintiff was also dilatory in making payment for the equipment from Schmid: as at mid-March 2014, it had paid US$1.5 million which was nowhere near the 40% downpayment needed to trigger the contract coming into effect. In the meantime, the defendants had made two loans totalling US$1.25 million to the plaintiff. In Greger's words, "the plaintiff's failure to deliver on its promises had delayed the development of the 35 MW solar cell line and the further intended lines". By July 2014, the intended solar cell production line at the Jiangyin Factory had yet to be launched. In the meantime, as the solar cell industry began to recover from the downturn that had started in 2011, bigger players emerged from the consolidation that had taken place during the downturn, ready to invest in large-scale projects. This meant that the 35 MW line was "losing its competitiveness"[101].

---

99 See transcript of 26 March 2019 at p 100 line 4 to p 102 line 22.

100 See transcript of 26 March 2019 at p 102 lines 5 to 18.

101 [8] of Greger's AEIC.

71 In July 2014, the defendants decided to "throw out" to Soh the idea of inviting "another new shareholder" to join the 1st defendant as they could see that Soh was experiencing "delay" and "difficulty" in "supporting the share allotment" under the SSA[102]. On 28 July 2014, Greger gave a presentation to Soh in which it was suggested *inter alia* that Schweizer Pte Ltd could reduce its shareholding in the 1st defendant so that a new investor could be brought into the 1st defendant[103]. This was done after discussions between Greger and the 2nd defendant. According to Greger:

> In general, the group Schweizer was… considering one of the contingency plans to attract other investors. So, in the light of that, I've prepared a series of business cases in different scales starting from 35, and then… 100 and 200 megawatts, which were primarily, if I recall it correctly, intended for potential investors[104]…
>
> (W)e had discussed earlier that in order to bring this solar venture up to economies of scale due to the changed business environment, we would have to seek for an additional investor. This was in particular also in light as the Darcet Jiangyin project did not start off and was on the continuous delay. So, for this additional investor to come in, Schweizer was proposing to reduce its shares in [the 1st defendant][105]…
>
> (I)f you have a new investor coming in, which…was advisable in terms of getting the financing the a larger scale – scope… I mean, could be one of the effects…that the shares are diluted on the Schweizer side[106].

72 In cross-examination, Greger agreed that it would also have been possible to bring a new investor into the 1st defendant without diluting Schweizer Pte Ltd's shareholding: he stressed that the suggestion of diluting

---

102 See transcript of 26 March 2019 at p 107 lines 1 to 8.

103 p 48 of Greger's AEIC.

104 See transcript of 29 March 2019 at p 51 lines 5 to 13.

105 See transcript of 29 March 2019 at p 53 lines 19 to 26.

106 See transcript of 29 March 2019 at p 54 lines 26 to 31.

Schweizer's shareholding was simply "kind of a proposal base" at that stage which never progressed to "contractual negotiations" with potential investors[107]. Soh objected to the suggestion of getting in a new investor[108]; and in the end, nothing further came to pass on this front. The 3rd defendant denied Soh's allegation that from August 2014 he had been asking for the plaintiff to consider taking over the Jiangyin production lien instead of simply remaining a shareholder of the 1st defendant[109].

73 In the months that followed, the parties continued to discuss the possibility of "upscaling from a 35 to a 100-megawatt line"; and Soh sought Greger's help to draw up various financial models in relation to a 100 MW line[110]. By September 2014, however, a year had passed by; and while there had been "a lot of discussions and scenarios" [111], the Jiangyin project "had not been started".

74 In September 2014, the plaintiff obtained the last of the four licences required to operate the Jiangyin Factory; and on 22 November 2014, Darcet Jiangyin was finally registered[112]. According to the 3rd defendant, he had the impression from the correspondence with Soh that the latter was "trying to reassure the 1st defendant that the plaintiff would now be in a position to fulfil its obligations"[113].

---

107 See transcript of 29 March 2019 at p 55 line 26 to p 56 line 28.

108 See transcript of 26 March 2019 at p 107 lines 10 to 15.

109 See transcript of 26 March 2019 at p 113 lines 9 to 15.

110 See transcript of 29 March 2019 at p 76 lines 26 to 31.

111 See transcript of 29 March 2019 at p 77 lines 12 to 14.

112 [67]-[68] of the 3rd Defendant's AEIC.

113 [68] and p 281 of the 3rd Defendant's AEIC.

75 This, however, was not to be so. In November 2014, Soh and the 3rd defendant had discussed options for accelerating the upgrade of the solar cell line from 35 MW to 100 MW; and on 24 November 2014, Greger had emailed Soh the final calculations as well as the price list for two upgrade options with certain recommendations[114]. Greger noted in his email that "the latest point to decide between the two options" was when the downpayment to Schmid had to be made, as this would "trigger the equipment manufacturing". On the same day, Soh emailed the 3rd defendant to ask[115]:

> How can we try to ask for the option with certain down payment and *some defer payment*? [Emphasis added]

76 This email from Soh was seen as "again raising the possibility of cash flow problems"[116] on the plaintiff's part. On 28 November 2014, Greger – acting on the Schweizer EB's instructions – wrote to Soh[117]. While the email was ostensibly in relation to several outstanding matters, Greger also expressly informed Soh that he had needed to "convince" the Schweizer EB of the progress of the project; that the EB was "very afraid that the [Schweizer] supervisory board has run out of patience to the Energy business because of continuous excuses for delay"; and that the supervisory board would "only be convinced upon the allotment agreement being completed upon Dec/15", failing which the EB feared that it would "be forced by the supervisory board to pull the plug". The last reference – to the completion of "the allotment agreement" – by 15 December 2014 – would appear to be a reference to the completion of share subscription payments under the SSA.

---

114 p 282 of the 3rd Defendant's AEIC.

115 p 282 of the 3rd Defendant's AEIC.

116 [68] of the 3rd Defendant's AEIC.

117 p 324 of Greger's AEIC.

77 On 10 December 2014, Soh wrote to the 3rd defendant about the issues he was facing in arrangement for the transfer of funds and suggested that Schmid help in the provision of a guarantee for bank financing[118]. This was followed by more correspondence between the parties. This has been referred to earlier in my summary of the plaintiff's version of events (see [8] to [58] above). In cross-examination, the 2nd defendant testified that she did not respond to Soh's various proposals because over the months of communications, she had formed the impression that Soh was regularly changing his proposals and "potentially he cannot fulfil the financial obligations he entered into [in] the share subscription agreement"[119].

78 It should be noted that the 3rd defendant's account of the meeting with the NETDA-AC in December 2014 differed from Soh's. It will be remembered that Soh had claimed that it was at this meeting on 24 December 2014 that he learnt for the first time "the Nantong government's withdrawals of the incentives given to [the 1st defendant]"[120]. In contrast, the 3rd defendant's evidence was that Soh had accompanied him to the meeting specifically "for the purpose of informing the NETDA-AC that the defendant would shift its effort to Jiangyin temporarily and, once the solar cell line was successfully set up, relocate or replicate the production line in Nantong by end of 2016". In other words, according to the 3rd defendant[121], what was discussed with the NETDA-AC at this meeting was

> …how long it takes where we may be able to start the [Nantong] project. We mentioned that ultimately it might take 2

---

118 p 294 of the 3rd Defendant's AEIC.

119 See transcript of 29 March 2019 at p 18 lines 20 to 32.

120 [131] of Soh's AEIC.

121 See transcript of 27 March 2019 at p 24 lines 4 to 10.

> years…because also view…on the bank loan which is a most critical one… Because if the bank loan is released, we will start Nantong immediately.

79 It should also be noted that the defendants disputed the plaintiff's contention that the Investment Agreement with the NETDA-AC required the 1st defendant to return the incentives received in the event it did not proceed with the Nantong project[122]. The defendants also disagreed that loss of US$13 million of incentives by PNT would mean the 1st defendant's "market value" being reduced by the same amount[123].

Summary of the plaintiff's claims against the defendants

80 To recap: the plaintiff relied on the following causes of action against the defendants. The first was misrepresentation. In this respect, the 3rd defendant was alleged first, to have made the Representations (see [10] above) to the plaintiff in August 2013, and thereby to have induced the plaintiff to enter into the Oral Contract on 5 September 2013[124]. Next, the 2nd and 3rd defendants were alleged to have repeated the Representations to the plaintiff on 30 January 2014 and thereby to have induced the plaintiff to enter into the SSA and to make payment of a sum of US$1.5 million to Schmid under the Schmid Contract[125]. The plaintiff claimed that the Representations were false; that the 2nd and 3rd defendants made these Representations either fraudulently or negligently; and that the 1st defendant was vicariously liable for the misrepresentations made by the 2nd and 3rd defendants.

