Griffin Travel Pte Ltd *v* Nagender Rao Chilkuri and others
[2014] SGHC 205

Case Number : Suit No 835 of 2011

Decision Date : 16 October 2014

Tribunal/Court : High Court

Coram : Chan Seng Onn J

Counsel Name(s) : Pradeep Pillai, Stephanie Wee, Ng Wenling and Sarah Yazid (Shook Lin & Bok LLP) for the plaintiff (by original action) and the defendants (by counterclaim); Francis Xavier SC, Muthu Arusu, Alina Chia, Melvin Mok and Tng Sheng Rong (Rajah & Tann LLP) for the defendants (by original action) and the plaintiffs (by counterclaim).

Parties : (1) Griffin Travel Pte Ltd — (1) Nagender Rao Chilkuri — (2) Joanna Kaunang — (3) Leny Widjaja — (4) Pereira Rahul Anthony — (5) Gwee Bee Ting Annie — (6) Ng Choo Geok Adella — (7) Narra Gouri Prasad — (1) Nagender Rao Chilkuri — (2) Joanna Kaunang — (3) Pereira Rahul Anthony — (4) Gwee Bee Ting Annie — (5) Ng Choo Geok Adella — (6) Signature Sparks Pte Ltd — (1) Griffin Travel Pte Ltd — (2) Griffin Global Holdco Ltd — (3) Griffin Bidco Ltd

Employment Law – Employee's duties

Employment Law – Unfair dismissal

Companies – Directors – Duties

16 October 2014 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Griffin Travel Pte Ltd ("the Plaintiff") is a travel agency which provides travel services to the marine, offshore and cruise industries. [note: 1] It has two shareholders: Griffin Marine Travel (Cyprus) Limited and Griffin Global Group Limited ("GGG"). GGG is wholly owned by Griffin Bidco Limited ("Bidco"). Bidco is in turn wholly owned by Griffin Global Holdco Limited ("Holdco"). The Griffin group of companies ("the Griffin Group") consists of numerous entities around the world. For simplicity, I will refer to each individual entity based on its geographical location, *eg*, Griffin India.

2 On 21 November 2011, the Plaintiff commenced proceedings for numerous alleged breaches of duties against some of its former employees ("the Defendants"), all of whom had resigned between February and September 2011. The Defendants are:

(a) Mr Nagender Rao Chilkuri ("Nagender");

(b) Ms Joanna Kaunang ("Joanna");

(c) Ms Leny Widjaja ("Leny");

(d) Mr Pereira Rahul Anthony ("Rahul");

(e) Ms Gwee Bee Ting Annie ("Annie");

(f) Ms Ng Choo Geok Adella ("Adella"); and

(g) Mr Narra Gouri Prasad ("Prasad").

3 The Plaintiff's principal allegation against the Defendants related to their involvement in five new companies (collectively, "the New Entities"), which were all set up between February and August 2011. The New Entities are:

(a) Quest Horizon Pte Ltd ("Quest Horizon");

(b) Niado Technology Pte Ltd ("Niado");

(c) BHEA Technologies ("BHEA Tech");

(d) Q4T Management Pte Ltd ("Q4T Singapore"); and

(e) Quest Rightshoring Services Pte Ltd ("QRS").

4 There was also a sixth company, Q4T Management Pty Ltd ("Q4T Australia"), which was alleged to be linked to Q4T Singapore but was not classified as part of the New Entities by the parties. A table containing the dates of incorporation, initial shareholdings and directors of the New Entities (and Q4T Australia) is appended to this judgment as Annex 1.

5 The key character in these proceedings was Nagender, the managing director of the Plaintiff at the material time. He was slated to become the next Global chief executive officer ("CEO") of the Griffin Group, but, according to the Plaintiff, was eventually found unsuitable for the role. The Plaintiff contended that Nagender was embarrassed, bitter and full of resentment at this turn of events and devised a "masterplan" which was calculated to damage the Plaintiff. [note: 2] This alleged masterplan involved the incorporation of Quest Horizon and QRS with a view to competing with the Plaintiff's business. Niado, BHEA Tech, Q4T Singapore and Q4T Australia were set up to supplement this masterplan. The New Entities were asserted to be part of a conglomerate with each performing a different function:

(a) Quest Horizon would be the holding company of the conglomerate;

(b) QRS would be the outsourcing arm with branches proposed to be set up in various countries such as Thailand, the Philippines and India;

(c) Niado would be the information technology ("IT") and travel software arm;

(d) Q4T Singapore together with Q4T Australia would be the travel arm; and

(e) BHEA Tech would provide the Customer Relationship Management ("CRM") support for the conglomerate.

6 The Plaintiff also alleged that Nagender engineered the resignations of the Defendants and co-ordinated the incorporation of the New Entities with a view to competing with the Plaintiff. [note: 3]

7 While the Plaintiff accepted that no competitive activity actually took place while the

Defendants were employed by the Plaintiff, they argued that this was only because the Plaintiff found out about the masterplan before the Defendants had the opportunity to put it into motion. [note: 4] The Plaintiff submitted that the Defendants' actions in formulating and implementing the alleged masterplan amounted to breaches of express and implied terms of employment by all of them and/or breaches of fiduciary duties by some of them. [note: 5]

8 The Plaintiff also asserted a number of other independent breaches which were not related to the alleged masterplan. [note: 6]

9 The Defendants, on the other hand, argued that the Plaintiff had "embarked on a witch hunt against the Defendants", and, in particular, with a view to unlawfully deprive Nagender of the fruits of his service to the Plaintiff. [note: 7] Their case was that Nagender genuinely believed that he was still in the running for the Global CEO position until July 2011, by which time all the New Entities except QRS had already been incorporated. The New Entities were incorporated by persons other than Nagender for reasons unrelated to Nagender and his proposed appointment as Global CEO. The New Entities would not have competed with the Plaintiff even if they had engaged in their intended businesses. Moreover, even if the New Entities were competing, the Defendants had merely engaged in preparatory acts at the material time. They also denied that Nagender had instigated the resignations of the other Defendants. [note: 8]

10 Further, Nagender, Joanna, Rahul, Annie and Adella had been summarily dismissed by the Plaintiff while they were serving their respective periods of notice after resigning. They counterclaimed against the Plaintiff for a declaration that they were wrongfully dismissed as well as for damages for wrongful dismissal.

11 As for Nagender, he was a shareholder in Holdco as well as a loan note holder in Bidco (both through his investment holding company, Signature Sparks Pte Ltd ("Signature Sparks")). The Defendants submitted that he was not only wrongfully dismissed but also unjustifiably classified as a "Bad Leaver" by Holdco and Bidco, which had the effect of depriving him of the value of his shares in Holdco and his loan note in Bidco. Accordingly Nagender and Signature Sparks counterclaimed against Holdco and Bidco for a declaration that Nagender was a "Good Leaver". Nagender also sought an order for the fair value of the shares in Holdco to be determined and paid by Holdco to Signature Sparks, as well as an order that the nominal value of his loan stock plus accrued interest be paid by Bidco to Signature Sparks.

12 In this judgment, I am only concerned with the issue of liability. Damages (if any) will be assessed at a separate hearing. [note: 9]

Dramatis Personae

The Defendants

13 Nagender, besides being the managing director of the Plaintiff at the material time, was also a director of Holdco and Bidco. He was designated as the next Global CEO of the Griffin Group sometime in late 2009, a fact which was publicised both within the group as well as to third parties. This decision was later retracted. Nagender resigned as managing director of the Plaintiff on 16 August 2011 with his agreed last day of employment being 15 January 2012. [note: 10] By way of the Plaintiff's letter dated 21 November 2011, Nagender was dismissed from his employment with the Plaintiff on allegations of gross misconduct and dishonesty. [note: 11]

14 Joanna was the Plaintiff's customer service manager at the Plaintiff's office in Perth, Australia. Sometime in July 2011, she returned to Singapore. [note: 12] She assumed the position of acting general manager of the Plaintiff upon Nagender's resignation and was positioned to be the Plaintiff's new managing director upon Nagender's departure. She resigned on 21 September 2011. By way of the Plaintiff's letter dated 21 November 2011, Joanna was dismissed from her employment with the Plaintiff on allegations of gross misconduct. [note: 13]

15 Leny was an executive director of the Plaintiff. She resigned from her employment on 2 February 2011. Her last day with the Plaintiff was on 30 June 2011, and she resigned from the board of directors on the same day. [note: 14]

16 Rahul was the Plaintiff's manager of operations. He resigned on 22 September 2011. By way of the Plaintiff's letter dated 6 October 2011, Rahul was dismissed from his employment with the Plaintiff on allegations of gross misconduct. [note: 15]

17 Annie was the Plaintiff's general manager of operations. She resigned on 12 September 2011. By way of the Plaintiff's letter dated 6 October 2011, Annie was dismissed from her employment with the Plaintiff on allegations of gross misconduct. [note: 16]

18 Adella was the Plaintiff's director of operations (it must be noted that her designation as "director" was titular only as she was not a member of the Plaintiff's board of directors). She resigned on 24 August 2011. By way of the Plaintiff's letter dated 6 October 2011, Adella was dismissed from her employment with the Plaintiff on allegations of gross misconduct. [note: 17]

19 Prasad held the position of "Vice President – Finance" in the Plaintiff. He resigned on 1 March 2011. [note: 18] He left the Plaintiff after he finished serving his period of notice on 31 August 2011. [note: 19] Prasad is Nagender's brother-in-law. [note: 20]

20 To put things into context, I set out in Annex 2 of this judgment a timeline of the key undisputed events which includes the Defendants' respective dates of resignation.

The witnesses

21 The Plaintiff put forward eight witnesses:

(a) Mr Ali Hussain ("Ali"), the managing director of the Plaintiff with effect from 1 October 2011;

(b) Mr George Boyes ("George"), the CEO of GGG (effectively the Global CEO of the Griffin Group) at the material time, a director of Holdco and Bidco, and a shareholder of Holdco;

(c) Mr Agyapal Khuman ("Khuman"), the managing director of Griffin India and a director of Holdco and Bidco;

(d) Mr Marcus Hebblethwaite ("Marcus"), the chief financial officer ("CFO") of the Griffin Group until his resignation on 27 August 2011 [note: 21], a director of Holdco and Bidco, and a shareholder of Holdco;

(e) Mr Alister Beveridge ("Alister"), the chief information officer of GGG;

(f) Mr Piyush Shukla ("Piyush"), the financial controller of the Plaintiff at the material time;

(g) Mr Andy Chua ("Andy"), a director of D'Perception Singapore Pte Ltd ("D'Perception"), a renovation contractor; and

(h) Mr Toh Ching Wah, a director at KPMG Forensic, a division of KPMG Services Pte Ltd, whose affidavit of evidence-in-chief ("AEIC") and supplementary AEIC were accepted into evidence without cross-examination.

22 All the Defendants gave evidence in court. They also called on the following persons to testify:

(a) Ms Rita Ganes ("Rita"), a former client services manager of the Plaintiff;

(b) Mr Indraneel Fuke ("Indraneel"), a director of BHEA Knowledge Technologies (P) Ltd ("BHEA India"), an IT firm based in India;

(c) Mr Ajay Satam Jagannath ("Ajay"), a former employee of the Plaintiff;

(d) Mr Sandeep Singhania ("Sandeep"), a director of Lantone Systems Pte Ltd ("Lantone"), a former IT service provider of the Plaintiff;

(e) Mr Ciocan Cornel ("Cornel"), a director and shareholder of Net Vision SEA Pte Ltd ("Net Vision") who had previously provided software services to the Plaintiff; and

(f) Mr Tay Tat Hwa, an associate director at KordaMentha Forensic Pte Ltd, whose AEIC and Supplementary AEIC were accepted into evidence without cross-examination.

The duties owed by the Defendants to the Plaintiff

23 Before I can determine whether the Defendants were in breach of any of their duties to the Plaintiff, I have to first consider what, exactly, those duties were. In this respect, the Plaintiff and Defendants differed in many aspects.

Whether the Staff Manual was incorporated into the Defendants' employment contracts

24 All of the Defendants, with the exception of Joanna, had written contracts with the Plaintiff dated 1 January 2009 ("the Employment Contracts"). [note: 22] As for Joanna, the parties were in agreement that from the time that she was posted to Singapore from Perth, there was no written employment contract and that her employment was governed by an implied contract of employment. [note: 23]

25 The Plaintiff argued that the terms in a document known as the "Staff Manual" also formed part of the Employment Contracts. The Staff Manual consisted of the regulations and individual policies which were issued on 1 June 2002 and amended on 1 July 2002. The Plaintiff argued that the following terms in the "Staff Manual" were expressly and/or impliedly incorporated into the Employment Contracts: [note: 24]

Section 1.1 - Purpose

This Staff Manual has been compiled as useful reference material for all staff of Global Marine Travel Services Pte Ltd [the Plaintiff's former name], hereafter referred as Griffin Travel, and the

rules and regulations contained herein constitute part of the employment contract.

Section 2.3 - Secondary Employment

1. It is the Company's policy that the employee upon signing the contract of employment shall commit fulltime service to the Company in order to maintain the highest standard of performance and prevent conflict of interest.

2. Written permission from the Company is required before any employee can take up part-time or secondary employment or engagement with other companies.

3. In the event, an employee is known to hold secondary employment or engagements without prior written approval, the employee shall be liable for disciplinary action.

Section 2.5(1) – Company Premises

No employee may indulge in any commercial activity or business or utilize any facilities of the Company for private purposes.

Section 2.5(2) – Conflict of Interest

No employee is permitted to hold any directorship or formal positions in other companies without prior knowledge and written approval from the Directors. Furthermore, the holding of any directorship or shareholding by the spouse / dependent of an employee in any companies must be brought to the attention of the Directors if it results in any conflict of interest in connection with the employment with the Company.

Section 2.5(3) – Confidentiality

You shall not at any time, during or after the termination of employment by the Company, directly or indirectly, divulge to third parties any details of the Company's business, finance, transactions, affairs or dealings confidential to the Company without the expressed written permission of the Management. The disclosure of such information may lead to disciplinary and legal action.

Any information, which the employees may obtain from the Company during the term of employment – whether or not demonstrated in documents, papers, computer data, contracts or agreements – may pertain to commercial or technical secrets of the Company and/or the Company's principals or customers.

The Employees shall not disclose any such information to any third party or use or duplicate any such information for any purpose other than that for which it was intended. This stipulation applies equally to the period following expiration of the employment contract for whatever reason. In case any employee violates this stipulation, the employee shall be responsible for the legal consequences, including payment of compensation for any financial loss suffered.

26 In *Straits Advisors Pte Ltd v Michael Deeb (alias Magdi Salah El-Deeb) and others* [2014] SGHC 94 at [118] and [119], I had the opportunity to sum up the legal position regarding the incorporation of contractual terms thus:

> 118 I begin by noting that the legal position regarding the incorporation of contractual terms in a contract of employment, such as the Employment Agreement here, was well set out by

Hobhouse J (as he then was) in *Alexander and others v Standard Telephones & Cables Ltd (No 2)* [1991] IRLR 286 after a consideration of the relevant case law (at 292–293):

> The principles to be applied can therefore be summarised. *The relevant contract is that between the individual employee and his employer; it is the contractual intention of those two parties which must be ascertained.* In so far as that intention is to be found in a written document, that document must be construed on ordinary contractual principles. In so far as there is no such document or that document is not complete or conclusive, their contractual intention has to be ascertained by inference from the other available material including collective agreements. The fact that another document is not itself contractual does not prevent it from being incorporated into the contract if that intention is shown as between the employer and the individual employee. Where a document is expressly incorporated by general words it is still necessary to consider, in conjunction with the words of incorporation, whether any particular part of that document is apt to be a term of the contract; if it is inapt, the correct construction of the contract may be that it is not a term of the contract. *Where it is not a case of express incorporation, but a matter of inferring the contractual intent, the character of the document and the relevant part of it and whether it is apt to form part of the individual contract is central to the decision whether or not the inference should be drawn.*

119 This passage was also cited with approval by Judith Prakash J in *ABB Holdings Pte Ltd and others v Sher Hock Guan Charles* [2009] 4 SLR(R) 111 (at [24]). The passage clarifies that whether or not certain terms are incorporated into an employment contract ultimately depends on the intention of the two contracting parties. In the particular situation where there is no express incorporation, as is the case here, then this contractual intent has to be inferred. An inference that the parties did intend the incorporation of certain terms, however, will only be made where the court views them to be "apt to form part of the individual contract".