---

122 See e.g. transcript of 27 March 2019 at p 121 line 4 to p 122 line 29.

123 See e.g. transcript of 28 March 2019 at p 86 lines 25 to 28.

124 [45]-[46] of the statement of claim (Amendment No. 1).

125 [56]-[57] of the statement of claim (Amendment No. 1).

81 Secondly, the plaintiff alleged repudiatory breach of the Oral Contract by the 1st defendant, which repudiation the plaintiff said it had accepted[126].

82 Thirdly, in respect of the balance sum of US$750,000 paid to the 1st defendant pursuant to the SSA, the plaintiff claimed that there had been total failure of consideration or basis in respect of this sum. *Per* the statement of claim, this sum of US$750,000 was alleged to have been paid to the 1st defendant on the basis that it would be used to pay Schmid for the purchase of equipment under the Schmid Contract; and since it had not been used to pay Schmid, there was a total failure of consideration or basis for the payment of the said sum; and the 1st defendant was thus unjustly enriched[127].

83 The issues in contention between the parties were primarily factual in nature. In respect of the claim in misrepresentation, I had to determine whether the Representations were in fact made by the 3rd defendant in August 2013 and by the 2nd and 3rd defendants on 30 January 2014; if they were, whether they were false; and if they were false, whether the 2nd and 3rd defendants made them knowing knowingly or recklessly – or at least negligently. The existence of the Oral Contract being disputed, I had to determine whether there was such a contract; and if so, whether the plaintiff was induced by the false Representations to enter into this contract. Assuming the Representations were false, I also had to determine whether the plaintiff was induced by these Representations to enter into the SSA and to pay US$1.5 million to Schmid.

---

126 [50] of the statement of claim (Amendment No. 1).

127 [61] of the statement of claim (Amendment No. 1).

84 In respect of the claim of repudiatory breach of the Oral Contract, this of course depended on my finding that there was an Oral Contract concluded on 5 September 2013. Assuming I found there was such a contract, I then had to determine whether the 1st defendant had in fact committed repudiatory breach of the contract; and if so, whether such repudiatory breach had been accepted by the plaintiff.

85 In respect of the claim of total failure of consideration or basis, this again rested on the plaintiff's assertion of an Oral Contract, a key term of which was the provision of US$18 million of financing for the purchase of equipment from Schmid. Assuming I found there was such an Oral Contract, I had to determine whether it was varied so as to provide for half of the US$18 million to be routed to the 1st defendant as share subscription payments under the SSA before being channelled back to the plaintiff in the form of loans for the equipment purchase. Assuming I found there was such a contractual variation, I then had to determine whether - out of the US$2 million paid by the plaintiff pursuant to the SSA - there was a total failure of consideration or basis in respect of the balance sum of US$750,000.

86 Given the nature of the plaintiff's claims, I thought it apt to start with the issue of whether there was in fact an Oral Contract concluded on 5 September 2013.

On the issue of whether an oral contract was concluded in September 2013

87 Having examined the evidence adduced, I found that there was no Oral Contract as alleged by the plaintiff.

88 Soh was the only witness from the plaintiff who gave evidence of this purported contract. As a witness, I found him to be shifty and lacking in credibility, and his evidence on the Oral Contract to be quite incredible. Firstly, if Soh were to be believed, parties were able to come to terms on an agreement concerning a factory lease and funding of some US$18 million after a mere two meetings in August 2013 (the first of which even Soh conceded was very casual[128]). In Soh's account of this compressed process, it appeared that there were barely any negotiations between the parties: indeed, according to Soh, the Oral Contract was concluded on the very same day that he presented his proposals to the defendants[129]. I did not find it believable that the defendants would have moved so swiftly to conclude an agreement with Soh – and a purely oral one at that, especially given the set-up of the Schweizer group's decision-making process in such matters. According to the 2nd defendant (whose evidence on this point was not challenged), the decision to venture into the production of solar cells in Nantong took more than half a year from conceptualisation to implementation, with approval having to be obtained from the Schweizer Executive Board and Supervisory Board[130]. I did not find it believable that a decision to shift their focus away from Nantong to Jiangyin – and to enter into a business venture with a party lacking any track record in the solar energy industry – would have been undertaken by the defendants in a matter of days or even weeks. Certainly I would have expected a fair amount of negotiations over contractual terms before the defendants entered into a binding agreement. This was especially so given that the Schweizer group had not had any previous dealings with Soh or his companies.

---

128 See transcript of 19 March 2019 at p 25 lines 26 to 31.

129 [13]-[14] of Soh's AEIC.

130 [4]-[12] of the 2nd Defendant's AEIC.

89 In this connection, I noted that whilst Soh's fellow director Vivian Zhang claimed that it was "not uncommon" in China for contracts to be concluded "on a handshake"[131], there was no evidence that the 1st defendant – or any of the Schweizer entities – had such a practice. In cross-examination, Vivian Zhang conceded that US$18 million was a huge sum[132], and that their company had not previously entered into any oral contracts involving such a huge sum[133].

90 Secondly, Soh's evidence about the supposed terms of the Oral Contract often did not add up or did not make sense. In particular, while he claimed in his AEIC that clear contractual terms had already been agreed as at 5 September 2013[134], in cross-examination his evidence as to what these exact terms were kept shifting. For example, he testified in cross-examination that the provision of the US$18 million in financing was subject to specific conditions: the financing would only be provided when Darcet Jiangyin was "completely set up" and "ready for operation", and when a written contract was signed[135]. He also asserted in cross-examination that there was to be a profit-sharing arrangement whereby the plaintiff would charge the 1st defendant "a lower rental" in return for getting "a bit" of the 1st defendant's profit[136]. Strangely, however, despite the obvious materiality of such terms, they were not mentioned

131 [14] of Vivian Zhang's AEIC.

132 See transcript of 22 March 2019 at p 43 lines 14 to 15.

133 See transcript of 22 March 2019 at p 44 line 26 to p 45 line 7.

134 [14] of Soh's AEIC.

135 See transcript of 19 March 2019 at p 68 line 22 to p 71 line 13.

136 See transcript of 19 March 2019 at p 54 line 24 to p 55 line 20.

in the description given in his AEIC of the Oral Contract; and Soh did not furnish any explanation for the omissions.

91 Some of the alleged contractual terms were also highly ambiguous. Thus, for example, whilst Soh claimed that it was agreed in the Oral Contract that the 1st defendant "would operate the Jiangyin Factory"[137], his description of the Oral Contract also included terms which provided for Darcet Jiangyin to "*produce and send the finished products* to [the 1st defendant's] customers", and to invoice the 1st defendant for (*inter alia*) "the costs of production". No explanation was provided by Soh as to what "operating the Jiangyin Factory" involved if it did not involve producing the solar cells and sending the finished products to customers. Indeed, as will be seen, this subsequently became a contentious issue between the parties when their working relationship broke down, with the 1st defendant contending on the one hand that it was never intended to be the one operating the solar cell production line and Soh insisting on the other hand that it was.

92 This is not to say that a concluded contract can never contain ambiguous terms. In the present case, however, the vagueness of Soh's description of key terms was another factor which – added to the mix – appeared to militate against the existence of the alleged Oral Contract.

93 Thirdly, it should be noted that even the identity of the parties to the Oral Contract was a matter of some mystery. In the statement of claim, the plaintiff had pleaded that it was the plaintiff itself – Darcet Pte Ltd, the Singapore-registered company – which had entered into the Oral Contract with the 1st

---

137 [14(b)(vii)] of Soh's AEIC.

defendant in September 2013[138]. However, this could not have been possible either factually or legally, because *the plaintiff did not exist in September 2013*: Soh himself stated in his AEIC that *the plaintiff was only incorporated on 3 October 2013*[139]. Perhaps tellingly, Soh's AEIC did not state that the parties to the Oral Contract were the plaintiff and the 1st defendant: instead, all that was said in the AEIC was that the terms of the oral Contract were "agreed on" by *Soh and the 3rd defendant*. Under cross-examination, however, Soh claimed that *both the plaintiff and Darcet Jiangyin* were parties to the Oral Contract with the 1st defendant[140]. This made for an even more baffling position, since Soh also admitted in cross-examination that both the plaintiff and Darcet Jiangyin were still "to be formed" at the point the Oral Contract was made; and in the end, Darcet Jiangyin was incorporated only on 21 November 2014[141]. In short, on Soh's own evidence, the plaintiff simply could not have been a party to any agreement with the 1st defendant as at September 2013.

94 Fourth, not only was Soh's evidence about the Oral Contract rife with inconsistencies and ambiguities, his assertion that such an agreement had been concluded in September 2013 ran contrary to the evidence of his own behaviour and that of other parties post September 2013. Most pertinently, in virtually all email communications with the defendants and other Schweizer representatives post September 2013, Soh made no reference to the existence of the Oral Contract.

---

138 [9] of the statement of claim (Amendment No. 1).

139 [15] of Soh's AEIC.

140 See transcript of 19 March 2019 at p 64 line 15 to p 65 line 5.

141 [38] of Vivian Zhang's AEIC.

95 It will be recalled, for example, that in Soh's version of events, the SSA varied the Buy and Leaseback Arrangement agreed in the Oral Contract: instead of the plaintiff providing US$18 million for the purchase of equipment from Schmid and then leasing this equipment to the 1st defendant at 9% yearly compound interest over 5 years, half of the US$18 million would be routed through the 1st defendant as share subscription payments before being funnelled to the plaintiff in the form of loans for equipment purchase. On Soh's telling, the SSA was simply a device designed to "give comfort to [the 1st defendant] on [the plaintiff's] commitment towards the Jiangyin Project"[142]: the routing of the monies in the form of share subscription payments to the 1st defendant did not change the fact that these were monies provided by the plaintiff *to finance the purchase of equipment from Schmid*, pursuant to the parties' Oral Contract. It was in this context that Soh claimed both the 2nd and 3rd defendants had assured him that payments under the SSA need not be strictly in accordance with the payment schedule and could be postponed pending the setting up of Darcet Jiangyin[143]. Given the circumstances narrated by Soh, I found it surprising that when the plaintiff found itself late in making payment according to the SSA payment schedule, Soh's email to the 2nd defendant on 19 May 2014[144] made no mention of the crucial background to the signing of the SSA. Indeed, while he did state in this email that the "share agreement, especially the timing of subscription phases need to go in tandem with the progress of forming and registration of [Darcet Jiangyin]", he expressly acknowledged that this was *a point which had not been brought up at the time the SSA was signed on 30 January 2014*.

---

142 [37] of Soh's AEIC.

143 [35] of Soh's AEIC.

144 p 241 of Soh's AEIC.

96 Given Soh's evidence about the manner in which the SSA had varied the Oral Contract and the reason for such variation, any reticence on his part in bringing the Oral Contract up to the defendants made no sense. In fact, as the business relationship between the parties started falling apart by end-2014, there was more reason than ever for him expressly to remind the defendants about the Oral Contract. After all, according to him, by December 2014 he had discovered the falsity of their representations about the Nantong incentives – and it was his case that these representations were part of the set of Representations that had induced him to enter into the Oral Contract and to take various actions pursuant to that contract, including the acquisition of the Jiangyin Factory and the signing of the Schmid Contract. Yet, oddly, when he emailed the 3rd defendant on 12 February 2015 to demand that Schweizer "make up the difference" to him of "the loss of USD 13 Million"[145], what he referenced was the SSA; and what he said was that the plaintiff had invested in 40% of the 1st defendant's shareholding on the understanding that there were incentives worth US$13 million. No mention at all was made of the Oral Contract which – on his own case – constituted the genesis of the parties' rights and obligations.

97 Similarly, in his email to the 2nd defendant on 13 February 2015[146], when Soh requested the latter to come up with an "alternative plan" to "resolve" matters between the parties, he described the arrangements between them in terms of "the share allotment agreement" (the SSA) and "our loan arrangement" (the loans from the 1st defendant to the plaintiff). Again, no mention at all was made of the Oral Contract; and again, I found this omission telling. One of the key concerns raised in this email was the 1st defendant's inability to retain its

145 p 680 of Soh's AEIC.

146 p 692 of Soh's AEIC.

Nantong incentive package. As noted above, Soh claimed to have been induced in part by representations about the Nantong incentives to enter into the Oral Contract; and several of the reliefs he claimed in this suit related to costs allegedly incurred as a result of his carrying out the Oral Contract (for example, the costs of acquiring the Jiangyin Factory)[147]. In the circumstances, it would have been not just logical but actually critical for Soh to bring up the Oral Contract in his email of 13 February 2015. He did not. To my mind, this was anomalous behaviour which tended to militate against there having been an Oral Contract to begin with.

98 The behaviour post September 2013 of other parties besides Soh was also inconsistent with the existence of an Oral Contract containing the terms pleaded by the plaintiff. As recounted by Soh, for example, the terms of the Oral Contract as regards the party responsible for bearing the costs of producing the goods at the Jiangyin Factory were quite clear. According to Soh, the Oral Contract provided for two bank accounts to be set up, one of which was to be controlled by the 1st defendant ("the PSG Bank Account"); for the 1st defendant to "advance working capital into the PSG Bank Account for the cost of production in the Jiangyin Factory; and for Darcet Jiangyin to invoice the 1st defendant for (*inter alia*) the costs of production after producing and sending the finished goods to the 1st defendant's customers[148]. However, the behaviour of the parties themselves post September 2013 was inconsistent with any such terms having been agreed. The plaintiff's Vivian Zhang herself noted[149] that as at May 2014, the discussions between the parties showed "no clarity on [the 1st

147 [49] of the statement of claim (Amendment No. 1).

148 [14] of Soh's AEIC.

149 [27] of Vivian Zhang's AEIC.

defendant's] and Darcet Jiangyin's roles and responsibilities for the costs" associated with the Jiangyin production line. Thus for instance, in an email dated 26 May 2014 sent to Soh as well as the 3rd defendant, the 1st defendant's financial controller Erich Wang stated that "the various operating costs after commencing business should be part of the costs of this project, and paid for using the Jiangyin company's registered capital"[150]. This appeared to be contrary to the position allegedly provided for in the Oral Contract, and yet, perplexingly, no protests or queries were raised by Soh. Indeed, in the emails which Vivian Zhang adduced of the discussions between the parties on each other's role and responsibility for various costs[151], not a single person referenced the agreement supposedly reached *vide* the Oral Contract of 5 September 2013.

99 Soh argued that if no Oral Contract had been concluded in September 2013, there would have been no reason for his companies to enter into either the JVA with JCET and Jiangsu Glory and/or the Schmid Contract. I did not find this argument persuasive for the following reasons.

100 In the presentation slides sent by Soh to the 3rd defendant on 3 September 2013, it was revealed that Soh's plan was actually for his Darcet Group to form "a new company…to take over the [Jiangyin] plant, which will house the group's expanding automation business, including its sub-contracted services to JCET in China"[152]. In her AEIC, Vivian Zhang gave evidence that at around the time when Soh first became aware of the 1st defendant's solar energy project,

---

150 p 124 of Vivian Zhang's AEIC.

151 See e.g. Tab 6 of Vivian Zhang's AEIC.

152 p 90 of Soh's AEIC.

he was already interested in the Jiangyin Factory for the purpose of expanding an automation business belonging to Darcet (Suzhou) Co Ltd. As the Jiangyin Factory comprised two plants, according to Vivian Zhang, Soh formed the intention of leasing the larger plant to the 1st defendant while using the smaller plant for Darcet Suzhou's business. In fact, in cross-examination Vivian Zhang testified[153] that she and Soh had thought that they

> …would do more than one operations [*sic*] in the Jiangyin factory, not only the solar cell… So PSG [the 1st defendant] only list [*sic*] part of the factory. Definitely, there would be other business activities held in this factory… Initially, the Jiangyin factory was to do the PSG's solar product, but subsequently, the Jiangyin factory would also have other projects.

101 Soh's presentation slides of 3 September 2013 also showed that while the built-up area of the plant was approximately 22,000 m^2 on a land size of 29,512 m^2, Soh intended to lease only "part of this plant with floor area of 5,500 m^2" to the 1st defendant[154].

102 Based on Vivian Zhang's evidence and Soh's own admissions, even before Soh first spoke to the 3rd defendant about the Jiangyin Factory, he already had plans to acquire the said factory space for his own expanding automation business and other potential business activities. The possibility of setting up a solar cell production line within the same factory space clearly fitted in with his own plans, especially since (as he pointed out in his presentation slides) a clean room already existed on the premises[155]. In other words, this was not a case where he took steps to acquire the Jiangyin Factory only because of – and subsequent to – the alleged Oral Contract being concluded on 5 September

---

153 See transcript of 22 March 2019 at p 59 line 1 to p 60 line 13

154 pp 86-87 of Soh's AEIC.

155 p 91 of Soh's AEIC.

2013. Indeed, considering that the formal JVA contractual documents with JCET and Jiangsu Glory were already finalised and signed by 18 October 2013, it seemed to me highly improbable that Soh would only have taken steps to procure the JVA after 5 September 2013. Tellingly, in cross-examination, Soh admitted that he had initially approached JCET (which was his customer) "2 or 3 years" before he even met the 3rd defendant[156]. Soh's further admissions under cross-examination also revealed that the JVA with JCET and Jiangsu Glory was structured so as to enable him – through his Jiangyin company – to "acquire the factory and land without having to pay for huge tax of, say, 30%"[157]. On his own evidence, he and JCET had recognised in the course of their discussions that he would have to "pay too much of a tax" if he were simply to "buy over" the factory, which was why they had agreed that[158]

> (I)t will be better arrangement for us to actually form a company and JCET put in the factory as the contribution of capital. And 1 year later, let's say… then we take over their share and we only pay certain stamp fee without… having to pay tax.