[original emphasis]

27 Clause 15 of the Employment Contracts expressly referred to the "Policy Manual" of the Plaintiff, which the Plaintiff asserted was contained in the Staff Manual. [note: 25] Clause 15 stated as follows: [note: 26]

> **15. Company Policy**
>
> This employment agreement (including the initial appointment period and any subsequent period) shall be governed by the "Policy Manual" of the Company, which may be amended by the Company from time to time, and which form part of this contract of employment. Such regulations are deemed incorporated into this contract of employment. Any employee on application to their immediate manager may see these regulations, and the Manager in Singapore holds a copy of the manual.
>
> ……
>
> It is the responsibility of the Employee at all times to be properly aware of any Company policies and procedures that apply to him/her or to his/her job at any time.

28 The Defendants submitted that the Staff Manual could not have been incorporated into the Employment Contracts in the first place as the Employment Contracts expressly excluded the application of such terms. The Employment Contracts contained an entire agreement clause which

provided for the replacement and exclusion of all previous employment agreements, whether oral or written. [note: 27] Clause 1 of the Employment Contracts stated:

> **1. Employment**
>
> This present employment agreement is effective as of 01-Jan-09, and replaces any or all other employment agreements, whether oral or written. This employment agreement constitutes the entire Agreement between the two parties, and any or all previous agreements, correspondences [*sic*], negotiations, representations, explanations, statements, promises or guarantees, whether oral or written, shall be excluded.
>
> It is expressly agreed and understood that there are no other verbal agreements or understandings between the Company (any of the Managers, Officers, Agents, representatives or Employees of the Company) and the Employee.

29 The Defendants also argued that the use of the word "Policy Manual" in cl 15 of the Employment Contracts at a time when the Staff Manual was in existence disclosed an intention to do away with the terms of the Staff Manual and for employees to be bound by the terms of a new Policy Manual to be drafted. No such Policy Manual has been issued. [note: 28] Moreover, there was no objective evidence of any intention to incorporate the Staff Manual. It was never put to any of the Defendants that there was an intention to incorporate either of these documents. [note: 29]

30 The Plaintiff argued that the material that was purportedly being excluded from the Employment Contracts *via* the entire agreement clause had to be expressed very clearly and cl 1 of the Employment Contracts was not sufficiently clear and unambiguous as to exclude the incorporation of the Staff Manual. [note: 30] Moreover, the Defendants led no evidence on any intention to do away with the Staff Manual. [note: 31] Further, reading cl 15 of the Employment Contracts strictly would lead to ambiguity as there was no "Policy Manual" in existence. A reasonable person would read the "Policy Manual" in cl 15 as referring to the only manual in existence at the time which all the parties were aware of, *ie*, the Staff Manual. [note: 32]

31 In my view, the Staff Manual was not incorporated into the Employment Contracts, whether expressly or impliedly. Clause 15 did not expressly incorporate the Staff Manual as it is clear from the circumstances that the "Policy Manual" was meant to refer to a specific document, even if it was not yet in existence. It is significant to note that Leny, Rahul, Adella and Annie's previous employment agreements dated 1 January 2006 expressly referred to the Staff Manual. [note: 33] The reference to "Staff Manual" was specifically amended to "Policy Manual" when the Employment Contracts dated 1 January 2009 were entered into some three years later. This could not be a mere typographical error by the Plaintiff. With this amendment, I decline to draw the inference that the parties intended the Staff Manual to continue to govern the terms of their employment as with the previous employment agreements and be incorporated as part of the Employment Contracts, especially when the entire agreement clause in the Employment Contracts had expressly excluded the operation of any part of the previous employment agreements. Unlike, for example, in *ABB Holdings Pte Ltd and others v Sher Hock Guan Charles* [2009] 4 SLR(R) 111 ("*ABB Holdings*"), the Plaintiff has not been able to establish clear evidence of an intention on the part of both parties to have the Staff Manual incorporated into the Employment Contracts. The burden to do so rests with the Plaintiff.

Fiduciary duties

Whether Adella and Prasad were fiduciaries

Whether Adella and Prasad were fiduciaries

32 The Plaintiff claimed that Nagender, Leny, Adella and Prasad all owed fiduciary duties to it. It is undisputed that Nagender and Leny were its fiduciaries while they acted as the Plaintiff's directors, but the Defendants denied that Adella and Prasad owed the Plaintiff any such duties. [note: 34]

33 Adella was the Plaintiff's director of operations, and was in Band 4, the Plaintiff's second most senior classification for its employees. The Plaintiff argued that she oversaw the Plaintiff's operations and was effectively in control of the same. She was part of the Plaintiff's senior management team. She was critically involved in the negotiations and decision-making process in relation to supplier contracts. The Plaintiff claimed that she had the power to hire and fire staff, [note: 35] and that all the operations staff in three locations (Bangkok, Perth and Kuala Lumpur) reported to her. [note: 36]

34 The Defendants denied that Adella was a member of the Plaintiff's senior management team. While she coordinated communications with suppliers regarding contracts, she did not have the mandate to make any decision as to the terms of such contracts. The Defendants disputed that she had the right to fire staff, and while they accepted that she had the right to hire staff, their position was that she never hired anyone without first obtaining Leny and/or Nagender's approval. [note: 37]

35 As for Prasad, he was the vice-president of finance and effectively the CFO of the Plaintiff. He was also classified in Band 4 and was an account signatory. The Plaintiff argued that he was in charge of the Plaintiff's budget and expenditure; moreover he had the power to hire staff in the Plaintiff's finance department. [note: 38]

36 The Defendants said that Prasad was not entrusted with powers to approve expenses, nor did he possess the mandate to decide on budgetary allocations, business development or infrastructure expansion plans. While he was on the panel for recruitment interviews, the appointment of staff was at the directors' discretion. [note: 39]

37 To begin, while the relationship of employee and employer *can* be a fiduciary one, whether a fiduciary relationship in fact arises will depend on the facts of a particular case (see *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631 at [25]).

38 In the English High Court decision of *Nottingham University v Fishel and another* [2000] IRLR 471 ("*Nottingham University*"), Elias J noted at [97] that:

> 97 … [I]n determining whether a fiduciary relationship arises in the context of an employment relationship, it is necessary to identify with care the particular duties undertaken by the employee, and to ask whether in all the circumstances he has placed himself in a position where he must act solely in the interests of his employer. It is only once those duties have been identified that it is possible to determine whether any fiduciary duty has been breached …

39 The above paragraph was cited with approval by the Court of Appeal in *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 ("*Smile Inc (CA)*") at [52]. The question to be asked, therefore, is whether the employee has placed himself in a position where he must act solely in the interests of his employer.

40 The Plaintiff relied on the cases of *Mona Computer Systems (S) Pte Ltd v Chandran Meenakumari and another* [2011] 1 SLR 310 ("*Mona*") and *ABB Holdings* to show that both Adella and Prasad were fiduciaries. However, the factual matrices in both these cases were rather different from

that which is before me.

41 In *Mona*, the plaintiff company was a family run business dealing with software and IT consultancy and development. The employee in question was the brother-in-law of the founding member of the plaintiff. It was a small business and the employee was the plaintiff's sole full-time employee tasked with the day-to-day business operations of the plaintiff. He also managed the plaintiff's contracts with third parties as well as those between the company's IT personnel and the plaintiff. After the founder died, his wife became the managing director of the plaintiff. As she was not familiar with the business operations of the plaintiff, she was dependent on that employee's experience and knowledge (at [6]). That employee also tacitly admitted that he owed the plaintiff a fiduciary duty. In such circumstances, it is unsurprising that the court found that he was, indeed, a fiduciary of the company.

42 In *ABB Holdings*, one issue was whether the defendant in that case owed fiduciary duties to the second and third plaintiffs, which were part of a worldwide group of companies. He was a director of the second plaintiff and clearly owed it fiduciary duties. The issue therefore was whether he was a fiduciary of the third plaintiff even though he was not a director of that company. He was initially employed by the second plaintiff but his employment was subsequently transferred from the second plaintiff to the third plaintiff with retrospective effect. As president and director of the second plaintiff, he was responsible for the general management of the plaintiff as well as the business development, marketing and sales of the plaintiffs' installation materials business in the Asia Pacific region. He also attended high-level meetings where the plaintiffs' various businesses were discussed. Even though his title was reduced from that of president to vice president and general manager of "low voltage products" when he was transferred to the third plaintiff, in truth no change took place in his rights and privileges and there were no changes in the terms and conditions of his employment. He remained part of the top management. He was in a position to hire and fire employees for the third plaintiff. Accordingly, he was found to be a fiduciary of the third plaintiff (*ABB Holdings* at [39]). In comparison, Adella and Prasad were clearly not responsible for the general management of the Plaintiff's business nor did they have the power to *both* hire and fire.

43 The Defendants, on the other hand, argued that the facts in *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2007] 3 SLR(R) 265 ("*Nagase*") were more relevant. In this case, two of the defendants were employees of the plaintiff company. One defendant, CY, had the designation of director of a division of the company but this was administrative only and he was not appointed a director of the plaintiff (like Adella). Another defendant, MT was the senior manager of the division. CY had the authority to make on behalf of the plaintiff a new warehousing contract with another company but it was found that MT had no power to contract with third parties on behalf of the plaintiff. Judith Prakash J found that both CY and MT were not, in fact, fiduciaries (at [29]):

> 29 In any case, the evidence does not establish that CY and MT owed a special duty of "single minded or exclusive loyalty" to the plaintiff. They were members of the middle management of the plaintiff albeit that CY held a fairly senior position. The mere authority to negotiate contracts on behalf of the company or to authorise the payment of invoices would not itself give rise to fiduciary obligations on the part of the officers of the company entrusted with such authority. Otherwise, practically every middle level manager and every person with some signing authority in a company's finance department would have fiduciary duties. In the case of CY, his promotion in 2001 to director of the division from the post of manager did not change the scope of his duties. He still had to report to Mr Mizumori [CY's immediate superior] and the board of directors and had to get Mr Mizumori's sanction for many of his decisions. I cannot find a basis to support any assertion that by becoming director of the division, CY had undertaken specific contractual obligations which had "placed him in a situation where equity imposes these rigorous duties in

addition to the contractual obligations". CY was not top management and MT's position, as CY's subordinate, was even more removed from a situation in which fiduciary duties could be imposed.

44 The Defendants submitted that Prasad and Adella, as the heads of their respective divisions in the Plaintiff (*ie*, finance and operations), occupied positions analogous to that of CY in *Nagase.* They still had to report to Nagender and Leny and had to get Nagender's and/or Leny's sanction for many of their decisions. They also argued that the Plaintiff had not adduced any evidence that Prasad or Adella had undertaken specific contractual obligations which placed them in a situation where equity imposed rigorous duties in addition to their contractual obligations, thus the Plaintiff had not discharged its burden of proving that Prasad and Adella owed fiduciary duties to it. [note: 40]

45 I accept the Defendants' submissions. Prasad and Adella were in Band 4, which was merely the second highest classification out of five. For example, *Annie* (who was Adella's subordinate [note: 41]) was also in Band 4, [note: 42] which indicated to me that Band 4 was not a classification reserved for senior management only. While Adella was responsible for coordinating communications with suppliers, I accept her evidence that she could not make any decision as to its terms. The fact that Prasad and Adella were heads of their respective divisions was also inconclusive. In *Nagase*, there were approximately 45 employees working under CY in his division (at [19]), but CY was nevertheless found to be part of the middle management. Similarly, the mere fact that Prasad was effectively the CFO of the Plaintiff would not, *ipso facto*, mean that he was also a fiduciary (see *Shepherd Andrew v BIL International Ltd* [2003] SGHC 145 at [102]). Despite his position, there is no indication that Prasad had the power to make decisions of a nature that could materially affect the Plaintiff's interests. I accept his evidence that he had no power to approve expenses or make actual decisions on budgetary allocations. [note: 43] Accordingly, I do not find that Prasad and Adella owed the Plaintiff any fiduciary duties.

The fiduciary duties owed by Nagender and Leny

46 It therefore remains for me to consider the scope of the fiduciary duties owed by Nagender and Leny to the Plaintiff. In this respect, the Plaintiff pleaded that the following fiduciary duties were owed to it: [note: 44]

(a) to act in good faith and in the best interests of the Plaintiff;

(b) to act with honesty and loyalty towards the Plaintiff;

(c) not to use their fiduciary position to gain any unauthorised personal profit;

(d) not to compete with the Plaintiff;

(e) not to place themselves in a position where their duty to the Plaintiff and their personal interests may conflict;

(f) not to disclose information of concern to the Plaintiff and which was relevant for the Plaintiff to know to third parties;

(g) to disclose to the Plaintiff any potential threat and/or competitive risk posed to its business;

(h) to serve the Plaintiff faithfully and dutifully and not to advance or promote their own

interests or other external interests to the prejudice of or contrary to the interests of the Plaintiff;

(i) not to obtain for themselves any business advantage that properly belongs to the Plaintiff without the consent of the Plaintiff; and/or

(j) to inform the Plaintiff of any activity, actual or threatened, which could damage the Plaintiff's interests.

47 The Defendants admitted that Nagender and Leny owed the duties stated at (a) to (f), (h) and (i) in the preceding paragraph, but denied that they owed a duty to the Plaintiff to disclose to the Plaintiff any potential threat and/or competitive risk to its business (as stated at (g) above) and/or to inform the Plaintiff of any activity, actual or threatened, which could damage the Plaintiff's interest (as stated at (j) above).

48 The Plaintiff relied on *ABB Holdings*, where Judith Prakash J at [42] found that the fiduciary duties owed to a company includes, *inter alia*, the following:

(a) a duty to disclose to the company information which came to the fiduciary and which was of concern to the company and was relevant to the company to know; and

(b) a duty to inform the company of any activity, actual or threatened, which could damage the company's interests.

49 The Defendants sought to persuade me to depart from the position taken in *ABB Holdings.* They referred to the High Court decision in *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 1 SLR 847 ("*Smile Inc (HC)*"). There, the court (at [194]) considered *British Midland Tool Ltd v Midland International Tooling Ltd and others* [2003] 2 BCLC 523 ("*British Midland Tool*") and *Shepherds Investments Ltd and another v Walters and others* [2007] 2 BCLC 202 ("*Shepherds Investments*"). The court disagreed with *British Midland Tool* and *Shepherds Investments* that a director has to disclose his intention to compete, and that once an intention to compete is formed, a director cannot as a matter of law take mere preparatory steps such as the leasing of premises and the equipping of the same (at [212] and [213]). The Defendants submitted that these observations were undisturbed by the Court of Appeal in *Smile Inc (CA)*. [note: 45]

50 The Court of Appeal's analysis on this aspect of *British Midland Tool* was set out at [75] to [77] of that case:

75 In holding the former directors liable, Hart J appeared to propound a very broad prohibition against potentially competitive behaviour, as follows (at [89]):

> A director who wishes to engage in a competing business and not to disclose his intentions to the company ought, in my judgment, to resign his office as soon as his intention has been irrevocably formed and he has launched himself in the actual taking of preparatory steps.