103 It will be remembered that in insisting there was an Oral Contract concluded on 5 September 2015, Soh had asserted that his "idea" in entering into this Oral Contract was to make money from lending to the 1st defendant (through the "Lease and Buyback Arrangement") and from getting a share of the 1st defendant's profit in return for charging a lower factory rental[159]. In cross-examination, it was pointed out that clause 6 of the JVA with JCET and Jiangsu Glory obliged the plaintiff to purchase JCET's shares if their joint

---

156 See transcript of 19 March 2019 at p 50 line 31 to p 51 line 3.

157 See transcript of 19 March 2019 at p 103 line 19 to p 105 line 7; also transcript of 20 March 2019 at p 91 lines 23 to 32.

158 See transcript of 19 March 2019 at p 51 lines 7 to 14.

159 See transcript of 19 March 2019 at p 54 line 8 to p 56 line 8.

venture was unable to generate profit in one year. When asked how he expected to generate profit within one year from the amounts he had supposedly contracted to charge the 1st defendant for rental and equipment purchase financing, Soh's answer disclosed that his real interest in entering into the JVA did not actually lie in the rights and obligations he had taken on in the alleged Oral Contract: in his own words[160] –

> Why must I make profit within the first year?... The purpose of this JV contract – JV arrangement – is… for the purpose of Darcet to acquire the factory and land without having to pay for huge tax of say, 30%... JCET, my partner, is a listed company in China. They have to go through the proper procedure. So with this [JVA] contract, that means… after 1 year, I will have the right to just take over, paying for the share price and take over their share and I have the factory – land and factory for myself.

104 Based on Soh's admission, in short, there was no expectation on his part - or for that matter, JCET's - that their joint venture company should be able to turn a profit within the one-year period stated in clause 6 of the JVA: on the contrary, the real intention behind the JVA was to create a situation whereby Soh would be able to acquire the Jiangyin Factory and land without having to pay substantial taxes, by buying over JCET's shares in the joint venture company once it failed to show a profit within a year.

105 To reiterate, therefore, it was untrue to say that the plaintiff would not have acquired the Jiangyin Factory if not for the alleged Oral Contract. On the evidence available, it appeared to me that Soh must already have formulated plans for acquiring the factory even before his meetings with the 3rd defendant: the idea of establishing a solar cell production line at the factory simply fitted in with those plans.

---

160 See transcript of 19 March 2019 at p 104 line 18 to p 105 line 2.

106 As for the Schmid Contract, I was similarly not persuaded that Soh signed this agreement in order to fulfil his obligations under the "Lease and Buy-back Arrangement" in the alleged Oral Contract. It should be remembered that the joint venture under the JVA with JCET and Jiangsu Glory was created not only to manufacture and sell automation equipment and accessories (which was originally the business of Soh's Darcet Group), but also to manufacture and sell "solar renewable new energy products"[161]. Under the JVA, Soh's company was responsible for providing "the required equipment installation, adjustment, and pilot production technicians, production and inspection technicians"[162]. To my mind, Soh's act of signing the Schmid Contract was equally consistent with the defendants' narrative – which was that despite their reluctance to take up his financing proposal, Soh himself had grown "very interested in the solar business" after his discussions with the 3rd defendant, to the extent that he was prepared to launch a 35 MW solar cell production line at the Jiangyin Factory[163].

107 In this connection, while the contract price stated in the Schmid Contract looked substantial[164], Soh was aware[165] that the contract would come into effect only upon payment of a 40% downpayment[166]. He was also aware that there were no specific deadlines stipulated in the contract for this 40% downpayment

---

161 Clause 7 of the JVA at p 107 of Soh's AEIC.

162 Clause 14.2 of the JVA at p 109 of Soh's AEIC. It was clarified during the trial that the reference to "Party B" in the English translation of this clause was a typographical error as the reference was actually to "Party C", i.e. the Plaintiff (see the original Chinese version of the clause at p 101).

163 See transcript of 26 March 2019 at p 79 line 22 to p 80 line 2.

164 Clause 12 of the Schmid Contract at p 136 of Soh's AEIC.

165 [24]-[25] of Soh's AEIC.

166 Clause 29.10 of the Schmid Contract at p 154 of Soh's AEIC.

to be made[167]: in other words, that the obligations on his company's part would kick in only when he paid up the 40%[168]. It was not surprising, therefore, he felt "comfortable" with signing the Schmid Contract[169].

108 Given the above circumstances, I did not think it was true to say that Soh would never have signed the Schmid Contract if there had been no Oral Contract already concluded in September 2013.

109 For the reasons set out above in [87] to [107], I found that there was never any Oral Contract concluded between the plaintiff and the 1st defendant in September 2013.

On the true state of the dealings between the parties in August 2013 and thereafter

110 What then was the true state of the dealings between the parties in August 2013 and thereafter?

111 In my view, the key aspects of the defendants' version of events were supported by the evidence adduced. As noted above, it would appear that Soh had plans to acquire the Jiangyin Factory even before his first meeting with the 3rd defendant in August 2013; that what he heard from the 3rd defendant about the Schweizer group's solar energy project sparked his interest in the solar energy business; and that starting up a solar cell production line on the Jiangyin Factory premises fitted in with his plans at that stage for acquisition of the factory and the land. On the evidence available, it appeared that Soh did make

---

167 Clause 13.1 of the Schmid Contract at p 136 of Soh's AEIC.

168 See transcript of 20 March 2019 at p 32 lines 8 to 21.

169 See transcript of 20 March 2019 at p 36 line 31 to p 37 line 1.

some proposals in September 2013 to lease factory space to the 1st defendant and to provide financing for the purchase of equipment for a solar cell production line. However, there was no evidence that these proposals resulted in parties coming to terms and in the 1st defendant signing on to a lease for the Jiangyin Factory and/or to a Buy and Leaseback agreement for the purchase of equipment. At the same time, it would also appear that while the defendants (and the Schweizer EB generally) were sceptical about Soh's ability to come up with the full US$18m financing offered, they continued to engage him in various discussions about collaboration. This was probably because they saw an opportunity to tap on his interest in the solar cell business and thereby to persuade him to invest in the 1st defendant. Both the 2nd and 3rd defendants were quite frank about the fact that their interest in the earlier stages of interaction with Soh was in inviting him to take up shares in the 1st defendant.

112 Following from the above, I rejected the plaintiff's contention that the SSA was a variation of the alleged Oral Contract of 5 September 2013 and/or that the SSA was intended to route part of the US$18 million financing through the 1st defendant. The plaintiff argued that the 3rd defendant's "cash flow overview" of 18 February 2014[170] proved its case about the true nature and purpose of the SSA. I did not find that the document provided any such proof. For example, the "cash flow overview" apparently called for a second payment to Schmid of US$5.45 million in March 2014. According to the same "cash flow overview", however, by end-February 2014 only US$2 million would have been paid by the plaintiff to the 1st defendant under the SSA. At the same time, by end-February 2014, the 1st defendant was supposed to have lent the plaintiff US$1.58 million for its first downpayment to Schmid of US$1.58 million. The

170 pp 201-203 of Soh's AEIC.

"cash flow overview" then appeared to call for the plaintiff to take on a "bridging loan" of US$5.45 million in March 2014, in order to make the second downpayment to Schmid of US$5.45 million. This was inconsistent with the plaintiff's contention that US$9 million of the financing for the Schmid equipment would be routed through the 1st defendant in the form of "share subscription payments" before being funnelled back to the plaintiff as "loans" for the equipment purchase.

113 I was satisfied, in short, that the SSA was what it said it was – an agreement for the subscription by the plaintiff to shares in the 1st defendant. After Soh agreed to become a shareholder in the 1st defendant, the parties continued to engage in discussions about how they could collaborate in the setting-up of a solar cell production line on the Jiangyin Factory premises. As the 3rd defendant put it, once Soh became a shareholder of the 1st defendant, the defendants had reason to support his efforts to set up such a production line in Jiangyin – especially if it also gave them the opportunity to pilot the use of Schmid's technology.

114 In this connection, I found Greger's evidence instructive. He struck me as being the most composed and reliable witness of the lot. His testimony showed that for the better part of a year following the signing of the SSA, the parties discussed various potential models for partnership ("many, many models discussed and proposed back and forth"[171]). In a set of presentation slides prepared for a meeting on 11 September 2014 between Soh and representatives from the 1st defendant and Schmid, a slide entitled "Assumptions on asset financing" appeared to assume that the bulk of financing for the Jiangyin solar

---

171 See transcript of 29 March 2019 at p 40 lines 28 to 32.

cell project would come from the plaintiff in the form of "paid-in equity" (US$9 million) and "long-term loan" (another US$9 million)[172] – but another slide in the same presentation also referred to plans to "(a)ttract and convince Darcet's Partner for (further) financial support to grow the business model moving forward"[173]. This appeared to be a reference to JCET; and subsequent email communications suggested that the proposal to "attract" JCET's financial support for the Jiangyin production line was taken up. Soh's email to the 3rd defendant on 10 December 2014 stated, for example, that JCET was "supposed" to have provided such financial support by acting as guarantor for the plaintiff's intended bank loan[174].

115 However, as the rest of Soh's email indicated, the proposed financial support from JCET did not eventually materialise; and this would appear to have been the case as well with the other potential partnership models discussed in the course of 2014. As late as 26 November 2014, the minutes of a meeting between Darcet and Schweizer representatives recorded that parties were still discussing the "(n)eed to understand roles & responsibilities of PSG [the 1st defendant] and Darcet Jiangyin respectively over the different project phases (e.g. Q1 '15 – Q2 '15 – Q3 '15 -)" and the "need to review cost sharing and profit sharing structure"[175]. The same set of minutes also showed that numerous matters such as the management of logistics and distribution activities had yet to be agreed between the 1st defendant and the plaintiff pending the registration

---

172 p 179 of Greger's AEIC.

173 p 173 of Greger's AEIC.

174 p 294 of the 3rd Defendant's AEIC.

175 p 280 of Greger's AEIC.

of Darcet Jiangyin[176]. Thus, although the plaintiff insisted that parties had agreed from the outset on the 1st defendant being responsible for operating the Jiangyin production line, there was no objective evidence of any such agreement. On the contrary, as the evidence extracted in the preceding paragraphs showed, there was a "lack of clarity on the roles and responsibilities of PSG [the 1st defendant] and Darcet Jiangyin" even as at 26 November 2014[177]. As Greger put it[178]:

> (E)ffectively we are still at square one after 1 year which…is fair enough to call a kind of difficulty or problem… I mean, this is ever starting or… what is it, right? … Schmid also was kind of wondering...since the downpayments have never been made, how to deal with this contract or… this order. And on top, we were facing a change of the market environment where, after a couple of years of severe downturn, the solar industry recovered and changing…the investing scenario of competition.

116 It should be added that Greger's evidence was that in any event, the 1st defendant never intended to operate the Jiangyin production line. As far as the 1st defendant was concerned, the Jiangyin project was meant to provide proof of concept of the Schmid technology, for which it would provide marketing support as the "marketing arm" and "cover the complete downstream". The "mass production" of the solar cells was then envisaged to take place in Nantong, which was where PNT would run the operations. I found Greger's evidence to be persuasive because it accorded with the other evidence available. In particular, as I alluded to previously, it was not disputed that the 1st defendant's resources were concentrated in PNT in Nantong; and the financial subsidies from the NETDA-AC would be applicable only within Nantong. It

---

176 p 287 of Greger's AEIC.

177 See transcript of 29 March 2019 at p 83 line 30 to p 84 line 1.

178 See transcript of 29 March 2019 at p 77 lines 12 to 22.

made no sense for the 1st defendant to agree to expend substantial resources launching and operating a production line in Jiangyin while also trying to set up another production line in Nantong.

117 I would also add that in my view, one key reason for this lack of clarity nearly a year after the signing of the SSA was that after the initial enthusiasm and flurry of activity between September 2013 and January 2014 (during which the plaintiff signed the JVA with JCET and Jiangsu Glory as well as the Schmid Contract and the SSA), the plaintiff ran out of financial steam. Whereas the initial idea had been to set up a 35 MW production line in Jiangyin, this was subsequently shown to be lacking in competitiveness, especially in light of the changing market conditions highlighted by Greger; and discussions then shifted to the option of having a 100 MW line. Unfortunately for the plaintiff, a 100 MW line was obviously more expensive than a 35 MW line; and this clearly caused financial issues for the plaintiff. It will be recalled, for example, that on 24 November 2014, after receiving Greger's recommendations on the options for upgrading from a 35 MW line to a 100 MW line, Soh had emailed the 3rd defendant to ask if it was possible to ask Schmid for a payment option with "certain down payment and *some defer payment*"[179]. It will also be recalled that by May 2014, the plaintiff had paid only US$2 million of the share subscriptions, whereas the payment schedule under the SSA had envisaged US$4 million being paid by April 2014. No further payments were made by the plaintiff after May 2014; and as seen earlier, by end-November 2014, Soh was being warned by Greger of the Schweizer EB's fears that it would "be forced

[179] p 282 of the 3rd Defendant's AEIC.

by the supervisory board to pull the plug" in light of the "continuous excuses for delay"[180].

118 In this connection, I would make two further points. Firstly, as noted earlier, I had rejected the plaintiff's contention that there was an agreement at the outset for the 1st defendant to operate the Jiangyin production line. It followed that I also rejected the plaintiff's further contention that in August 2014, the 3rd defendant had proposed that the plaintiff take over the operation of the production line while the 1st defendant supported it with working capital of US$5 million. Indeed, given the defendants' concerns about the plaintiff's financial position, it seemed improbable that the 3rd defendant would have made any promises that required his own company to give the plaintiff US$5 million in working capital for the Jiangyin Factory.

119 The second point is this. Soh claimed that he was only told by the 2nd defendant on 16 September 2015 that Schweizer Pte Ltd had decided to withdraw from the energy business and would be terminating its production line contract with Schmid. He claimed this news came as a surprise to him. Clearly, the impression he sought to give was that the defendants had deliberately strung him along and kept him in the dark about their exit plans. I did not think this could be true. As noted above, Greger's presentation on 28 July 2014 had already mooted the idea of the Schweizer group reducing its stake in the 1st defendant and bringing in a new investor instead. While this did not materialise, Greger's email to Soh on 28 November 2014 expressly warned that the Schweizer supervisory board had needed convincing about the progress of the Jiangyin project; that the EB was "very afraid" that the supervisory board had

---

180 p 324 of Greger's AEIC.

run out of patience" regarding "the Energy business" due to the continuous delays; and that if the "allotment agreement" (the SSA) was not "completed" by 15 December 2014, the EB feared that the supervisory board would "pull the plug". Within that same month, a set of slides emailed by Greger to Soh on 13 November 2014 had also indicated that one option being considered by the 1st defendant at that point was to rescind the equipment purchase contract it had entered into with Schmid for the Nantong project and to recover from Schmid the amounts paid under that contract[181]. On 24 December 2014, according to Soh, he was privy to a meeting between the 3rd defendant and NETDA-AC representatives at which the latter "turned down" the former's request to "extend the timelines for the Nantong project". Soh was also well aware of the capital reductions in the plaintiff's and Schmid's shares in the 1st defendant in April 2015 and August 2015. Taking all these facts together, I did not believe Soh / the plaintiff would have been taken by surprise on 16 September 2015 by the 2nd defendant's revelations.

On the issue of the alleged Representations made by the defendants

120 In coming to the above findings of fact on the state of the dealings between the parties in August 2013 and thereafter, I also considered the plaintiff's allegations about the Representations made by the defendants and the effect of these Representations.

121 It will be recalled that according to Soh's version of events, it was the 3rd defendant who had volunteered all sorts of information about Schweizer's solar energy project at their two meetings in August 2013; who had expressed

---

181 See transcript of 28 March 2019 at p 63 line 25 to p 68 line 15; also pp 1584-1603 ABD Vol VI.

interest in August 2013 in having the 1st defendant start a production line at the Jiangyin Factory; and who had made the Representations which induced Soh to enter into the Oral Contract on 5 September 2013[182]. The 3rd defendant, on the other hand, denied making the Representations pleaded by the plaintiff during any meeting in August 2013. He agreed that he had given Soh information about the Nantong incentives and the 1st defendant's investment into PNT, but asserted that he had done so later than August 2013, possibly around October to November 2013[183], when parties were discussing with Soh the possibility of his taking up shares in the 1st defendant.

122 Having considered the evidence adduced, I did not find Soh's version of events believable. Conversely, I believed the 3rd defendant's evidence as to when he came to provide Soh with information about the incentives and the capital injections into PNT – and why. My reasons were as follows.