76 The Appellant has argued that a similar standard should apply to the Respondent, *ie*, that the Respondent should have disclosed his intentions to compete with the Appellant. However, we are not persuaded by this argument. The crucial question is: What was the duty that was breached in *British Midland Tool* ([63] *supra*)? The duty to disclose in *British Midland Tool* was held to be based upon a director's fiduciary duties, not an employee's duty of good faith and fidelity. Indeed, Hart J makes it quite clear that (at [94]):

> The employee's duty of fidelity to his employer, although in some respects similar in content to the director's fiduciary duty to the company and although it is itself sometimes described as a fiduciary duty … is by no means identical. Importantly it does not include, in the usual case, any prohibition as such on being in a position where his duty as employee and his self-interest may conflict.

77 ***British Midland Tool*** **is, therefore, good authority centering on the fiduciary duty of a director, to act loyally and in the best interests of his principal, and not put himself in a position of conflict between his principal's interests and his self-interest.** These are considerations that do not apply with equal force in an employee-employer relationship, which is the situation in the present case.

[emphasis added in bold]

51 It is axiomatic that a director may in the appropriate circumstances be duty-bound to make disclosures of matters of relevance to the company. However, as noted by Lewison LJ in the UK Court of Appeal in *Jeremy Michael Ranson v Customer Systems plc* [2012] EWCA Civ 841 ("*Ranson*") (which was not cited to me by the parties), even in the context of the fiduciary duties of a director, there is no *free-standing* duty to disclose. Rather, it is founded on the director's duty "to act in what he in good faith considers to be the best interests of his company" (*Ranson* at [52], citing *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244).

52 I respectfully agree with Lewison LJ's analysis. To conclude, Nagender and Leny did not owe free-standing duties of disclosure to the Plaintiff but that is very different from saying that a failure to disclose is *never* a breach of fiduciary duty. A director can hardly argue that he has upheld his general duty of single-minded loyalty if his failure to disclose was motivated by bad faith, such as where the director was aware that such non-disclosure would cause harm to the company.

Implied duty of fidelity

53 The Plaintiff pleaded that, as employees of the Plaintiff, all of the Defendants were further subject to implied duties of good faith, fidelity and loyalty pursuant to which they were required to: [note: 46]

(a) act in the best interests of the Plaintiff;

(b) receive and obey the instructions of the Plaintiff;

(c) devote their time and talents to the Plaintiff's business;

(d) do their work for the Plaintiff with honesty and integrity;

(e) avoid situations where their personal interests conflict with those of the Plaintiff;

(f) not make preparations during their employment with the Plaintiff and using the Plaintiff's time and resources with a view to competing with the Plaintiff once their employment was over; and

(g) disclose to the Plaintiff any potential threat and/or competitive risk posed to the Plaintiff's business.

54 In their Defence and Counterclaim, the Defendants admitted that they were subject to implied duties of good faith, fidelity and loyalty to the Plaintiff, but they did not admit they owed the duties set out at (a) to (e) above. They further denied that they were subject to the duties set out at (f) and (g). [note: 47] However, in their closing submissions, the Defendants departed from their pleaded case and argued, on the authority of *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock*"), that the implied duties owed are confined to implied duties of *mutual trust and confidence*, rather than implied duties of good faith. [note: 48]

55 In *Cheah Peng Hock*, Quentin Loh J confined the term implied in law to one of mutual trust and confidence. This includes a duty of fidelity, *ie*, a duty to act honestly and faithfully (at [55]). As for an implied duty of good faith, Loh J noted at [46] that:

> The danger of implying a duty of good faith into contracts of employment is to introduce a potentially far reaching concept which may impose positive duties and fetters the freedom of parties, particularly those of equal bargaining power who are not protected under the Employment Act (Cap 91, Rev Ed 2009) or under the common law, to contract. It will probably also conflict with written terms.

56 I note that *Cheah Peng Hock* dealt with the issue of the duty owed by an *employer* to an employee, although the reasoning was of wide application.

57 In any case, the Plaintiff readily accepted that it was the implied term of mutual trust and confidence that applied, but argued that previous cases have referred to the said implied duty as the implied duty of good faith, fidelity and loyalty, and courts have used the terms interchangeably. It submitted that the unlawful conduct in the present case would amount to a breach of the duty of fidelity. [note: 49]

58 Insofar as the Plaintiff's argument related to labels, I agree. What is crucial is, after all, the *content* of the duty (though of course the use of similar labels for different concepts may be confusing). As stated in *Asiawerks Global Investment Group Pte Ltd v Ismail bin Syed Ahmad and another* [2004] 1 SLR(R) 234 at [61], employees are expected to serve their employers diligently, honestly and loyally, but what this duty translates into factually depends on the circumstances, such as the nature of the work. For simplicity, I will refer to the implied duty as the implied duty of fidelity.

59 The next issue is whether this implied duty of fidelity permits an employee to take preparatory steps with a view to competing with his or her former employer while still in the latter's employ. The Court of Appeal answered this question in the affirmative in *Smile Inc (CA)* at [65]. Whether or not the steps taken by an employee can be considered as preparatory to future competition, or instead constitute actual competitive activity, turns on the facts of each particular case (*Smile Inc (CA)* at [67]).

60 It is a matter of some controversy as to whether "mere" employees have a duty to disclose to their employer any potential threat and/or competitive risk posed to their employer's business. To persuade me that they did have this duty, the Plaintiff placed particular reliance on the cases of *UBS Wealth Management (UK) Ltd v Vestra Wealth LLP* [2008] EWHC 1974 (QB), *Kynixa Ltd v Hynes and others* [2008] EWHC 1495 (QB) and *QBE Management Services (UK) Ltd v Dymoke and others* [2012] EWHC 80 (QB) ("*QBE*").

61 In *QBE*, a group of employees, led by the first three defendants (who were senior employees and one of whom was found to owe fiduciary duties to the company), left the plaintiff company to set

up the fourth defendant, to compete with their former employers. This was a case where counsel for the defendants had admitted that two of the defendants had "crossed the line" into "impermissible preparations" in certain aspects. The first three defendants had not only recruited their colleagues into their new endeavour, but were also found to have misused confidential information and solicited the company's clients whilst still employed, and these were all done under the cloak of secrecy. Haddon-Cave J set out at [171] to [174] a set of extracts from recent cases in the UK:

> 171 In *Shepherd Investments Ltd and Anor v Walters & another* [2006] EWHC 836 (Ch), Etherton J. held that when former directors and employees set up a competing business, diverting business opportunities and misusing confidential information, they had acted in breach, not only of their fiduciary obligations, but also their implied obligation of fidelity, from the moment that they procured the services of attorneys in the Cayman Islands to set up the rival business. On the facts of that case, Etherton J, held that a former employee was also in breach of obligations as a fiduciary, whether or not he was to be regarded as a director, and that he was in breach of his duty of fidelity.
>
> 172 In *UBS Wealth Management v. Vestra Wealth LLP* (supra) Openshaw J. said at paragraph 24:
>
> > I cannot accept that employees, in particular senior managers, can keep silent when they know of planned poaching raids upon the company's existing staff or client base and when these are encouraged and facilitated from within the company itself, the more so when they are themselves party to these plots and plans. It seems to me that that would be an obvious breach of their duties of loyalty and fidelity to [their employer].
>
> 173 In *Kynixia v. Hynes* [2008] EWHC 1495 Wyn Williams J. said at paragraph 283:
>
> > I simply do not see how one can be acting as a loyal employee when one knows that three senior employees (including oneself) may transfer their allegiance to a group of companies which includes a competitor and yet not only fail to divulge that knowledge but also say things which would have the effect of positively misleading the employer about that possibility.
>
> 174 In *Tullett Prebon plc v. BCG Brokers LP* [2010] IRLR 648 Jack J. said at paragraphs 68-69:
>
> > [A] desk head must not do anything to assist the recruitment of his desk… Where a desk head decides that he is in favour of the recruitment of his desk and thereafter assists the recruitment in such small or large ways as may arise, he is in plain breach of his duty: he has crossed the line between observing his duty to his employer and acting in the interest of his employer's rival.

62 In coming to his interpretation of the law, Haddon-Cave J also disagreed (at [180] and [181]) with the following passage by Hickinbottom J in *Lonmar Global Risks Ltd v West* [2011] IRLR 138 ("*Lonmar*") at [151]:

> … Generally, therefore, an employee is under no obligation to report to his employer his own misconduct (*Bell v Lever Brothers* [1932] AC 161), or the misconduct of his fellow employees (*Sybron v Rochem* [1983] ICR 801); nor is he under a restraint from legitimate preparation for himself engaging in future competition with his employer (*Tunnard*), or informing another employee of his plans to do so and offering him a potential job in that competitor in the future (*Tither Barn v Hubbard* (EAT/532/89 (Wood J), unreported, 7 November 1991). **If it is not**

unlawful for an employee to inform a fellow employee of plans to set up in competition, and (without inciting him to breach his contract with his current employer) offer him a job in the future, then the employee to whom such matters are confided cannot sensibly be under a general obligation to inform his employer of those plans and offer. [emphasis added in bold]

63 In my view, Hickinbottom J's reasoning in *Lonmar* better accords with the law as set down in *Smile Inc (CA)*, where the Court of Appeal disagreed with the contention that an employee ought to disclose his intention to compete with his employer. In this regard, the Court of Appeal considered the duty that was breached in *British Midland Tool* and found that duty was in fact founded upon a director's fiduciary duties, not an employee's duty of good faith and fidelity.

64 A director, as a fiduciary, has a *single-minded* duty of loyalty to the exclusion of the fiduciary's own interest. Employees do not ordinarily bear such an onerous obligation. They are expected to be loyal to their employer, but as Lewison J explained in *Ranson* at [41], the duty of loyalty in the context of an employee bears the same label but holds a very different meaning. The employee's duty to his employer is "one where each party must have regard to the interests of the other, but not that either must subjugate his interests to those of the other" (*Nottingham University* at [95]).

65 I also respectfully adopt Quentin Loh J's pertinent observations in *Scintronix Corp Ltd (formerly known as TTL Holdings Ltd) v Ho Kang Peng and another* [2013] 2 SLR 633 at [94] that an employee does not normally have a duty to avoid *potential* conflicts of interest:

> … [T]he duty of fidelity to an employee does not require the employee to subjugate his own interests to those of his employer and an unforgiving view of conflict in the employment context is difficult to square with this well-established position in law. … **An employee is not *per se* in breach of his duty of fidelity merely because he is in a position where there is a potential conflict of interest**. I acknowledge that the scope of the duty of fidelity may vary according to the seniority of the employment, but I do not think the duty of fidelity extends so far as to cover potential, as opposed to actual, dishonest or disloyal behaviour.
>
> [emphasis added in bold]

66 As far as the duty of disclosure is concerned, Lewison LJ endorsed (in *Ranson* at [48] and [54]) the statement in *Nottingham University* that there is no general principle that an employee is bound to inform his employer if and when he is doing outside work in breach of his contract. However, he added (at [55]):

> 55 **That is not to say that an employee can never have an obligation to disclose his own wrongdoing; but any such obligation must arise out of the terms of his contract of employment.** Mr Stafford QC took us on a *tour d'horizon* of cases where such an obligation (or an analogous obligation) did arise. In Swain v West (Butchers) Ltd [1936] 3 All ER 261 the employee manager had a contractual obligation "to promote, develop and extend the interests of the company." This contractual obligation required him to disclose misconduct by the managing director. In QBE Management Services (UK) Ltd v Dymoke [2012] EWHC 80 (QB) [2012] IRLR 458 Mr Dymoke's contract contained obligations to use his best endeavours to promote and protect the interests of his employer, and a further obligation that he would "fully and properly disclose to the Board … all of the affairs of the Group of which he is aware." These obligations meant that Mr Dymoke had a duty to disclose his own activities in soliciting fellow employees to defect *en masse*, his misuse of confidential material and solicitation of his employer's customers while he was still employed. He also showed us different contracts made between CS and other employees

which contained far more restrictive terms than those contained in Mr Ranson's contract. [emphasis added in bold]

67 If an employer wishes to impose a legal burden on an employee to blow the whistle on himself and his colleagues, it should be made crystal clear that he has such an obligation. It would be even better if the employer also laid out the proper steps on how he should discharge this obligation. Moreover, I suspect that in many circumstances it may be more efficacious to rely on the carrot of incentives rather than the stick of legal sanction to induce employees to step forward.

68 In my view, the Plaintiff has not established on the facts that the non-fiduciary Defendants have undertaken, expressly or impliedly, a contractual duty to report. In such circumstances, they would not be in breach of the implied term of fidelity merely by their failure to disclose any activity, actual or threatened, which could damage their employer's interests. As stated in *Lonmar* at [155]:

> … [T]he contractual duty of fidelity does not as a general rule incorporate an obligation to report to an employer wrongdoing of employees, let alone conduct falling short of wrongdoing which may nevertheless not be in the best interests of the employer.

The alleged masterplan

69 Having established the scope of the fiduciary duties owed by Nagender and Leny as well as the implied duties owed by all the Defendants as employees of the Plaintiff, I turn now to consider whether those duties had been breached on the facts of the present case. I begin with the Plaintiff's principal allegation that there was a masterplan linking all the New Entities together. The Plaintiff argued that the involvement of the Defendants in the New Entities disclosed an engineered scheme spearheaded by Nagender, who was able to control the New Entities through (a) the loyalty of the other Defendants to him and (b) his wife Kavita Chilkuri ("Kavita"), to incorporate a group of companies with a view to competing with the Plaintiff's business. [note: 50]

70 The Plaintiff has provided an organogram showing the links between the New Entities and the Defendants, which can be found at Annex 3 of this judgment.

71 The existence and scope of the alleged masterplan turned primarily on Nagender's alleged motive of wanting to cause harm to the Plaintiff as a result of him being spurned as the next Global CEO. Therefore, I consider it appropriate to analyse this aspect of the Plaintiff's case first.

The Global CEO succession and Nagender's resignation

72 Nagender had a 20% shareholding in the Plaintiff in 2008. [note: 51] As part of a corporate restructuring exercise to facilitate the partial or full sale of the Griffin Group, [note: 52] Nagender transferred his shares in the Plaintiff to GGG in return for shares in GGG (*ie*, a share swap). [note: 53]

73 In 2009, the Griffin Group entered into talks with a private equity firm, Inflexion Private Equity Partners LLP ("Inflexion"). [note: 54] As part of the group's restructuring, the shares in GGG (including Nagender's) were acquired by Bidco, which was in turn a wholly owned subsidiary of Holdco. Inflexion purchased 25% of Holdco's shares. [note: 55] By a subscription agreement dated 16 December 2009 ("the Subscription Agreement") between Holdco, Bidco and himself, Nagender, subscribed through his investment holding company, Signature Sparks, to a 9.1% stake in Holdco and a £1.6m loan note issued by Bidco. [note: 56]

74 Nagender claimed that he agreed to the share swap and also to the sale of the business on the assurance that he would become the Global CEO after the sale. [note: 57] The Plaintiff denied that any such assurance was made. [note: 58] Nevertheless, it was undisputed that George had identified Nagender as the "prime candidate to be the next Global CEO". [note: 59] Third parties were also told that Nagender was to be George's successor. [note: 60] The plan was for Leny to succeed Nagender as managing director of the Plaintiff with Joanna as the second-in-command. [note: 61]

75 George claimed that the decision not to appoint Nagender as the next Global CEO was reached in early August 2010. [note: 62] At that time, the Griffin Group was considering a merger with VIA, a travel company with a focus on the Nordic countries, and one of the issues being considered was whether Mr Espen Asheim from VIA would be the Global CEO of the merged entity. [note: 63] George claimed that he first told Nagender about this decision on or around 20 August 2010, [note: 64] but there is no other evidence of such a conversation.

76 On 22 or 23 September 2010, Nagender had a heated argument with George during one of the Griffin Group's board meetings, in which George called Nagender "obnoxious". [note: 65] Nagender later called Mr Christian Hamilton ("Christian") and Mr Gareth Healy ("Gareth") of Inflexion, as well as Mr Dick Porter ("Porter"), who was then the chairman of the Griffin Group, to complain about George's behaviour. This upset George, who, in an email to Christian and Gareth, expressed that he was "deeply hurt" by what Nagender did. [note: 66]

77 It was undisputed that Porter told Nagender that the Griffin Group was going to source for an external candidate for the Global CEO position at around the same time. [note: 67]

78 On 23 September 2010, Nagender sent an email to George, Khuman and Marcus, among others, stating that:

> Events of the past few weeks have not been pleasant and least decent. While my intention is not to elaborate on them, it has come to a stage where it is untenable for my continued involvement with the organisation, under the current circumstances. While some other discussions have been ongoing without my / everyone's involvement, it is timely for me to move on. [note: 68]

79 Nagender admitted that when he sent the email, he wanted to leave the Plaintiff entirely. [note: 69] He claimed that the email was not sent in response to his conversation with Porter, but was rather a reaction to a separate dispute relating to company matters that culminated in the confrontation with George at the board meeting. [note: 70]

80 What happened next that day is disputed, but it would appear that Nagender was placated for the time being. Nagender sent a follow up email stating: "As discussed, I agree that it would merit diffusing the current situation. Let's give it a couple of days rest prior to meeting up to discuss and bringing the matter to its logical conclusion." [note: 71]

81 Subsequently, George and Nagender met sometime between 6 and 8 October 2010 in Mumbai, India. Both men left their meeting thinking that the issue had been resolved, but their accounts of what occurred differed materially. According to George, they came to an agreement that Nagender would not be the Global CEO but instead could take on the position as the regional head of the Griffin Group's Asia operations. [note: 72] Nagender, in contrast, asserted that he had asked George in no

uncertain terms as to whether there was any change in the Griffin Group's plans regarding Nagender's appointment as the Global CEO, to which George's reply was no. [note: 73]

82 George wrote to Christian and Gareth on 7 October 2010, setting out his account of the discussion which he had with Nagender in the following terms:

> I have had a very lengthy clear out and discussion with Nagender so things are going back to normality. I have one issue still to discuss with him, regarding his position going forward and the suggestion for Nagender *to start with* as a regional head (Asia) with the added responsibility of pulling together operations globally. [note: 74]
>
> [emphasis added in italics]

83 George claimed that the issue of Nagender's position going forward was finalised the next morning over breakfast on 8 October 2010. [note: 75] The email above suggests that there was a plan t o *begin* with the promotion of Nagender to a regional position with added global responsibility. Therefore, it is not unreasonable to conclude that, after meeting with George in Mumbai, Nagender might have left with the impression that he was still on track to be the Global CEO, with his proposed regional position being only an interim one. If George had told Nagender in no uncertain terms that he would *never* be the Global CEO, I doubt that Nagender would have been so readily placated for normalcy to return.

84 On 30 October 2010, Christian sent an email to Gareth and the major shareholders of the Griffin Group, including Nagender, attaching a powerpoint presentation that referred to the succession planning for the managers of the Griffin Group. This presentation was made in the context of Inflexion's proposal to acquire an additional 25.1% in the Griffin Group (which did not materialise). [note: 76] One of the slides in the presentation stated that the recruitment for a new Global CEO would "start immediately and that this process would take c. 6-9 months". [note: 77] Nagender stated that this took him by surprise; [note: 78] however, he maintained that the matter was still up in the air, [note: 79] as there was still the possibility that Inflexion's plans might fall through. If that happened, then with George's intention to retire and the old shareholders remaining in place, Nagender could still be the one taking over the reins. [note: 80]

85 Nagender was outspoken about his disgruntlement at the events that had transpired. In a telephone conversation with Christian on 18 November 2010, he told the latter that he was "very bitter about it" [note: 81] and that "[i]f the transition doesn't happen, the current CEO to the new CEO, I'm ready to go". [note: 82] He also said on the stand that he was "upset at being lied to". [note: 83]

86 This was followed by an email dated 23 November 2010 from Porter in advance of a board meeting on 25 November 2010 in London to the global shareholders, which stated that:

> Planning for CEO recruitment will begin immediately. George and Dick will meet Skill Capital to see if it is agreed they are presented to the Board as recruitment agency. The understanding is for the process to be open to all from within Griffin and additional external candidates will be sought. [note: 84]

87 Sometime in November 2010, another heated exchange occurred between George and Nagender

at a board meeting. Nagender asserted that any change in the CEO appointment plans would make his stay in the Griffin Group untenable and he would leave if someone else was appointed as the Global CEO. [note: 85] Subsequently, Bob Westerndarp (the head of Griffin US) sent an email to the global shareholders on 26 November 2010 indicating that the search for a new Global CEO needed to start immediately, and that Nagender has "expressed that he has lost interest in the business". [note: 86]

88 In response, on 26 November 2010, Nagender sent an email stating:

> Please do take the necessary action but let me assure you all that I will earn my every cent till the day I leave. … Since one of the Shareholders has now formalized this discussion, it would be appropriate for me to formalize my position in terms of my desire to disengage from Griffin.
>
> Please advise the due process for me to comply. [note: 87]

89 It seems that Nagender was prepared to leave the Plaintiff for good at this point, although of course he could later change his mind. On the same day, George replied to Nagender asking him to "please rest this". He also asked Nagender to wait until an upcoming meeting in Athens before making any decision. [note: 88] Nagender did not follow up with his resignation threat.

90 At the shareholders' meeting in Athens, Greece on 12 January 2011, it was agreed that the management shareholders would not start the recruitment process for a new CFO and CEO until the VIA merger discussions were aborted (or a successful merger negated the need for such recruitment). Nagender was appointed as the chairman of the management committee of the Griffin Group. [note: 89]

91 On 14 January 2011, George sent Porter an email about a discussion with Nagender, stating:

> The meeting went a lot better than I could ever imagine. At least all eight of us discussed the major issues, problems with honesty and openness. *Most important is Nagender decided to stay*. We all agreed that we want to start discussions with VIA and I have already spoken to FSN and Espen VIA's CEO and advised also Gareth and Christian. …
>
> … *[T]he partners have decided not to go ahead at this stage at looking to hire a CEO or CFO, instead we will relook at this if the VIA merger for whatever reason gets abandoned*. … [note: 90]
>
> [emphasis added in italics]

92 The parties interpreted the events in Athens very differently. According to the Defendants, it signalled to Nagender that there remained a real chance that he might be appointed as the Global CEO. [note: 91] George himself said he had met with Nagender privately and assured him that he still had a role to play within the Griffin Group. [note: 92] George also agreed during cross-examination that the reason Nagender had decided to stay on was that the management committee had agreed to *temporarily* put on hold the external recruitment of a potential CEO. [note: 93] Notwithstanding this, the Plaintiff maintained that Nagender had not been given any assurances that he was going to be the Global CEO and the *status quo* remained. [note: 94] The Plaintiff said that any intention to revert to the original plan to make Nagender the next Global CEO would have been expressly recorded. [note: 95]

93 Based on the email of 14 January 2011, it seems clear to me that Nagender's position as at mid-

January 2011 was that he would stay with the Griffin Group and not resign. This change of heart is not surprising as he could probably tolerate the *status quo* but not when someone else was made Global CEO instead of him. That would result in too much of a loss of face for him.

94 In February 2011, George and Nagender went to Houston, USA, and Brazil to assess the operations of the Griffin entities there and to see if any improvements could be made. [note: 96] I accept the Defendants' argument that there was no reason for Nagender to be involved in any of these tasks, nor would Nagender want to take on any of these larger global roles, if he did not think that he had at least the chance of taking over as the Global CEO. [note: 97]

95 On 24 March 2011, Nagender sent a rather long email to the shareholders of the Griffin Group, which contained the following statement:

> I cannot but help add the issue in terms of the way the succession was offered to me and portrayed extensively to internal (offices and staff) and externally (Suppliers & Airlines) and then changed. This leaves me in a situation nobody wishes to be in. Inflexion played a role and definitely other shareholders did. This is a very negative situation both personally & professionally for me. Any changes in the CEOs office will have an impact on my decisions going forward and this is a responsibility the organisation has to understand & accept. Both [I]nflexion and George as CEO have, in their judgement, found me wanting on the step up, which I fully respect. However both need to respect my personal & professional stance on the subject. [note: 98]

96 For the Plaintiff, this was seen as yet another resignation threat, [note: 99] and that the bitter tone was strongly at odds with any belief that Nagender may have on still becoming the Global CEO. [note: 100] The Defendants' explanation for this email was that Nagender was simply writing down his opinion on what had not worked for him in the past year. [note: 101]

97 On 28 March 2011, George replied to Nagender's abovementioned email with a similarly lengthy response. Of note was the following paragraph:

> Nagender there was nothing more I wanted then for you to take over from me as CEO. There is no doubt you have an abundance of talent. I accept I made a mistake, I did present you as the person to take over from me in the near future, I said this to Griffin GM's to Amadeus and to Air France. I did this in the most genuine and spontaneous way because I do believe in you. It was a very painful decision on my part, which I took alone mainly for reasons that I have already touched on in this email. *You are not ready to become the global CEO of Griffin* … [note: 102]
>
> [emphasis added in italics]

98 In my view, this was a clear indication from George that Nagender would not be made the Global CEO. Nagender's evidence was that this was merely "another change in the scenario" and so he decided not to react. [note: 103] It might well be true that he decided not to react immediately. But I believe that from this point onwards, Nagender would have seen clearer signals that he might never be made the Global CEO. George had couched his email response to Nagender in palatable language that he was "not ready to become the Global CEO of Griffin" and perhaps at a later time he might possibly be. However, I am inclined to the view that Nagender would now be seriously considering his own future in the company that he had long worked very hard for. Yet, it is probably premature to say that he would have *immediately* come to a firm decision to leave the company upon learning of George's views.

99 Sometime in May 2011, there was a phone conversation between Porter, Khuman and Nagender during which it was explained to Nagender that George wished to step down later in 2011 and that a search was beginning immediately for a new, externally sourced CEO to replace him (George). [note: 104] I believe that this would be a much stronger signal to Nagender because there were now some plans for a definite change in Global CEO with George stepping down in a few months' time. Moreover with a new Global CEO to be sourced externally, it would be quite untenable for Nagender to stay. I believe Nagender would be pushed hard to make up his mind to resign. I can understand that resignation from a very senior position in a company that a person had long worked for would be a major and very difficult decision to make. No doubt that person would have to go through some long and hard thinking before finally reaching a firm decision to quit.

100 On 9 June 2011, George forwarded to the global shareholders an email he had sent to Gareth on 2 June 2011 admonishing Inflexion for its meddling in the business. Interestingly, it contained a line that said that the "activity for recruiting a CEO has to be postponed". [note: 105]

101 On 21 and 22 June 2011, Nagender resigned from the board of Griffin India and the Griffin Global board respectively. I view them as concrete steps taken by Nagender pursuant to a clear decision to resign which I believe must have been firmed up earlier. This reaction was additionally sparked by an email from Marcus attaching notes from a previous discussion [note: 106] and minutes from a global board meeting on 24 May 2011 in which Nagender was not in attendance. The latter contained the line "Singapore was discussed and an approach agreed". [note: 107] Nagender apparently considered "Singapore was discussed" to mean "Nagender was discussed" and took umbrage. [note: 108]

102 It is not disputed that Marcus called Nagender on 22 July 2011 to notify him of the possible appointment of one Mr Simon Morse as the executive chairman of the Griffin Group's board. [note: 109] Nagender recorded this conversation. He asked Lantone to retrieve the recording. Lantone then informed him that there were other phone recordings from the Plaintiff's phone extensions. Nagender asked Lantone to retrieve these files as well. He claimed that it was then that he came across certain conversations between George and Khuman on 20 June and 4 July 2011 which revealed to him "the scale of complicity between these two individuals" and he decided to quit because it "would be untenable to continue working with such manoeuvring occurring behind the scenes". [note: 110] I think this confirmed the decision that he had already made earlier to quit and a point of no return had now been reached for his decision to resign.

103 On 16 August 2011, Nagender finally acted and tendered his resignation as the managing director of the Plaintiff. [note: 111] On 19 September 2011, he also resigned from the Plaintiff's board of directors. [note: 112]

Analysis on the Global CEO succession issue

104 The Plaintiff's case was that Nagender knew in late 2010 and *definitely* before February 2011 (when the first of the New Entities, Quest Horizon, was incorporated) that he was not going to be appointed as the Global CEO. [note: 113]

105 The Defendant's case was that until mid-2011, there was no clear message from the Griffin Group that Nagender would not be made the Global CEO at any time. [note: 114] Moreover, the Defendants asserted that Nagender's position was that he would only leave the Plaintiff when he was *sure* that he would not be made the Global CEO, [note: 115] and that day only came sometime in July

2011.

106 In my view, it is unlikely that Nagender had conceived of a plan for revenge as early as February 2011, when he was supposed to have masterminded the setting up of Quest Horizon, which was eventually incorporated on 21 February 2011. Quest Horizon was allegedly the first of the New Entities which was formed to compete with the Plaintiff. Nagender was never given any conclusive indication that his appointment as the Global CEO was definitely off the table at this time. While the events of the Athens meeting on 12 January 2011 could not be said to be a clear indicator that the plan to make him the Global CEO had been reinstated, it was an example of the conflicting signals that Nagender had been getting. In fact, Nagender was appointed as the chairman of the management committee of the Griffin Group, and George even sent an email on 14 January 2011 to tell Porter that Nagender had decided to stay. This was because the management committee had agreed to put on hold the external recruitment of a potential CEO. In February 2011, George and Nagender visited the USA and Brazil to assess the Griffin Group's operations there and establish if improvements could be made. It does not appear to me that Nagender at this point of time was already harbouring a firm intention to resign. Why would Nagender want to be involved in any of these tasks and take on larger global roles if he had already made up his mind to resign at this time? Given Nagender's personality where he would not hesitate to make his displeasure known, I do not think it is likely that he would agree to take on these additional tasks in February 2011.

107 However, subsequently in an email dated 28 March 2011 (see [97] above), George told Nagender that he was not ready to be made the Global CEO. By this time, his relationship with George was already very strained. Furthermore, Nagender was told by Khuman and Porter sometime in May 2011 that there were plans to search for an external CEO to replace George, who wished to step down later in 2011. By now, he had been told by both the incumbent Global CEO and the chairman that he would not be stepping up to the Global CEO position. Nagender's resignations from the board of Griffin India and the Griffin Global board came swiftly thereafter on 21 and 22 June 2011 respectively. These resignations from the two boards indicate to me that Nagender would likely have made up his mind to resign by now. If it were otherwise, why would he resign from the Griffin India board and the Griffin Global board? However, Nagender gave a reasonable explanation why he made up his mind to resign only in July 2011 (see [102]). I accept Nagender's evidence to mean that, in his mind, his decision to resign had been firmed up to the point that he would not change his mind at all whatever the circumstances and even if the Plaintiff were to re-offer him the Global CEO position. He had crossed the Rubicon.

108 Based on the evidence set out above, I find that Nagender would likely have made a firm decision to quit the Plaintiff sometime between May and July 2011. In fact, as my subsequent analysis on one of the issues in this case will reveal, this timeframe can probably be further narrowed to be somewhere between 17 June and July 2011 (see [376] below). Although it is not possible to pin-point the specific date at which his resignation decision was finally made, what seems clear to me is that, as at February 2011, Nagender had *not* yet made up his mind to resign and it is unlikely that he would have started implementing a devious masterplan to undermine the Plaintiff, if there was even one at all. One inference is that the earlier planning and eventual incorporation of Quest Horizon on 21 February 2011 was more likely the independent private activity of its shareholders than one involving Nagender as the mastermind instigating these shareholders to join him in setting up a conglomerate to be spearheaded by him with Quest Horizon as a holding company in order to compete with the Plaintiff. Furthermore, I do not believe that any of the other Defendants would have shared any of the ill feelings that Nagender harboured, which arose from the Plaintiff's refusal to appoint him as Griffin's Global CEO.