123 I have set out earlier my finding that there was no Oral Contract concluded in September 2013. On a more general level, I did not find it believable that the defendants would have been keen in August / September 2013 to contract for the lease of a factory in Jiangyin and / or for the provision of equipment purchase financing by Soh or his company. At that point in time, they had already established a company in Nantong – PNT – and still had the benefit of agreements with the NETDA-AC which promised certain incentives. There was no serious imperative for them to shift their focus to Jiangyin, especially since the incentives were indisputably not transferable to another project outside of Nantong. I also believed the 3rd defendant's evidence that

182 [11]-[14] of Soh's AEIC.

183 See transcript of 26 March 2019 at p 8 lines 20 to 32.

Soh's offer of US$18 million financing was met with scepticism by the defendants at that stage because apart from having no track record in the solar energy business, his company was a "relatively small" one, and the defendants were not certain if he did in fact have the US$18 million[184]. On the other hand, as the 3rd defendant also pointed out, the defendants could see that Soh was "very interested in the solar business"[185]. It seemed to me highly probable that rather than take the larger risk of signing on to a lease for the Jiangyin Factory and / or to the "Buy and Leaseback Arrangement" proposed by Soh, the defendants would have preferred to get Soh to pump money into the 1st defendant by becoming a shareholder. Given that Soh and the 3rd defendant met only on a casual basis for the first time in August 2013, and that the SSA was signed on 30 January 2014, it also seemed to me more probable than not that the information about the Nantong incentives and the 1st defendant's investment into PNT would have been disclosed to Soh closer to the date of the SSA rather than during their first casual conversations in August 2013.

124 As for what was disclosed to Soh prior to the signing of the SSA, the 3rd defendant's evidence was that he had told Soh about the total Renminbi amount of the Nantong incentives (about 95 million Renminbi) as well as the separate amount available in phase 1 and phase 2 of the Nantong project[186]. He had also told Soh that the Nantong incentives would be given "progressively" by the Nantong government, in that the Nantong government would give certain amounts of incentive "progressively with [the 1st defendant's] investment and

184 See transcript of 26 March 2019 at p 37 lines 28 to 31.

185 See transcript of 26 March 2019 at p 37 lines 17 to 20.

186 See transcript of 26 March 2019 at p 11 line 30 to p 12 line 26.

equipments"[187]. As to the 1st defendant's capital injections into PNT, he had told Soh that the minimum registered capital required in PNT was US$50 million, and that as at November 2013 the 1st defendant had invested US$8.9 million into PNT. The 3rd defendant could not be sure if he had converted the Renminbi value of the Nantong incentives into US dollar values, but it was not seriously disputed than the figure of 95 million Renminbi would have approximated a figure of US$13 million at that time. The 3rd defendant also could not remember if he had converted the US dollar value of the 1st defendant's capital injection into the Sing dollar equivalent, but it was also not seriously disputed that the figure of US$8.9 million would have approximated a figure of about S$10 million at that time.

125 It appeared to me, therefore, that the information which the 3rd defendant admitted to giving Soh was not actually that different from the content of the alleged Representations pleaded by the plaintiff[188] (see [10] above for the relevant extract from the statement of claim). As noted earlier, I found that this information was probably given around October – November 2013 and not in August 2013. I should add that as I found that there was never any Oral Contract, even assuming the 3rd defendant had given Soh information about incentives and capital injections in August 2013, it would have been moot to ask whether these statements could have induced Soh to enter into an Oral Contract in September 2013.

---

187 See transcript of 26 March 2019 at p 9 lines 19 to 22.

188 [8] of the statement of claim (Amendment No. 1).

On the issues of whether the plaintiff was induced by the Representations to enter into the SSA and whether the Representations were false

126 In light of the 3rd defendant's testimony, I was prepared to accept that the statements he had made to Soh in October or November 2013 about the Nantong incentives and the 1st defendant's investment into PNT were sufficient to amount to the Representations pleaded by the plaintiff. However, on the basis of the evidence adduced, I did not find that the plaintiff was able to prove that these statements were false. Nor did I find that the plaintiff was able to prove that it was these statements which had induced Soh to sign the SSA on its behalf in January 2014. My reasons were follows.

127 Insofar as the Representations about the Nantong incentives were concerned, the plaintiff's case was that these were false because the defendants failed to disclose that "PNT's receipt and retention of the incentives worth approximately USD 13 million was in fact contingent on the 1st defendant making capital injections into PNT totalling USD 50 million by the end of 2014, and implementing the Nantong Project according to a schedule. If the 1st defendant failed to make the said capital injections, PNT would be required to return the incentives to the Chinese government"[189].

128 On the evidence adduced, I did not find the plaintiff's claims of falsity to be made out. In the first place, I did not think it was true to say the defendants had failed to disclose that "PNT's receipt and retention of the incentives…was in fact contingent on the 1st defendant… implementing the Nantong Project according to a schedule." I noted that the 3rd defendant had stated several times in cross-examination that he had told Soh the Nantong incentives were to be

189 [40(b)] of the statement of claim (Amendment No. 1).

paid out "progressively with [the 1st defendant's] investment and equipments… (W)e have incentives from NETDA and progressively payment of certain amount where we actually move on with the project"[190]. I understood his testimony to mean that he had told Soh the payment to PNT of the incentives from the NETDA-AC would be done in stages corresponding to the 1st defendant's injection of investment funds and resources. He was not actually challenged in any meaningful way on this part of his testimony.

129 I also did not think it was true to say that that "PNT's receipt and retention of the incentives worth approximately USD 13 million was in fact *contingent on* the 1st defendant making capital injections into PNT totalling USD 50 million by the end of 2014". The plaintiff argued that this was what the agreements between the 1st defendant and the NETDA-AC actually said – but it could not pinpoint a clause that specifically said so. Certainly, clause 5(1) of the Investment Agreement did stipulate that the 1st defendant was to fulfil its obligation to contribute "strictly in accordance with the applicable PRC laws and regulations" to the capital of any foreign invested enterprises it set up in the NETDA[191] (in this case, presumably PNT). It was also true that clause 8 of the Supplementary Investment Agreement did state that the financial support given to the 1st defendant was "based on the fact that [it] plans to set up one or more Enterprise(s) in the NETDA to invest in the Project with the aggregate total investment estimated to be up to USD 245 million"[192]. However, clause 8 also expressly provided for the 1st defendant to give the NETDA-AC "3 to 6 months written notice" of any changes to its investment plan; and upon such notice

---

190 See transcript of 26 March 2019 at p 9 line 19 to p 10 line 24.

191 p 72 of Soh's AEIC.

192 p 84 of Soh's AEIC.

being given, "the Parties shall enter into good faith discussions as to whether such amendments to the Investment Plan shall be accepted unconditionally".

130 In other words, even if the 1st defendant did not invest a total of US$50 million in PNT by end-2014, it was not a given that "PNT would be required to return the incentives to the Chinese government": it was open to the NETDA-AC to accept "unconditionally" any such changes to the Investment Plan. It was therefore incorrect for the plaintiff to assert that "PNT's receipt and retention of the incentives worth approximately USD 13 million was in fact *contingent on* the 1st defendant making capital injections into PNT totalling USD 50 million by the end of 2014". It followed that there was no misrepresentation by the 3rd defendant in omitting to tell Soh of any such "condition" attached to the payment of the incentives.

131 In any event, I found that the plaintiff was unable to prove an adequate causal link between the 3rd defendant's statements about the Nantong incentives and its entry into the SSA in January 2014. Soh did not dispute that he was aware the bulk of the US$13 million incentives would only be paid out when the Nantong production line was launched: indeed, in the statement of claim, the plaintiff expressly pleaded that it had been told that apart from the US$3 million which had been used to purchase a piece of land, the remaining US$10 million would be received by PNT "*upon the production line being set up*"[193]. At the time Soh signed the SSA in January 2014, he would also have been aware that the Nantong production line was not going to be set up anytime soon – since he was the one insisting that the 1st defendant turn its attention to Jiangyin at that point. In the circumstances, it was not clear why the quantum of the

193 [8(b)(ii)] of the statement of claim (Amendment No. 1).

Nantong incentives and the conditions (if any) for their receipt by PNT should have had such a material impact on the plaintiff's decision to subscribe to shares in the 1st defendant. Interestingly, Soh's AEIC did not actually state that the 3rd defendant's statements about the Nantong incentives were – at least in part - the cause of the plaintiff entering into the SSA[194]. What he said, instead, was that had he "known that the incentives from the Nantong Government were contingent on [the 1st defendant] making capital investments of USD 99.8 million or that PNT was to have a registered capital of USD 50 million, [he] *would have certainly considered any collaboration with PSG more carefully and would have asked more questions as [to the 1st defendant's] ability to make such investments*" [195]. With respect, this appeared to be somewhat equivocal evidence which fell short of the position pleaded in the statement of claim; namely, that[196] –

> Had the plaintiff known that the Representations were untrue, the plaintiff would not have entered into the SSA and paid for shares in the 1st defendant and would not have paid USD 1.5 million to Schmid.