109 I now examine the circumstances surrounding the setting up of the New Entities.

The setting up of the New Entities

The Defendants' evidence on Quest Horizon and Niado

110 According to the Defendants, the idea for Quest Horizon originated from discussions that Adella had in late 2010 with some of her colleagues, including Annie and Madhu Kumar ("Madhu"), who was the general manager of the Plaintiff's branch in Perth, Australia until his resignation on 4 October 2011. Adella had the idea of pooling her money with some of her colleagues to invest in preparation for retirement, and one of the investment ideas was to invest in property in Thailand. She also reached out to Nagender, who declined to participate. Instead, he told Adella that he would be happy to give them advice or assistance. [note: 116] Adella said it was Nagender who came up with the idea of incorporating a company. [note: 117] Adella also approached Leny but she similarly declined as she already had plans to invest in her father's vegetable export business in Medan. [note: 118] In the end, only Joanna, Annie, Madhu and Adella decided to participate. [note: 119]

111 In January 2011, Leny set up an online discussion group named new-venture-2011@googlegroups.com ("the Google Group"). Joanna said she had asked Leny to set up the Google Group to facilitate communications regarding the incorporation of Quest Horizon as Joanna was based in Sydney and Leny was more tech savvy than she was. [note: 120] Other than Annie, Joanna, Adella and Madhu, the Google Group also included Leny, Prasad and Nagender, even though the three persons had not expressed any interest in investing in Quest Horizon. Leny was a member because she helped set up the Google Group, while Prasad and Nagender were added so that their advice regarding matters of incorporation could be sought. [note: 121]

112 On 6 January 2011, Joanna sent an email to the Google Group stating: [note: 122]

> Hi Nagender,
>
> The following has been taken:
>
> - Universal Quest
>
> - Quest Capital
>
> - Quest Group
>
> - Quest International
>
> - Universal Quest
>
> - Quest Company
>
> - Venture Quest
>
> - Global Quest
>
> What about the following:
>
> - T-Quest (T-for team)

- Cosmic Quest

- Quest Horizon

Any other input?

113 Nagender replied on the same day saying "Quest Horizon looks good". [note: 123] As to why Nagender's input on Quest Horizon's name was sought, Nagender said he thought that Joanna was merely seeking his opinion out of courtesy. [note: 124] Adella also testified that the future Quest Horizon shareholders had already decided on Quest Horizon as the name for their new enterprise, so the fact that Nagender thought the same way was merely coincidence. [note: 125]

114 The original idea of purchasing property in Thailand was later abandoned after Adella found out about the restrictions on foreign ownership there. [note: 126] Despite this setback, Madhu, Joanna, Annie and Adella decided to proceed with the pooling of their moneys and the incorporation of Quest Horizon in order to be prepared for any investment opportunities which might arise, although they did not have any firm decision as to what they were going to do. [note: 127]

115 On 21 February 2011, Quest Horizon was incorporated with Annie and Adella as directors. There were four shareholders – Joanna (10%), Annie (10%), Adella (35%) and Madhu (45%) – and their respective shareholdings reflected their contributions. The initial paid up capital was $250,000.

116 Prasad did not end up assisting in the incorporation of Quest Horizon (which was done with the assistance of KhattarWong LLP). However, he helped by liaising with IP Consultants Pte Ltd ("IP Consultants") which Quest Horizon had engaged as its corporate secretary. [note: 128]

117 In March 2011, Quest Horizon email accounts were created for the members of the Google Group. Leny (allegedly at Joanna and Annie's request) had asked Sandeep of Lantone to set up an email domain for Quest Horizon. As for Nagender, they created an account for him out of politeness. [note: 129] Nagender claimed he did not know he had a Quest Horizon email account. [note: 130] Quest Horizon's email access records showed that Nagender's email account was created on 25 March 2011 and last accessed mere days later on 31 March 2011, [note: 131] indicating that he did not use the email account much, if at all.

118 Quest Horizon's first (and only) corporate investment was in Niado. According to the Defendants, the opportunity first came about when Cornel approached Nagender with a proposal to collaborate on setting up a business-to-business booking system relating to travel procurement. [note: 132] By way of background, Cornel had known Nagender for a long time. [note: 133] Cornel's company, Net Vision, had previously delivered a product named Transocean Reservation Exchange or "TREX" to the Plaintiff, which was used to meet the travel requirements of one of the Plaintiff's major customers, Transocean Inc. [note: 134] Cornel and Nagender had a "casual discussion" regarding Cornel's proposal in late 2010, but the main discussion took place sometime in early March 2011. [note: 135] Cornel also approached Sandeep, who agreed to participate in this venture with a small stake. [note: 136]

119 Cornel testified that Nagender declined his proposal around a week or two after the discussion in early March 2011 without saying why. [note: 137] Nagender suggested that Cornel approach "the

ladies" – namely, Joanna, Annie and Adella. [note: 138] Cornel had worked closely with the three of them, as well as Leny, while on the TREX project. [note: 139] Cornel said he decided to talk to them because they had the expertise from a travel agent's perspective, which was the type of input he needed for the project. [note: 140] Cornel stated that Joanna, Annie and Adella agreed to his proposal towards the end of March 2011. [note: 141] I believe the evidence of Cornel, and in particular, that he had approached Nagender, who declined to join in the venture. I pause here to observe that if there was a conglomerate spearheaded by Nagender to compete with the Plaintiff in the travel agency business, it would be very odd that he would have allowed the intended holding company of that conglomerate, *ie*, Quest Horizon – which Nagender was supposed to have a 45% interest with Madhu as his nominee according to the Plaintiff (which will be discussed subsequently) – to take up a 45% share in Niado, when Nagender showed no interest in the project proposed by Cornel in the first place.

120 Sometime in the middle of April 2011, [note: 142] Adella and Annie started sourcing for business premises for Niado, as well as Quest Horizon. [note: 143] As for why the search started so quickly, Cornel's evidence was that the lease for Net Vision was also expiring. Net Vision therefore needed a space quickly and it made sense to get premises together with Niado. [note: 144] The decision to take two adjacent office units at Changi Business Park ("the Changi Offices") was made by 25 April 2011. [note: 145] Again, I have no reason to disbelieve this part of Cornel's evidence.

121 Niado was incorporated on 27 April 2011 with a paid-up capital of $80,000, and with Annie, Cornel and Sandeep as directors. [note: 146] Quest Horizon and Cornel each held 45% of the shares while Sandeep held the remaining 10%. Cornel testified that the word "Niado" came from the names of his two children. [note: 147]

122 During this period, the shareholders of Quest Horizon also injected additional capital into it. According to Joanna, this was for the purpose of defraying rental and renovation costs. [note: 148] The share capital of Quest Horizon was therefore increased to $375,000. [note: 149] Later in July 2011, there were discussions to again increase the share capital of the company to $410,000, [note: 150] but this was shelved in favour of infusing funds by way of shareholders' loans instead.

123 On 31 May 2011, Niado and Quest Horizon signed tenancy agreements for the Changi Offices. Quest Horizon was the named tenant for unit no 08-03 [note: 151] while Niado was the named tenant for unit no 08-04. [note: 152] The total rent for the Changi Offices came up to a combined $11,323.11 a month. [note: 153]

124 Quest Horizon's unit in the Changi Offices would eventually be shared by the following companies: Net Vision, BHEA Tech, EGSoft Pte Ltd ("EGSoft"), and Signature Sparks. EGSoft was owned by one of the Defendants' ex-colleagues, Mr Yashpal Singh. While these parties contributed to the rent, Quest Horizon did not charge them a premium. Adella explained that the sharing of premises was merely a means of reducing the rent. [note: 154] I accept Adella's evidence on this point.

125 Leny had an active role in the renovation of the Changi Offices. Leny said she had agreed to help because Madhu and Joanna were in Australia while Adella and Annie were busy with the Plaintiff's work. By this time, Leny had already resigned and was serving the tail end of her notice period, which meant that she had more time. [note: 155]

126 Adella, Annie and Leny decided to engage D'Perception to assist Quest Horizon with the renovation of the Changi Offices. D'Perception had renovated the Plaintiff's premises in the past. Leny asked Nagender to put her in touch with the firm [note: 156] and Nagender called Andy, who was its owner. [note: 157] Adella said that the cost of renovation was about $130,000 to $140,000. [note: 158]

Analysis

127 The Plaintiff argued that there were numerous suspicious circumstances that gave rise to the inference that Quest Horizon was meant to be much more than a passive investment company: [note: 159]

(a) the Defendants had differing views as to why and how Quest Horizon came to be formed;

(b) Quest Horizon's activities were inconsistent with a passive investment vehicle;

(c) the named directors and shareholders did not appear to have been the driving force behind Quest Horizon; and

(d) the evidence supported the Plaintiff's case that Quest Horizon was incorporated as the holding company in Nagender's conglomerate of companies.

128 I will not deal in this judgment with each and every one of the numerous arguments raised by the Plaintiff as I am of the view that the Defendants have given adequate explanations for all that transpired. I will, however, canvass some of the Plaintiff's more important arguments.

129 Regarding the alleged inconsistencies in the Defendants' evidence surrounding the formation of Quest Horizon, these were all minor discrepancies at best. For example, whether the initial discussion to pool their monies together for investment purposes took place around Adella's desk or in a conference room [note: 160] was immaterial and this is the sort of detail that can easily slip from one's mind. As for the differences in the Defendants' accounts of the purpose and idea behind Quest Horizon's formation, it was merely a case of different individuals using different ways or turns of phrase to express the same thing. For example, Joanna mentioned that the idea of pooling their savings was "really for growing [their] savings faster" [note: 161] while Leny said it was a way to "pool funds together for investment". [note: 162]

130 The Plaintiff also argued that Quest Horizon was not just a passive investment vehicle, as a passive investment vehicle would not have selected an unestablished start-up like Niado as a major investment. It was hardly the type of stable, low-risk investment that people looking to safeguard their capital would normally invest in. [note: 163]

131 There is nothing out of the ordinary for the shareholders of Quest Horizon to select Niado as its major investment. Cornel was a persuasive man who was clearly not short on confidence. He made big promises of big profits – his projected valuation of Niado was a head-turning $50m to $100m. [note: 164] While investing in Niado was clearly a risk, it was not an uneducated one since Joanna, Adella and Annie had worked with Cornel before and knew how well TREX had worked for the Plaintiff. I am not surprised that the shareholders of Quest Horizon would have invested in Niado despite it being a start-up company because they shared in Cornel's vision and believed in his promises of high returns at that time. Nagender, however, showed no interest for reasons of his own. It would appear that Niado has remained a struggling start-up and Nagender was wise not to have invested in it.

132 The Plaintiff argued that if Cornel so strongly desired the particular expertise of Quest Horizon's shareholders, it was strange that he only required Annie, Adella and Joanna to "answer" his "questions". [note: 165] I do not find this strange because while Cornel might have the relevant domain knowledge in software development, he needed the users' input and perspective to help him develop the software system. For this, Annie, Adella and Joanna would be capable of providing the necessary users' input. I accept Cornel's evidence that he wanted to have a travel agent's perspective and answering his questions was really all they could do to help. In any event, they would not have the full picture of what was involved in developing the whole system. [note: 166]

133 The Plaintiff also raised several points regarding Quest Horizon's leasing of the Changi Offices, which are summarised as follows: [note: 167]

(a) A passive investment vehicle would not need any business space of its own and the taking of actual office space would mean significant overhead costs.

(b) Niado was not active in 2011 and would not have required such a large space. Quest Horizon also took up office space beyond what Niado needed.

(c) Even if the additional space was taken so that Niado could expand, the rush to obtain the tenancy of the Changi Offices was inexplicable.

(d) Therefore, the taking of the tenancy wholly for Niado's benefit was unbelievable. The lease of the Changi Offices must have been for Quest Horizon's own benefit, which does not accord with the stated purpose of Quest Horizon being a passive investment company.

134 It was certainly possible for Quest Horizon to have acquired larger premises than it needed for Niado's future expansion. I also accept Cornel's explanation that he was also looking for new premises for Net Vision at the same time, which accounted for the hurry.

135 The Plaintiff then made a number of arguments that essentially boiled down to the unlikelihood of a passive investment company incurring so much money on overhead costs and on renovation costs relating to the Changi Offices, without trying to earn a profit from those sharing the premises. Moreover, it appeared that Quest Horizon effectively bore Niado's share of the rent. It also appeared to bear a number of significant costs which were not redistributed to the rest of the New Entities, such as those in relation to electrical works, fire protection works and so on. The Plaintiff further highlighted that Quest Horizon had bought 26 Dell computers which the Defendants claimed were bought primarily for Niado's usage; yet Cornel had stated that the employees of both Net Vision and Niado used their own laptops and not the Dell monitors. [note: 168]

136 First of all, I note that Quest Horizon had carefully apportioned the amounts that each of the entities sharing the premises had to contribute towards the rent and renovation costs. [note: 169] This goes some way towards showing that they were distinct entities that kept their own accounts. For example, there were invoices issued to BHEA Tech for its use of the Changi Offices, even though BHEA Tech is said to be a part of Nagender's purported conglomerate. [note: 170] As for why Quest Horizon did not charge a premium to the other companies based there, I accept that it was because Quest Horizon's shareholders did not view the sharing of premises as a money-making venture but rather as a means of reducing the rent which Quest Horizon had to pay. [note: 171] It is certainly reasonable for them to have felt that making money out of close friends and colleagues by charging a

premium for the space shared was not an entirely palatable thing to do.

137 Although Quest Horizon allowed Niado to use the Changi Offices rent-free, even incurring additional costs on Niado's behalf, this was consistent with it being a shareholder and investor in Niado. I accept the Defendants' argument that these expenses were essentially Quest Horizon's continued investment in Niado. As for the Dell monitors, they could have been intended for Niado's use, even if the employees never actually used it. [note: 172] Moreover, it was Cornel's evidence that he was putting in long hours at Niado [note: 173] for free. [note: 174] In these circumstances, it was only fair for Quest Horizon, as the other major shareholder of Niado, to bear a greater share of the resulting expenses, a point Cornel alluded to during cross-examination. [note: 175] Moreover, if the shareholders of Quest Horizon had bought into Cornel's sales pitch, the amounts spent by Quest Horizon were relatively low compared to the potential gains. I should also add that, rather strangely, one of the Plaintiff's arguments that Niado could not have been merely an investment by Quest Horizon was the fact that its shareholders chose not to pump *more* money into Niado when they could have. [note: 176] It seems that, for the Plaintiff, Quest Horizon was, at the same time, both spending too much and too little money on Niado.

138 The Plaintiff also pointed out that some of the other Defendants were more active in Quest Horizon than its shareholders. For example, even though Madhu held 45% of the shares in Quest Horizon, his participation appeared to be minimal, [note: 177] while Joanna (a 10% shareholder) was much more involved. [note: 178] The Plaintiff even suggested that Madhu was really a proxy for Nagender, as I have alluded to at [119] above. [note: 179]

139 It is not unusual for a shareholder's involvement in a company to be disproportionate to his or her shareholding. The Plaintiff's assertion that Madhu was Nagender's proxy was not backed up by credible evidence and indeed, as the Defendants highlighted, was never even pleaded by the Plaintiff. [note: 180] Madhu's perceived lack of involvement was justified by the fact that he was based in Australia and was thus not in the best position to comment on many matters. I agree with the Defendants that it is entirely plausible for a shareholder to leave the running of a business to others who are better placed to do so. [note: 181]

140 Nagender, in particular, was singled out for having an "unusual level of involvement in Quest Horizon". [note: 182] For example, the Plaintiff argued that it was actually *Nagender* who chose the Quest Horizon name based on his email exchange with Joanna (see [112]–[113] above). [note: 183] There is nothing strange at all about Joanna asking Nagender for his opinion or that the name Nagender liked (out of three options) also turned out to be the name chosen for the company. People can like the same things.

141 However, I found that Nagender's participation in the renovation of the Changi Offices raises more legitimate questions. It was Andy's evidence that when Nagender called him to engage D'Perception for the renovation works, Nagender referred to it as the "QH Project" and that it was a private project undertaken by him and Leny. Andy also alleged that Nagender had given him strict instructions that the "QH Project" was not to be mentioned to the Plaintiff and never to be discussed at meetings at the Plaintiff's office. [note: 184]

142 Andy's impression that Quest Horizon was a "private project" by Nagender and Leny is consistent with an email Andy sent to his employees on 9 May 2011 which stated: [note: 185]

> … this project is although by the boss of Griffin (our past client), BUT it is not to be associated with Griffin as this is a PRIVATE project by Nagendar [*sic*] and Leny and hence to be referred to as QH PROJECT and NOT to be mentioned when in GRIFFIN and all meetings pertaining to this project is to be carryout OUTSIDE of GRIFFIN premises unless Nagendar arrange to be in his GRIFFIN Office. …

143 The way that this email was drafted indicates to me that Nagender had impressed upon Andy that the renovation of the Changi Offices was to be kept under wraps. While I accept that this could potentially raise an inference that Nagender was more closely associated to Quest Horizon than he was willing to reveal, I note that there are other possibilities which may affect the strength of the inference raised.

144 For example, I note that during cross-examination Andy was unable to confirm whether Nagender did say that he *personally* wanted to engage D'Perception. Andy said this impression came from the fact that only Nagender had spoken to him at the point. [note: 186] Indeed, Andy readily admitted that he could not say who the "key person" behind the project was. [note: 187]

145 Similarly, an email from Andy's employee with the header "QH Project @ Signature Park [*sic*] for Nagendar [*sic*]" was sent to Leny and Joanna, and also copied to Nagender, at 11.29am on 9 May 2011. [note: 188] None of the Defendants informed the employee in writing that it was not actually Nagender's project although Leny and Joanna claimed that they had done so orally. [note: 189] However, whether or not a correction was made orally or even at all was not critical as the failure to do so did not indicate that Joanna, Leny and Nagender accepted the email header as accurate. Furthermore, it was such a minor matter that I would not generally expect any of the Defendants to bother to inform the employee to correct the header even if they had found it to be inaccurate.

146 Andy also claimed that he saw Nagender at the Changi Offices during a site visit on 9 May 2011. [note: 190] The Defendants argued that Andy could not possibly have seen Nagender because Andy himself had not attended the site visit, according to an email by Andy containing the following final paragraph: [note: 191]

> P/S: Leny and Joanna – I will be tied up this afternoon but please liaise with Sherine (hp [redacted]), she will assist me to oversee the site marking, thks.

147 While Andy conceded during cross-examination that it was *possible* that he was not actually there, [note: 192] I accept that Andy was likely to have been present. Andy's recollection regarding Nagender's behaviour at the site visit was vivid. This indicated that Nagender gave some input on the renovation of the Changi Offices at the beginning. However, it does not appear that his preferences were decisive, as one might expect if he was the mastermind of the whole affair. In any event, I note that Nagender was not copied on any emails in relation to the renovation after 10 May 2011 [note: 193] and Andy also agreed that his dealings with Nagender were less after that date. [note: 194]

148 There was also the question of why, if Nagender was not interested in Quest Horizon, he was seen multiple times at the Changi Offices, including by Cornel and Indraneel. I note, however, that Cornel only saw Nagender *after* the renovations had been completed [note: 195] and Indraneel only recollected seeing Nagender there from July onwards. [note: 196]

149 Nagender's activities in the Changi Offices after June 2011 can be explained by the fact that

he had a *personal* and separate interest in the Changi Offices, as it was his evidence that he had identified it as the possible premises for what he claimed to be his wife's venture (*ie*, QRS) by that date. [note: 197] However, I do find it curious why Nagender was so involved in the renovation of the Changi Offices in early May 2011 when Kavita's interest in starting a business (which later became QRS) began only in late June 2011 apparently. This raises suspicions whether Nagender already had a substantial indirect interest in Quest Horizon, perhaps through Madhu, which is part of the Plaintiff's case theory.

150 This is certainly not a case where all the evidence clearly points in one direction, in which case it will be relatively easy to decide. When the evidence points both ways and where inferences drawn also point in different directions, I have to assess the evidence that supports the Plaintiff's case on one side and also that in support of the Defendants' case on the other side. I have to carefully weigh and consider all the evidence as a whole and make findings of fact on a balance of probabilities, having regard to the fact that the Plaintiff bears the burden to prove its claims. In other words, the issue of whether Nagender had any material involvement in Quest Horizon or whether Quest Horizon was part of a conglomerate below requires a *global* appreciation of the case. I will return to this question below at [277].

The Defendants' evidence on BHEA Tech

151 The Defendants' case was that the incorporation of BHEA Tech resulted from a request in early 2011 by Indraneel and Mr Ram Kumar ("Ram"), the owners of BHEA India, for Nagender's assistance with the setting up of a subsidiary in Singapore. [note: 198] Indraneel's evidence was that BHEA India had been recently engaged by a new customer in Singapore, the Banyan Tree Group, and they needed to have a presence in Singapore to facilitate doing business in Singapore. [note: 199]

152 At the time, BHEA India was engaged by the Plaintiff (through Lantone, the Plaintiff's IT services provider) to customise the Plaintiff's CRM system, which was known as SugarCRM. [note: 200] However, in or around July 2010, the Griffin Group began an initiative to adopt a common CRM system across all the entities in the Griffin Group. [note: 201] Pursuant to this, BHEA India was asked to submit a response to the Request for Proposal ("RFP"). Indraneel said that he found the RFP confusing as he had thought that the SugarCRM customisation they had been engaged for was for the entire Griffin Group. Nevertheless, BHEA India submitted its response to the RFP on 30 March 2011. [note: 202] In any event, BHEA India did not win the tender. On 22 July 2011, the global CRM tender was won by Salesforce, Inc, the vendor of a CRM system known as Salesforce. [note: 203] This meant that the version of SugarCRM the Plaintiff was using would (as Nagender admitted) eventually become obsolete. [note: 204]

153 Nagender agreed to assist in the incorporation of BHEA Tech since he saw no conflict of interest between the Plaintiff and BHEA India. [note: 205] Moreover, Indraneel and Nagender had an understanding that if the Plaintiff assisted BHEA India with the incorporation of the Singapore entity, Indraneel would not charge the Plaintiff for most of his subsequent visits to Singapore to discuss the ongoing implementation of the customised SugarCRM system. [note: 206] During this time, Indraneel also asked Nagender whether he would be interested in becoming a shareholder in BHEA Tech. Nagender did not give Indraneel an answer immediately. [note: 207]

154 Nagender subsequently instructed Prasad to assist with the incorporation of BHEA Tech. [note: 208] In turn, Prasad asked Annie and Adella if they were willing to help by acting as the first

shareholders and directors of BHEA Tech before BHEA India took over. Annie and Adella agreed. Prasad decided to incorporate BHEA Tech using IP Consultants since he had already been in contact with IP Consultants for Quest Horizon matters. [note: 209]

155 In late April 2011, Indraneel told Annie that BHEA India was looking for office premises for BHEA Tech in Singapore, upon which Annie offered to share Quest Horizon's office premises with BHEA Tech. Indraneel eventually agreed as it was cheaper than their other options. [note: 210]

156 BHEA Tech was incorporated on 27 April 2011 with Annie and Adella as directors and an initial share capital of $100 in 100 shares solely owned by Annie. [note: 211] Indraneel said this arrangement was temporary as BHEA India needed a local director on the board of BHEA Tech and he wanted to incorporate BHEA Tech quickly to begin business with potential clients in Singapore, and the process of collating the necessary documentation from BHEA India's shareholders would have taken some time. [note: 212]

157 In May 2011, Nagender finally declined Indraneel's earlier offer for him to invest in BHEA Tech. [note: 213] Nagender told Indraneel that if BHEA India was keen to have a partner in Singapore, he could approach Quest Horizon which was looking to invest in business ventures. Indraneel and Ram thought it was a good idea as they knew the shareholders of Quest Horizon and were going to share premises with Quest Horizon. [note: 214]

158 In June 2011, Ram and Indraneel visited Singapore and held discussions with Joanna. At the meeting, Joanna said that Quest Horizon would need to consider the matter further. Nevertheless, they carried on the discussions on the assumption that Quest Horizon would subscribe to about a 7% stake in BHEA Tech. Prasad assisted in working out a possible shareholding plan on this basis and it was then circulated under the cover of his email dated 9 June 2011. [note: 215] Ultimately, Quest Horizon did not proceed with the proposed investment in BHEA Tech, which Joanna said was because of fears of conflicts of interest. [note: 216] The Quest Horizon shareholders decided not to proceed with the proposed investment in BHEA Tech, a decision they came to themselves, without any input from Prasad or Nagender. [note: 217] Also in June 2011, Indraneel said he again approached Nagender (through Prasad) to see if he was interested in investing in BHEA Tech by way of a loan note, but was again rebuffed at the end of that month. [note: 218] I have no reason to disbelieve the evidence of Indraneel.

159 On 22 August 2011, a resolution was passed for the allotment of 1,900 new shares in BHEA Tech to the shareholders of BHEA India. [note: 219] On 12 September 2011, Annie transferred all her shares in BHEA Tech to Indraneel. [note: 220] On 28 September 2011, Adella resigned as a director from BHEA Tech. [note: 221] Further, on 1 October 2011, Annie sought to resign from BHEA Tech but her resignation was not accepted by BHEA Tech, which requested that she remain as a local director until it found a replacement. She remained a director of BHEA Tech until 15 April 2013. [note: 222] BHEA Tech also shifted out of the Changi Offices sometime in March or April 2013. [note: 223]

160 Ultimately, Annie and Adella only acted as nominee directors [note: 224] and were not paid any directors' fees. [note: 225] None of the Defendants have any current interest in BHEA Tech.

Analysis

161 The Plaintiff submitted that the Defendants' explanations that their involvement in BHEA Tech was only to assist in its incorporation and be temporary directors was completely implausible:

(a) It was incredible that Annie and Adella would have so obligingly involved themselves in BHEA Tech merely on the orders of Prasad, considering that being the director of a company carries with it serious obligations. [note: 226]

(b) When the Plaintiff confronted Annie and Adella with the facts of their involvement in BHEA Tech, they never said that they had been involved in BHEA Tech at the express direction of the Plaintiff. [note: 227]

(c) The Defendants had engaged in numerous other activities that went beyond assisting in BHEA Tech's incorporation, such as the fact that Quest Horizon considered taking a 7% shareholding in BHEA Tech, and certain alleged payments to BHEA India from Quest Horizon and Nagender. [note: 228]

(d) Annie and Adella, being senior operations employees of the Plaintiff, were appointed as directors of BHEA Tech instead of someone completely uninvolved in the operations of the Plaintiff and its use of CRM systems. [note: 229]

(e) Two local directors were appointed instead of just one (as required by the Accounting and Corporate Regulatory Authority) and Annie became a shareholder when there is no requirement for a local shareholder; and [note: 230]

(f) The Defendants used their Quest Horizon emails and/or personal email addresses while dealing with BHEA Tech. [note: 231]

162 The Defendants had adequate explanations for each of the issues above. For example, there was nothing strange about asking Adella and Annie to help, or the fact that they agreed. Certainly, Prasad could have directed Indraneel and Ram to a third-party corporate secretary instead of Adella and Annie – but that would not have been consistent with the generation of goodwill with BHEA India, as the Defendants' argued. [note: 232] Annie being the first shareholder was also adequately explained by Prasad being proactive and starting the process of incorporation before the exact shareholding details could be finalised. [note: 233]

163 As for the alleged payments to BHEA Tech, Prasad did use $1,900 of Quest Horizon's funds for the purpose of increasing BHEA Tech's share capital, but it was clear that it was merely an advance (which of course implies that the sum should be repaid). [note: 234] The Plaintiff had also relied on certain internal accounting related documents that seemed to show that Quest Horizon had made other direct payments to BHEA India, [note: 235] but this was contradicted by BHEA India's accounts which showed that it was Lantone that settled these bills. [note: 236]

164 Nagender admitted that while he did make a number of direct payments to BHEA India, these were in respect of certain bills owed by the Plaintiff that had been pending for some time. As these sums were in Indian rupees, he remitted them from his own account first, before claiming for reimbursements. [note: 237]

165 As to the fact that Quest Horizon considered investing in BHEA Tech, this is a neutral factor. It

does not point to BHEA Tech being incorporated as part of a conglomerate, and the existence of discussions that came to nought may even point in the opposite direction.

166 Crucially, Piyush, a witness for the Plaintiff who had been involved in asking BHEA Tech's company secretary to create necessary resolutions to make BHEA India's directors and shareholders the directors and shareholders of BHEA Tech, was certain that the intention was for BHEA Tech to be owned and controlled by the shareholders of BHEA India, [note: 238] and not Nagender. [note: 239] He even said he *definitely* knew that Adella and Annie were involved *purely* because there was no local director from BHEA India. [note: 240]

167 On the whole, I believe the evidence given by Indraneel and the Defendants in relation to the circumstances surrounding the setting up of BHEA Tech, and the question of why Adella and Annie were made directors of BHEA Tech. I do not accept the submissions of the Plaintiff that BHEA Tech was also a part of the alleged conglomerate.

The Defendants' evidence on Q4T Singapore and Q4T Australia

168 According to Rahul, he learnt in early 2011 that Nagender's anticipated promotion to the Global CEO position might be aborted and that Nagender might remain with the Plaintiff in Singapore. Soon after, he found out about Leny's resignation in February 2011. [note: 241]

169 In May 2011, he heard from Leny that Ali might possibly be placed in charge of operations in the Asia Pacific region. This placed further doubts in Rahul's mind as to who would be in charge of the Plaintiff in the future. [note: 242] He had worked with Ali previously and had an unhappy experience. [note: 243] Rahul discussed this with Ajay, who was also not fond of Ali. [note: 244] Ajay and Rahul then decided to set up their own travel company ahead of tendering their respective resignations. Rahul claimed that he had no intention of directly competing with the Plaintiff. His plan was to set up an office from home and to service a few clients from any industry, whether it was leisure, corporate, marine or offshore. [note: 245]

170 As neither Rahul nor Ajay had any prior experience in incorporating a company, they approached Prasad sometime in May 2011 for assistance. Prasad agreed to assist Rahul and Ajay on the condition that he would notify Nagender of their plans. Rahul and Ajay agreed. [note: 246] Prasad gave evidence that he knew that it was wrong for him to help Rahul and Ajay set up a business that dealt with the same core business as his employer, but he justified this by saying that he sensed that the two men were "disturbed" and he wanted to "hold them than allow them to move out". [note: 247]

171 It is unclear how long Rahul and Ajay took to decide to incorporate Q4T Singapore. On the stand, Rahul said this decision was made "probably within a day or two" after hearing from Leny about Ali possibly taking charge of operations in the Asia Pacific region. [note: 248] This is consistent with Ajay's AEIC, which indicated that they came up with a plan the same evening that Rahul talked to him about what he had heard from Leny, before speaking with Prasad the next day. [note: 249] However, Ajay attempted to resile from the position in his AEIC during cross-examination when he indicated that there was more than one discussion over two or three days. [note: 250]

172 On 31 May 2011, Prasad sent IP Consultants an email to request that it arrange for the incorporation of a new company with the name "Q4T Management Pte Ltd". [note: 251] Prasad claimed he meant to copy Nagender in his email to IP Consultants in order to inform him about Rahul and

Ajay's plans but inadvertently entered an erroneous email address nxxxxxxxx@gmail.com ("the Disputed Email Address"), which did not belong to Nagender. Nagender's personal email is "nrxxxxxxxx@gmail.com" (with an "r" after "n"). [note: 252] Nagender therefore did not receive this email. [note: 253]

173 Around this time, Ajay contacted his good friend, Ms Apoorva Madhu Vuddandi ("Apoorva"), to ask her to incorporate Q4T Australia as a personal favour to him. [note: 254] Apoorva is Madhu's daughter and a former employee of Griffin Australia. Ajay claimed that he had wanted to set up Q4T Australia because it was cheaper to issue some types of tickets from Australia than it was to do so in Singapore. [note: 255] Ajay claimed he did this on his own volition without telling anyone else, not even Rahul, [note: 256] and Rahul claimed that he only learnt of Q4T Australia's existence on 1 November 2013 when the company search on Q4T Australia was disclosed. [note: 257]

174 On 31 May 2011, the application for registration of Q4T Australia as a proprietary company was made and processed in Australia. Q4T Australia was incorporated on the same day, with Apoorva as the sole shareholder and director. [note: 258]

175 On 1 June 2011, Prasad sent a follow-up email to IP Consultants, copying Annie and Adella, stating that the business address for Q4T Singapore would be the Changi Offices. [note: 259] His stated reason for using that address was to allow him to monitor all incoming mails to Q4T Singapore. [note: 260] It was to make sure that Rahul and Ajay did not engage in any activities using Q4T Singapore that might be in conflict with their duties to the Plaintiff.