132 For the reasons set out above, I held that the plaintiff was unable to prove that the 3rd defendant's representations about the Nantong incentives were false, or that they had induced it to enter into the SSA.

133 Insofar as the Capital Injection Representation was concerned, it was not disputed that between July 2012 and July 2013, the 1st defendant had injected funds into PNT totalling US$8.9 million (or about S$10 million)[197]. What the

---

194 See e.g. *Edgington v Fitzmaurice* (1889) 29 ChD. 459 at 483.

195 [183] of Soh's AEIC.

196 [57] of the statement of claim (Amendment No. 1).

197 [175] of Soh's AEIC.

plaintiff objected to – and what it claimed rendered the 3rd defendant's statements about the capital injection false – was the fact that in end-December 2012 and early 2013, PNT had remitted funds to the 1st defendant totalling some US$8.7 million. This was done pursuant to the Contract for the Supply of a Production Line for the Production of Solar Cells entered into between the 1st defendant and PNT[198]. The plaintiff claimed that this movement of funds from PNT to the 1st defendant showed that the 1st defendant "had not made a capital injection of SGD 10 million into PNT but had instead re-invested the funds from funds sent by PNT"[199]. This proposition was premised on the plaintiff's case theory about the "round-tripping" of investment funds by the 1st defendant. In gist, the plaintiff alleged that the contract for the 1st defendant to supply PNT with a Production Line for the Production of Solar Cells was not a genuine contract; and that the 1st defendant had in effect "round-tripped" the funds it injected into PNT by having the latter purport to make payments under this contract and then purporting to re-invest back into PNT the monies so transferred.

134 It will be recalled that in respect of the Nantong project, the arrangements for the equipment for the solar cell production line were such that PNT had contracted with the 1st defendant for the latter to supply it the necessary equipment, pursuant to the Contract for the Supply of a Production Line for the Production of Solar Cells; and in turn, the 1st defendant had contracted to purchase such equipment from Schmid. The plaintiff contended that the production line supply contract between the 1st defendant and PNT could not be

198 p 109 of the 3rd Defendant's AEIC.

199 [177] of Soh's AEIC.

genuine because there was no legitimate reason why PNT could not have contracted directly with Schmid[200].

135 I did not find the above allegations to be proven on the evidence available. In the first place, I did not see anything especially sinister about the defendants preferring an arrangement whereby a Singapore-registered company (the 1st defendant) – rather than a Chinese company (PNT) - would contract directly with Schmid. *Inter alia*, the plaintiff's own experience – as recounted in various emails – appeared to show that delays and difficulties were not uncommon issues faced by a China-registered company in transferring funds out of China: see for example Soh's emails of 19 May 2014 and 15 December 2014[201].

136 Moreover, the plaintiff's assertion that the funds remitted by PNT to the 1st defendant were not for the purpose of paying Schmid did not appear to entirely accurate. PNT had remitted slightly over US$5 million to the 1st defendant at the end of 2012 and then a sum of US$3.5 million in 2013. The 1st defendant's audited financial statements showed that in 2013, it had made advance payments to Schmid of 2,863,954 Euros in 2013 and of US$3 million in 2014 "for the supply of a production line used in the production of solar cells"[202]. While it was true that steps were taken to recover these payments (or at least to net them off against other supply contracts with Schmid) following Schweizer Electronic AG's decision to withdraw from the energy business in August 2015, there was no evidence to show that at the time these payments to

---

200 See transcript of 29 March 2019 at p 14 lines 8 to 15.

201 pp 241 and 663 of Soh's AEIC.

202 The 1st Defendant's audited financial statements for FY 2017 at p 791 of Soh's AEIC.

Schmid were made, they were "sham" payments not meant truly for the purchase contract with Schmid.

137 It should also be noted that by 10 February 2014, Soh had received from the 1st defendant its draft financial statements for the financial year 2013, for the period up to end-November 2013[203]. These draft financial statements stated clearly that in 2013 the 1st defendant had invested a total of S$10,876,444 in a subsidiary (PNT being its wholly-owned subsidiary) – *and* that it had also received in the same period advance payments from a subsidiary amounting to S$10,726,174[204], which payments were described as "deposit made by the subsidiary for the supply of production line for the production of solar cells"[205]. I point this out because throughout the trial, the plaintiff's case was that the defendants had concealed from it the evidence of their "round-tripping" activity by omitting to tell him about PNT's remittances to the 1st defendant. If, however, the defendants had indeed been carrying out a "round-tripping" scheme they did not want the plaintiff to know about, it seemed to me highly improbable that they should have concealed from Soh the information about PNT's remittances to the 1st defendant before they got him to sign the SSA – only to hand him documentary evidence of such remittances a mere fortnight after signing the SSA.

138 Interestingly, after receiving the draft 2013 financial statements from the 1st defendant, Soh did not raise any concerns about the "advance payments" it had received from its subsidiary which nearly equalled its investment in the

---

203 p 205 of Soh's AEIC.

204 p 207(I) of Soh's AEIC.

205 p 207(N) of Soh's AEIC.

subsidiary for the same period. This lack of concern was inconsistent with his assertion that the actual amount of capital injected by the 1st defendant into PNT formed a material factor in his decision to invest in the 1st defendant. In other words, his behaviour was inconsistent with his assertion that he had been induced to enter into the SSA by the Capital Injection Representation.

139 Even more oddly, despite allegedly finding out on 24 December 2014 about the "loss" of the Nantong incentives, Soh did not voice any protestations to the Defendants – not even in early February 2015 when he was being sent brusque reminders by them to pay up under the SSA. Instead, as noted in my summary of the parties' evidence, on 2 February 2015 Soh had expressly assured the 3rd Defendant that he would be paying them US$3 million out "before end of next week"[206] – that is, presumably by Friday 13 February 2015. It was only on the eve of the promised deadline for his US$3 million payment that he suddenly brought up for the first time the alleged reduction in the 1st Defendant's "market value" due to the "loss" of the Nantong incentives[207]. The timing of his complaint was rather suspicious. It appeared to me to be a complaint raised primarily to excuse his failure to make the promised payment of US$3 million. In this connection, I observed that the email from DBS Bank which Soh forwarded to the 3rd Defendant on 2 February 2015 as purported proof of his having sufficient "fund…ready for use" was shorn of any real details: it merely referred to a "*transaction* of 3 million" being "*available as of Friday evening 30th Jan*" and did not actually demonstrate that Soh or the Plaintiff possessed funds sufficient to meet a US$3 million payment at that point in time.

---

206 Tab 55 of Soh's AEIC.

207 Tab 56 of Soh's AEIC.

140 For the reasons set out above, I held that the plaintiff was unable to prove that the Capital Injection Representation was false, or that it had been induced by the representation to enter into the SSA.

141 I make two other points on the plaintiff's arguments concerning the Representations. Firstly, the plaintiff claimed[208] that the 2nd defendant was the one who had suggested the "value" of the 1st defendant's shares was equivalent to the combined amounts of the incentives and the capital injections. The plaintiff argued that the aggregate amount of the incentives and capital injections came to US$21,900,000: 40% of this amount would have yielded a figure of about US$8.7 million, which the plaintiff argued was close enough to the US$9 million figure agreed for the total share subscription price. The 2nd defendant denied that she had valued the 1st defendant's shares by reference to the aggregate amount of the incentives and capital injections[209]: her evidence was that the US$9 million figure was simply the "asking price" she had come up with based on the brand and the efforts put in to develop the 1st defendant's business[210]. On balance, I found the plaintiff's version of events somewhat unbelievable and the 2nd defendant's explanation rather more plausible. It seemed to me odd that in assessing how much *the 1st defendant's shares* were worth, the plaintiff should have been asked to take into account *only the specific amounts of its subsidiary's Nantong incentives and the amount of capital invested in that subsidiary*. In terms of the 1st defendant's branding, on the other hand, even Soh acknowledged that he was aware of the track record of its parent company (Schweizer Electronic AG) and the superior technology of its other

---

208 See transcript of 28 March 2019 at p 34 lines 23 to 27.

209 See transcript of 28 March 2019 at p 35 line 8.

210 See transcript of 28 March 2019 at p 33 lines 23 to 26.

key shareholder (Schmid). At the same time, although PNT had not been able to launch the Nantong production line following the loss of the CCB loan facilities, the 1st defendant had conducted "a lot of marketing activity" to develop a sales pipeline and marketing concepts[211]. Given Soh's interest at that juncture in entering the solar energy business[212] and his own lack of track record in this business, it did not seem so surprising that he would have agreed to an "asking price" of US$9 million for 40% of the 1st defendant's shares based on the Schweizer brand and the efforts put in to develop its business.