176 Q4T Singapore was incorporated on 23 June 2011 with Rahul and Ajay as directors each holding 50% of the shares. The paid up share capital was $100. [note: 261]

177 Prasad claimed that, on the same day, he approached Adella to discuss the issue of Rahul and Ajay incorporating Q4T Singapore. [note: 262] After she heard about this, she told Prasad that what Ajay and Rahul had done was not right and that they would have to speak to Nagender about it when he returned to Singapore. [note: 263] In the meantime, Adella spoke with Rahul about the matter. [note: 264]

178 An alleged meeting about Q4T Singapore took place when Nagender returned to the office sometime in end June 2011. Nagender, Prasad, Adella, Rahul and Ajay were involved. Nagender instructed Rahul and Ajay to stop all activity. [note: 265] He also instructed Adella and Prasad to keep tabs on Rahul and Ajay. [note: 266]

179 It was admitted that no steps were taken to deregister Q4T Singapore after this. [note: 267] Instead, on 6 July 2011, Prasad sent another email to IP Consultants stating that Q4T Singapore's mailing address was to be changed to Quest Horizon's office premises. [note: 268] Prasad claimed that this was done as a precautionary measure to keep an eye on Q4T Singapore. [note: 269]

180 No activities had ever been carried out under Q4T Singapore. Similarly, Q4T Australia was never active and was deregistered on 25 December 2011. [note: 270]

Analysis

181 The Plaintiff argued that Q4T Singapore was not just a small-scale business for Rahul and Ajay's benefit but the travel arm of Nagender's alleged conglomerate. [note: 271] In this regard, the Plaintiff relied on the following arguments:

(a) There were inconsistencies between Rahul and Ajay's version of events in their AEICs. [note: 272]

(b) Q4T Singapore and Q4T Australia must have been conceptualised before May 2011 because of the speed of incorporation. [note: 273]

(c) The fact that Q4T Australia was even incorporated showed that Q4T Singapore was meant to be established on a bigger scale than a home business. [note: 274]

(d) If Nagender truly gave firm instructions that Q4T Singapore had to cease all operations, the parties involved would have immediately deregistered the company. [note: 275]

(e) There was an incident on 25 September 2011 where Rahul visited Nagender at his house for dinner and asked Nagender for advice on how to plan a budget. Nagender had advised Rahul *prior* to being informed that Rahul had resigned. [note: 276] Nagender's *laissez faire* attitude in providing his assistance indicated that Q4T Singapore was in fact Nagender's own brainchild and explained why Nagender was not surprised that Rahul would ask for his help. [note: 277]

(f) Prasad's involvement in Q4T Singapore's incorporation showed that his involvement was premeditated, as Prasad would not have assisted in the incorporation of the company if he had really wanted to stop this travel agency from starting. [note: 278]

(g) Apoorva's involvement in Q4T Australia could not have been mere coincidence, since she is the daughter of Madhu, who is the largest single shareholder of Quest Horizon. [note: 279]

(h) The fact that Q4T Singapore would potentially share the Changi Offices was another indication of a link. [note: 280]

182 While there were certainly inconsistencies between Rahul and Ajay's accounts, I do not think these differences rendered their evidence entirely unreliable. Much of it related to the different timeframes provided by the two individuals, but it is obviously very difficult for two people to remember exactly when certain events took place. Rahul also generally gave more details of the discussions with Adella and Nagender, but that is also not a material inconsistency.

183 By Rahul and Ajay's account, the time between when they began discussing Q4T Singapore and the beginning of the incorporation process was a short one. While the timeframe was short, it was not impossibly so, especially when Rahul and Ajay were motivated by their dislike for Ali. In fact, the Plaintiff seems to have exaggerated certain details to make the timeline seem even tighter than it actually was. For example, in its closing submissions, the Plaintiff said that it was "undisputed" that the decision to incorporate Q4T Singapore was finalised only on 30 May 2011, which would mean that Prasad had written to IP Consultants regarding the incorporation of Q4T Singapore the same day that Rahul and Ajay approached him, which would be 31 May 2011. [note: 281] Yet, Ajay *expressly denied* that it had to be 30 May 2011 during cross-examination. [note: 282] Similarly, Prasad said that Ajay and Rahul met him a few days before he sent the email. [note: 283] The 30 May 2011 date seems to

have come from the fact that, after saying that the discussion took place in late May 2011, Ajay agreed to the suggestion by Plaintiff's counsel during cross-examination that late May would be the "last week of May", after which counsel stated that the last week of May 2011 started on 30 May (presumably because that was the date of the last Monday of May 2011). [note: 284] However, Ajay subsequently clarified that he meant 23 to 31 May 2011. [note: 285] While the week of 23 May 2011 is technically the penultimate week of May, witnesses are not expected to give evidence with such linguistic precision.

184 Similarly, Ajay had said that he only called Apoorva after finalising the decision to incorporate Q4T Singapore. The Plaintiff seized on this point, and argued that as Q4T Australia was incorporated on 31 May 2011, Ajay must have either called Apoorva to go ahead on the same day he spoke to Rahul or very early the next day. [note: 286] But this is again only the case if we accept that the date the decision was made to be 30 May 2011.

185 The Defendants argued that Q4T Singapore would not be considered to be competitive with the Plaintiff as the Plaintiff offered specialist services while Q4T Singapore would only have been a generalist travel agent. I agree that two companies in a field as broad as the travel agency business may not necessarily compete for the same customers. Trying to discern the potential customer base of a company that ultimately existed only in name is a futile exercise with the dearth of documentary evidence about the company's intended purpose. Nevertheless, I am inclined to the view that Q4T Singapore would be competitive with the Plaintiff on a very small scale if it remained only a small-scale home-based travel agency. If it expands its travel agency business into more areas in the future as it grows, then it will have the potential to compete with the Plaintiff on a bigger scale.

186 The Plaintiff questioned the Defendants' evidence that Nagender had rebuked Rahul and Ajay for incorporating Q4T Singapore. The Plaintiff argued that if Nagender had really given firm instructions that Q4T Singapore was to cease all operations, the natural reaction would have been for all parties involved to immediately deregister the company. [note: 287]

187 While I accept that Prasad's subsequent actions appear to be inconsistent with Nagender's orders, I do note however that no further steps were taken by Q4T Singapore to carry out its intended business, such as by applying for the necessary licenses required to carry out the business of a travel agent. After weighing the evidence from several witnesses, I am inclined on balance to believe that Nagender had reprimanded Rahul and Ajay for incorporating Q4T Singapore.

188 As for the purported dinner on 25 September 2011 at Nagender's home where Rahul had asked Nagender for advice on how to prepare budgets, it is somewhat surprising that Nagender did not ask why Rahul needed to know this before proceeding to advise him. This is especially so because Rahul had not yet told Nagender of his resignation [note: 288] and Nagender had also rebuked Rahul for incorporating Q4T Singapore just a few months ago. Further, doing budgets or financial planning was not part of Rahul's job scope with the Plaintiff.

189 Rahul had allegedly created two spreadsheets based on this discussion named "Staffing (NR version) V1" and "Staffing (NR version) V2", which were stored in a folder named "QRS" purportedly because Nagender had explained the concept of budgeting with reference to QRS. [note: 289]

190 It seems to me that any discussion would have been more likely to have been about QRS rather than Q4T Singapore. I think Rahul was not being entirely forthright in this aspect of his testimony. While this did not necessarily link Q4T Singapore and QRS together, Nagender had, at the very least, an interest in QRS through his wife Kavita and he did not shy away from obtaining the help of the

Plaintiff's employees in furthering that interest (as we shall see).

191 There are two final points. The Plaintiff noted that the assistance by Apoorva could not have been coincidental since she was the daughter of Madhu. First of all, Griffin Australia only had four employees – Madhu, his wife, his daughter and one other employee. [note: 290] If Ajay had wanted help in setting up a company in Australia, he would most likely have turned to someone he knew, such as a colleague. There is no indication he had other friends in Australia. Three out of four people who he could have approached were either Madhu himself or his family members. Moreover, I agree with the Defendants that any inference to be drawn from the assistance of Apoorva is purely speculative. [note: 291]

192 Finally, the Plaintiff submitted that Q4T Singapore would potentially share business premises at the Changi Offices with the other New Entities. While Q4T Singapore's business address was the Changi Offices, there was no allocation of any rent or expenses to Q4T Singapore. [note: 292] It does not appear to me that Q4T Singapore had gone beyond mere registration and commenced doing any travel business.

The Defendants' evidence on QRS

193 As for QRS, the Defendants' case was that this was actually Kavita's company, and that none of the Defendants (other than Leny, who only became a director after she had resigned from the Plaintiff) had any interest in it. Insofar as Nagender was concerned, he only took an interest in QRS because it was his wife's company. [note: 293] Nagender claimed that Kavita had formed a desire shortly before Leny's exit on 30 June 2011 to enter into a small business venture to occupy herself as her two daughters were moving to Australia to pursue their further education. Kavita had wanted to start a business based on a concept Nagender had come up with, which was to offer support and advisory services to small and medium enterprises, mainly in relation to outsourcing services in other countries.

194 Kavita approached Leny for her assistance in June 2011, during a discussion with Nagender and Kavita. As Kavita had never been involved in a business, Leny agreed to assist until the end of the year, as she intended to return to Medan to assist her father in his vegetable export business at the time. [note: 294] According to Nagender, Kavita decided to seek Leny's help as both Kavita and Nagender believed that "spouses should not work together". Nagender encouraged his wife to do so since Leny was exiting the Plaintiff. [note: 295]

195 According to Nagender, sometime in June 2011, Piyush and his ex-wife invited Prasad, Kavita and Nagender to dinner at his house, where Kavita talked about her desire to go into business. Piyush volunteered his assistance and offered to find out more information for her business. [note: 296] At this juncture, I note that this was different from Piyush's account that it was Prasad who approached him and asked him to assist with work to be done for the New Entities. [note: 297]

196 In July 2011, Joanna also volunteered to help with incorporation matters when she learnt about Kavita's business venture, [note: 298] ostensibly to learn more about how to incorporate a company. [note: 299] Joanna said that it was she who suggested the name "Quest Rightshoring", as they were all in their respective "quests" for success. [note: 300]

197 Nagender was scheduled to go to the Philippines on 19 July 2011. [note: 301] He claimed that,

before he left, Kavita told him she wanted to have an idea about the rental costs and availability of premises in the Philippines and purportedly asked Nagender and Prasad to help obtain this information for her.

198 Nagender claimed that the reason for the trip to the Philippines was to attend a client meeting in Manila as well as conduct recruitment interviews together with Joanna and Prasad in Cebu for the Plaintiff and Griffin Dubai. [note: 302] At the time, the Plaintiff was supposedly bidding for a new client, Offshore Marine Services Pty Ltd ("OMS"), in Australia and if the Plaintiff was to be successful in bidding for the project, it would have required a substantial increase in service staff to service OMS. [note: 303]

199 On 16 July 2011, Prasad sent an email to Colliers International Philippines ("Colliers") requesting for their assistance in identifying potential office space for the new venture's business use in the Philippines. Again, Prasad copied the Disputed Email Address instead of Nagender's correct email address. [note: 304]

200 On 21 July 2011, Nagender, Joanna and Prasad interviewed a number of prospective recruits in Cebu. During their lunch and tea breaks, the trio visited a number of premises identified by Colliers to see if any of them were suitable. They also met a Filipino lawyer to obtain legal advice on incorporation matters in the Philippines. The lawyer referred them to SGV & Co ("SGV") (an affiliate of Ernst & Young), to obtain information and clarification on some corporate tax matters. Prasad left Cebu that evening as he was scheduled to be on leave from the next day. [note: 305]

201 The next morning, Joanna and Nagender met with SGV while on their way to the airport. [note: 306]

202 On 3 August 2011, QRS was incorporated with Kavita as the sole shareholder with a paid-up capital of $50,000. Leny and Kavita were named as directors. [note: 307]

203 During this period, advice was also sought from various parties in the Philippines, India and Thailand relating to the incorporation of entities in those countries. For example, enquiries were made with a tax consulting firm in the Philippines. [note: 308] Contact was also made with an Indian corporate secretarial outfit [note: 309] as well as chartered accountants. [note: 310] The general manager of the Plaintiff's Thailand office, whom the parties referred to as Cherry, also contacted a Thai law firm on 11 August 2011 seeking advice regarding the steps needed to get a business permit in Thailand for QRS, apparently at the request of Piyush. [note: 311] However, the Defendants denied that there were plans to set up a QRS entity in Bangkok given that Leny was unaware of any proposed plans or discussions to set up an office in Bangkok for QRS. [note: 312] Nagender's evidence was that Bangkok had been previously discussed as a possible location, and based on that discussion, Piyush went ahead to find out more, even though nobody asked him to do so. [note: 313] The Defendants also emphasised that, notwithstanding these preliminary steps, QRS did not have an Indian, Philippine or Thai entity set up in 2011. [note: 314]

204 Nagender, Joanna and Leny also helped to prepare some marketing material for QRS. [note: 315] In September 2011, Leny prepared what appeared to be a marketing information sheet on QRS titled "Benefits.docx" ("the Benefits document"), [note: 316] which she claimed was prepared after a discussion with Kavita. [note: 317] This document was circulated to Nagender and Joanna separately

under the cover of her emails dated 2 September 2011. [note: 318]

205 On 3 September 2011, Nagender sent an email to Leny with his own write up on offshoring strategy. [note: 319]

206 That same Saturday, Leny, Joanna, Nagender and Piyush had a discussion about QRS's intended business. [note: 320] At the meeting, they jointly created a powerpoint presentation. Thereafter, Piyush circulated the finished product to Nagender, Joanna and Leny by way of his email dated 3 September 2011. [note: 321] Nagender then amended the powerpoint presentation and sent it to Leny on 5 September 2011. [note: 322] Leny then revised the presentation on 7 September 2011 and sent the revised presentation to him. [note: 323]

207 According to the Defendants, QRS was not operational in 2011. It only commenced operations in 2012, after all the Defendants were no longer employed by the Plaintiff. [note: 324] Leny resigned as a director of QRS on 16 January 2012. [note: 325] Joanna entered into the employment of QRS as manager around May 2012. [note: 326] On 18 July 2012, Kavita ceased to be a shareholder and director of QRS and Joanna became the sole shareholder and director of the same. She bought over Kavita's shares for $150,000. [note: 327]

208 QRS presently has offices in Singapore, Mumbai and Cebu, with about 20 staff spread across the three offices. [note: 328]