142 Secondly, the plaintiff claimed that in addition to the 3rd defendant making the Representations, the 2nd defendant too had repeated them to Soh on 30 January 2014. Given the findings I set out in the preceding paragraph, I found it difficult to believe that the 2nd defendant would have found it necessary to trot out the various statements about the incentives and the capital injections just before the signing of the SSA. Even assuming in any event that the 2nd defendant did make these statements on 30 January 2014, it did not assist the plaintiff to advance its case on misrepresentation - given my findings on the issues of falsity and inducement.

Summary of my findings on the plaintiff's claims in misrepresentation

143 To sum up: while I was prepared to find that the 3rd defendant made statements amounting to the Representations pleaded by the plaintiff, I found that the plaintiff could not have been induced by these Representations to enter into an Oral Contract on 5 September 2013. I found that the 3rd defendant's representations were made in October / November 2013, but more

211 See transcript of 29 March 2019 at p 66 lines 25 to 32.

212 See transcript of 26 March 2019 at p 36 line 17 to p 37 line 31.

fundamentally, I found in any event that there was simply no evidence of an Oral Contract having been entered into by the plaintiff and the 1st defendant in September 2013. I also found that the plaintiff was unable to prove that the Representations were false or that they had induced it to enter into the SSA on 30 January 2014. In the circumstances, therefore, I held that the plaintiff was unable to make out its claims in misrepresentation.

On the plaintiff's claim against the 1st defendant for repudiatory breach of the oral contract

144 On the plaintiff's claim against the 1st defendant for repudiatory breach of the Oral Contract, the plaintiff's pleadings gave no particulars of the manner in which the 1st defendant was alleged to have committed such repudiatory breach, other than the vague statement that the 1st defendant had "[refused] to perform its obligations under the Oral Contract, *as set out above*"[213]. The words "as set out above" did not appear to be in reference to any specific allegation in the 49 preceding paragraphs of the statement of claim. Unhelpfully, no further elucidation was provided at trial.

145 In any event, as I found that there was never any Oral Contract entered into by the plaintiff and the 1st defendant, there was no factual basis for the claim that the 1st defendant had "committed repudiatory breaches of the Oral Contract by refusing to perform its obligations under the Oral Contract".

On the plaintiff's claim in total failure of consideration / basis

146 The plaintiff brought an alternative claim for the return of the balance sum of US$750,000 paid to the 1st defendant pursuant to the SSA on the basis

213 [50] of the statement of claim (Amendment No. 1).

of total failure of consideration or basis. This claim was premised on the case theory that the parties had an Oral Contract as at September 2013 for (*inter alia*) the provision of US$18 million in equipment purchase financing by the plaintiff; and that the SSA had varied the Oral Contract by providing for half of the financing to be routed through the 1st defendant as "share subscriptions" before being returned to the plaintiff as "loans" for the equipment purchase. From this, the plaintiff argued that since the US$750,000 had not been used to pay Schmid for equipment, there was a total failure of consideration or basis for the payment of this sum; and the 1st defendant was unjustly enriched[214].

147 Given my findings as to the non-existence of any Oral Contract and as to the nature and purpose of the SSA (at [87] to [108]), I found that there was no factual basis for the plaintiff's claim in total failure of consideration / basis.

On the plaintiff's allegations of loss and damage

148 Given the above findings of fact, I have not found it necessary to address the plaintiff's allegations of loss and damage in these written grounds. There is one general point, however, that I should make. In its pleadings and in Soh's AEIC, the plaintiff sought to give the impression that it had acquired the Jiangyin Factory only because it was acting in compliance with the Oral Contract, and that it suffered considerable losses as a result of acquiring and then maintaining the factory[215]. In cross-examination, however, a rather different picture emerged. As I observed earlier, the evidence available – including Soh's own admissions in cross-examination – indicated that even

214 [61] of the statement of claim (Amendment No. 1).

215 [189] of Soh's AEIC.

before his first meeting with the 3rd defendant, Soh had conceived his own reasons for wanting to acquire the Jiangyin Factory; and moreover, that clause 6 of the JVA was apparently crafted so as to allow Soh to acquire the factory premises without paying substantial taxes, through a purchase of JCET's shares in the joint venture company Darcet Jiangyin once the latter failed to show a profit within a year. Strangely, despite the fact that the Jiangyin solar cell production line never took off, Soh admitted in cross-examination that Darcet Jiangyin actually managed to turn a profit within the first year[216], such that clause 6 could not be triggered. Soh alleged somewhat cryptically that this was due to the fact he had put US dollar funds into Darcet Jiangyin and the US dollar had subsequently "appreciated". No evidence, however, was produced by the plaintiff to bear out this belated allegation. In cross-examination, it was also pointed out to Soh that although at one point in his AEIC he had claimed that the plaintiff was "stuck" with the factory[217], in a later passage in his AEIC he had stated that the plaintiff had already entered into an agreement to "sell back the Jiangyin Factory to JCET" and had also terminated the JVA[218]. He further conceded in cross-examination that in reality, since clause 6 of the JVA had not been triggered and the plaintiff had not actually acquired the factory, what it had sold to JCET was its shares in their joint venture company Darcet Jiangyin[219]. It was also conceded that the plaintiff had not adduced in evidence any evidence of the alleged agreement to sell JCET its shares in Darcet Jiangyin or of the termination of the JVA[220].

---

216 See transcript of 21 March 2019 at p 58 line 30 to p 59 line 30.

217 [188] of Soh's AEIC.

218 [196] of Soh's AEIC.

219 See transcript of 21 March 2019 at p 82 line 11 to p 83 line 27.

220 See transcript of 21 March 2019 at p 99 lines 3 to 10.

149 The evidence of the true nature of the plaintiff's dealings in relation to the Jiangyin Factory was thus suspiciously murky. If anything, far from proving that the plaintiff had acquired the factory only in order to satisfy its obligations to the 1st defendant, the evidence suggested that the plaintiff's real objective in acquiring the factory lay elsewhere, in advancing its own interests; and that it had been disappointed in its efforts to realise the expected benefits from the JVA with JCET. I would not go so far as to speculate how this subsequent disappointment might have contributed to its decision to recoup some losses by suing the 1st defendant, but what I must stress is that the plaintiff struck me as being less than transparent about its dealings in Jiangyin, and Soh in particular struck me as being less than honest as a witness.

On the plaintiff's belated attempt to adduce new evidence at trial

150 Before concluding, I should mention that the plaintiff brought an application[221] before me on the first day of trial seeking to introduce evidence of audio recordings Soh claimed to have made of conversations between him, the 2nd defendant, the 3rd defendant and "some other parties" between July 2014 and July 2015 (as well as transcripts of these alleged recordings). These alleged recordings were not previously disclosed during the discovery process; and Soh's affidavit in support of the application did not furnish any explanation as to why they were not disclosed earlier. Given that the plaintiff alleged these were "contemporaneous" recordings of highly relevant discussions, I found it astonishing that no previous indication should have been given of their existence. After all, by the time the Defence was filed in April 2017, the plaintiff would have been aware that the defendants were denying the existing

221 HC/SUM 1307/2019.

of any Oral Contract and saying that the plaintiff was to blame for the Jiangyin project not going ahead. In other words, the plaintiff knew well ahead of the trial the factual issues in contention; and if these alleged recordings had indeed been as relevant as the plaintiff argued, there was no reason for their having been kept out of discovery. Allowing the plaintiff's application would have gravely prejudiced the defendants, who would not have had time to examine the authenticity of the alleged recordings and the accuracy of the transcripts. I also did not think it was feasible to vacate the trial, especially given the existence of foreign witnesses and the length of time which parties had already been given to prepare for trial.

151 For these reasons, I dismissed the plaintiff's application to admit the alleged recordings and the transcripts.

Conclusion

152 As I indicated in the brief oral remarks I made in giving my decision, the 2nd and 3rd defendants were not the most impressive of witnesses. However, on the whole, the most critical aspects of the defendants' version of events was borne out by other, objective evidence. Moreover, Soh himself struck me as a distinctly unreliable and untruthful witness; and key aspects of his testimony were either contradicted or not supported by other evidence. At the end of the day, the plaintiff bore the burden of proving its claims; and on the evidence before me, I found that it was unable to do so. I therefore dismissed the plaintiff's action in S 253/2017 and ordered that they pay the defendants the costs of the proceedings (to be taxed if not agreed within 14 working days).

Mavis Chionh
Judicial Commissioner

See Tow Soo Ling and Hu Huimin (CNPLaw LLP) for the plaintiff;
Lim Ming Yi, Yeo Shan Hui, and Jaryl Lim Zhi Wei (I.N.C. Law LLC) for the defendants.