Analysis

Whether QRS was Kavita's project

209 The Plaintiff argued that QRS was not Kavita's project, but actually Nagender's, mainly for the following reasons:

(a) The speed at which Kavita's idea evolved was implausible. In just one month, Nagender, Joanna and Prasad were in Cebu looking for premises for QRS, as well as meeting with lawyers and tax advisors. [note: 329]

(b) Kavita did not have the capability to think of and implement QRS's business concept. She was an air-stewardess turned housewife who was averse to emails. Evidence from Leny and Prasad indicated that she was not a business savvy person. There were no emails from Kavita showing that she had ever given any instructions to any of the Defendants on what needed to be done for QRS, nor was she seen at the Changi Offices by Indraneel. [note: 330]

(c) Nagender admittedly came up with the business idea for QRS. He could control QRS through his wife. Nagender took the lead during the meeting with SGV. He was also copied, directly addressed or he sent to the other Defendants and/or third parties numerous emails relating to QRS's operations. His opinion was also sought with respect to various matters. [note: 331]

(d) Nagender conceded during cross-examination that after serving his period of notice, he would be willing to be part of the team running QRS. [note: 332]

(e) There was an extract of data found on Joanna's laptop that appeared to be part of the business plans (or publicity material) for QRS. It read "Nagender Chilkuri, Joanna Kaunang and Piyush Shukla. The team has over 50 years of experience in service operations management". [note: 333]

210 The Defendants' submissions in response were as follows:

(a) It was purely coincidental that Nagender, Joanna and Prasad happened to be going to Cebu in July 2011 and decided to assist Kavita during their spare time there. [note: 334]

(b) The mere fact that Kavita was an air stewardess and subsequently a housewife did not mean that she did not have the capability to turn a business idea into QRS. The mere fact that she did not like corresponding over emails did not mean she was lacked business savviness. Her lack of experience was why she needed the assistance of her husband and friends to implement her ideas at the detailed level. The fact that Indraneel did not see Kavita at the Changi Offices did not mean QRS was not her brainchild. Indraneel was only in Singapore about three to four times during the material period. Since QRS was not doing any actual business at the time, there was less need for Kavita to be at the Changi Offices. [note: 335]

(c) The Plaintiff's assertion that Nagender could control QRS through his wife was based on the fact that Prasad assisted Kavita because she was Nagender's wife – but that did not assist the Plaintiff's case. All it meant was that Prasad would not help someone he did not know. [note: 336]

(d) It was perfectly logical for Nagender to help Kavita since he is her husband. [note: 337]

211 As a preliminary point, the Defendants have highlighted that the Plaintiff did not actually plead that Nagender *controlled* QRS. [note: 338] I was not minded to exclude the Plaintiff's arguments on this matter. Nagender had asserted that he had no interest in QRS and that his involvement was limited to the provision of advice or comments when he was approached for such advice or views. [note: 339] The Plaintiff was well within its rights to test this part of the Defendants' case. I do not think the Defendants could be said to be prejudiced or taken by surprise. It is also untrue that Nagender had no opportunity to contradict that allegation. While the issue of "control" was never specifically put to Nagender, the Plaintiff's counsel had asked Nagender questions to the effect of whether it was true that Kavita was really the one giving instructions, [note: 340] as well as whether Nagender accepted that his involvement in QRS was limited to the provision of advice or comments. [note: 341]

212 After considering the parties submissions, I come to the view that it is unlikely that QRS was formed by Kavita independently. I note that QRS was by Nagender's own account conceived in June 2011. By this time, he already had an intention to leave the Plaintiff (see [108] above). It was far too coincidental that his wife would have the idea to set up a business at this juncture. The complexity underlying QRS's business model indicated to me that the moving mind behind QRS was unlikely to be someone as inexperienced as Kavita. Her lack of involvement in comparison to Nagender's was palpable. The Defendants have not disclosed a single email that originated from Kavita, and the excuse that she did not like to send emails was unconvincing. [note: 342] The evidence showed that Nagender was one who was giving instructions in relation to QRS. It was far more likely that QRS was Nagender's brainchild and his company. He was merely using Kavita as his nominee.

Whether QRS was part of a conglomerate with the other New Entities

Whether QRS was part of a conglomerate with the other New Entities

213 Nevertheless, even if Kavita was merely a figurehead, that did not mean QRS was necessarily linked to the other New Entities. I summarise the Plaintiff's arguments in this respect:

(a) The terms Quest Horizon and QRS were used interchangeably by the Defendants which indicated that these two entities were part of the same group of companies. The Plaintiff referred to a number of emails exchanged by Prasad and Joanna with third parties using their Quest Horizon emails which gave the impression that Quest Horizon and QRS were related. [note: 343]

(b) The Plaintiff pointed to certain emails that seemed to show that QRS's business was evolving very quickly, indicating that QRS was meant to operate on a larger scale than indicated by the Defendants. The amount of planning showed that such planning must have started significantly earlier, *ie*, in tandem with the other New Entities. [note: 344]

(c) The Plaintiff also submitted that there was more to the Defendants' involvement than the mere provision of assistance to Kavita:

(i) Prasad's involvement *via* his communications with third parties such as Colliers and Indian tax accountants and lawyers with respect to various matters indicated that he had a more active role than merely helping Kavita. For example, in his 16 July 2011 email to Colliers, Prasad described himself as being part of a "newly formed corporate group" setting up a call centre in Cebu. [note: 345] The Plaintiff suggested that Prasad therefore had a "far greater vested interest" in QRS's affairs. [note: 346]

(ii) Joanna took an active role in QRS from the beginning and appeared to be privy to more details about QRS's direction than someone who was simply helping. [note: 347] In a text fragment that appeared to be promotional materials for QRS, she was named as part of the team which "has over 50 years of experience in service operations management". [note: 348] The first job she took after her dismissal from the Plaintiff was with QRS. [note: 349]

(iii) Leny appeared to be more involved in QRS than a non-executive director would be, such as the fact that she drafted the Benefits document. [note: 350]

(d) Finally, the Plaintiff highlighted that while Nagender had said that he only wanted to "rent a seat" in the Changi Offices for his wife, [note: 351] the Benefits document seemed to represent that QRS had access to all the facilities and premises of the Changi Offices. The Plaintiff also noted that Leny had not seen it fit to check with the major shareholders of Quest Horizon before drafting the Benefits document, and asserted this was because Leny *knew* that Quest Horizon and QRS were actually part of the same group of companies. [note: 352]

214 These factors do give rise to a suspicion that Quest Horizon and QRS were closely linked and formed part of one conglomerate. On the other hand, with Prasad and Joanna using the Quest Horizon email addresses and office address to communicate with various external parties, it was unsurprising that the companies were mentioned in the same breath.

215 The fact that Prasad, Joanna and Leny all helped out in QRS's business also did not mean that Quest Horizon was necessarily linked to QRS. Leny and Prasad were not shareholders in either Quest Horizon or QRS. Although Joanna was a shareholder in Quest Horizon, she was not a shareholder of

QRS. I cannot infer much from the non-financial assistance being provided by close friends and colleagues to each other. Prasad was Nagender's brother-in-law, and there is nothing surprising about his assistance. There is nothing sinister about friends helping Nagender with his wife's project (as far as they were aware).

216 To support its argument that QRS' business had evolved into "much more within an extremely short span of time", the Plaintiff relied on three emails between June to August 2011. [note: 353] However, I note that in the Benefits document, which was prepared by Leny in September 2011, the only business programmes proposed were still only for home businesses, start-ups, small enterprises and medium-sized enterprises. [note: 354]

217 The Benefits document does show that there was an intention by QRS to hire or rent space in the Changi Offices from Quest Horizon. It seems to me that Nagender's statement that he merely wanted to "rent a seat" was an understatement. [note: 355] However, the mere fact that there was such an intention does not mean that the two companies were linked. While I accept that it was possible that Nagender could have come up with the concept for QRS prior to June 2011, I do not think it would be as early as February 2011 since Nagender had not decided to resign at that point.

218 It is not disputed that, in drafting the Benefits document, Leny did not think she needed to check with the major shareholders of Quest Horizon even though the document stated that QRS would be housed in the Changi Offices. The Plaintiff suggested that she did not do so because they were part of the same conglomerate and she knew the Quest Horizon shareholders would not mind. [note: 356] However, the Benefits document was clearly not a finalised piece of work. For example, under the header "Locations", the Benefits document listed Singapore, Cebu, Mumbai, Kuala Lumpur, Bangkok and Ho Chi Minh City, but no QRS offices have ever been set up in Kuala Lumpur, Bangkok or Ho Chi Minh City. I accept Leny's evidence that the Benefits document was actually a draft for discussion. [note: 357] Quite simply, there was no reason for Leny to ask for permission from Quest Horizon's shareholders as to what she could include in a draft meant for internal discussion.

The Resignations

219 The Plaintiff also pleaded that Nagender had instigated the mass exodus of the Defendants to the New Entities as part of his masterplan. [note: 358] I now consider the reasons cited by the Defendants for their resignations.

Leny

220 On 2 February 2011, Leny tendered her written resignation to Nagender. [note: 359] She said she wanted to resign because of the following events: [note: 360]

(a) In the middle of 2010, she went through a divorce;

(b) Sometime in October 2010, [note: 361] she was hospitalised for stress;

(c) Contrary to what she had expected, Nagender was still in Singapore despite plans for him to be promoted as the Global CEO, which meant her own prospects of becoming managing director of the Plaintiff was in jeopardy (and indeed Nagender had informed her near the end of 2010 that he had his own doubts as to whether he would be promoted); and

(d) At the end of her hospitalisation, her parents asked her to go back to Medan, Indonesia (her birthplace [note: 362]) to assist her father in his business.

221 In her resignation letter, she stated that "[she] would like to pursue [her] interest in managing [her] family business and starting [her] own business in future". [note: 363] She claimed that Nagender did not accept her resignation and urged her to reconsider. When they spoke about it again later in April 2011, Nagender told her to speak to George directly. [note: 364]

222 On 23 May 2011, she met George in London where she explained why she wanted to resign. George wrote to her on 25 May 2011, saying that he was very sad to see her go, but he also completely understood and respected the reasons for her decision, and that if he had the same issue he would have done exactly the same. [note: 365]

223 This was Leny's evidence as to what was said at the London meeting:

> A: Your Honour, when I spoke to George Boyes, I spoke to him about the time spent, and – too much of time spent in the plaintiff time. Basically, that led to my divorce. And he told me that it's okay, because it's also his second marriage, he told me that he also divorced before. And he told me that, "Given the time, you will be able to tide over all these things". So, that was one of the issues that we spoke to. Subsequently, I – he asked me as well, "What are you going to do after your resignation?" I spoke – I told him that my father wanted me to have a look at the business and see whether if I can take over the business in future. But I told him as well, I'm not sure whether it's something really for me, because I haven't been in a different industry. I do not know how will I react to that. So he said, "It's okay, just go over and do whatever it is, but in case you don't find it suitable, you can always come back to Griffin because the door is always open to you".
>
> Q. So he said, "If I had the same issue", you are saying that George Boyes is referring to a collection of issues that you had raised? Is that your evidence?
>
> A. I would say that. [note: 366]

224 However, George said that Leny told him that she wanted to resign to help in her father's business in Indonesia as her father was unwell. [note: 367]

225 At the London meeting, George also agreed to abridge her notice period of six months to four months. Leny said she had wanted a shorter period because she wanted to go back to Indonesia in July 2011. She was being very overworked and only had four to five hours' sleep a night and her father had asked her to get early leave in order to rest. [note: 368]

226 She also provided a reasonable explanation for why she stayed on after July 2011, which was that, due to unforeseen circumstances, she had to stay behind to look after her niece. While she still wanted to leave at the end of 2011, the initiation of the present lawsuit derailed her plans. [note: 369]

227 The Plaintiff argued that it was inconsistent for Leny to complain of stress and yet at the same time get involved in the renovation of the Changi Offices, as well as giving substantial assistance to Quest Horizon, while still juggling her work responsibilities for the Plaintiff. [note: 370]

228 I accept the reasons given by Leny for her resignation. Considering her divorce and her

hospitalisation, it was not at all unbelievable that she would want a change of scenery in February 2011. I do not believe that her resignation was linked in any way to an alleged masterplan conceived by Nagender. For completeness, I also note that the Plaintiff did not plead any link between the incorporation of the New Entities and Leny's resignation. [note: 371]

Prasad

229 On 1 March 2011, Prasad tendered his resignation. [note: 372] Prasad's evidence was that he had orally informed everyone at the Plaintiff that he intended to leave and retire from active employment to return to India for good, and he had set his exit date tentatively as sometime in July or August 2011 to ensure a smooth transition. [note: 373] This was corroborated by Piyush, the Plaintiff's financial controller at the material time, who was being groomed from some point in 2010 to take over from Prasad. Piyush said that Prasad had indicated his intention to return to India and that the plan was for Piyush to take over. Moreover, Piyush was also aware that Prasad was intending to return to India around the middle of 2011. [note: 374] Accordingly, there was no reason to link Prasad's departure with the New Entities.

Adella

230 On 24 August 2011, Adella tendered her written resignation to Nagender. Adella was the first of the Defendants to resign after Nagender did. She claimed that she had openly discussed her wish to retire from the Plaintiff since about 2006 when she turned 45 with Nagender and George, but Nagender always managed to convince her to stay. [note: 375] However, since Nagender was leaving, there was nothing to hold her back anymore. [note: 376] During a telephone conversation with Joanna, George said that he knew that Adella had long wanted to retire. [note: 377] In my view, Adella's wish to retire from the Plaintiff was a genuine one.

Annie

231 On 12 September 2011, Annie tendered her resignation letter to Joanna (who was then taking over Nagender's role as managing director of the Plaintiff). [note: 378] She claimed that she was demotivated by the departure of her close colleague Adella. Moreover, she was also concerned about her own ability to work with younger colleagues and the fact that she would become Rahul's subordinate (as Rahul was slated to take over Adella's position) even though Rahul was more junior than her. [note: 379] This was an understandable reason as well.

Joanna

232 On 21 September 2011, Joanna tendered her resignation letter to Marcus, a director of the Plaintiff. [note: 380] She was earmarked to take over Nagender's role as managing director of the Plaintiff but she stated that she was apprehensive as these were big shoes to fill. [note: 381] In essence, her reasons for leaving were that she did not have George's trust and that she felt that she was not ready to step into Nagender's shoes, at least without the latter's support and guidance (which she was deprived of when George refused to allow Nagender to accompany Joanna to meetings with the Plaintiff's clients [note: 382] and based on her discussion with Ali and Marcus [note: 383]).

233 The Plaintiff argued that if Joanna did not think that she was capable of stepping into

Nagender's shoes, it did not make sense for her to subsequently take over QRS, an even more stressful endeavour since QRS was merely a start-up company with uncertain prospects. [note: 384] On the other hand, there is merit in the Defendants' contention that the demands of taking over a company like the Plaintiff are very different from those of running a small business. [note: 385] I also accept that she could have found it frustrating to be caught in the middle of George and Nagender's political bickering. [note: 386]

234 The Plaintiff also argued that Joanna had all the support she needed because of a conversation she had with George on 10 September 2011, [note: 387] but I do not think a single conversation which occurred *prior* to the events that supposedly caused her to doubt George's goodwill is conclusive of whether she was getting the kind of support she felt she needed.

Rahul

235 On 22 September 2011, Rahul resigned. Rahul's primary reason has been alluded to previously: he had a negative experience working for Ali and did not want to work for Ali again. [note: 388]

236 Rahul's stated desire for leaving was triggered by Ali's alleged declaration that he would be stepping into Nagender's shoes. This supposedly took place at a meeting on 19 September 2011 [note: 389] involving Ali and Marcus and certain other staff from the Plaintiff (but not Joanna [note: 390]). This alarmed Rahul, who then informed Joanna on 22 September 2011 that he intended to resign. That was when Joanna told him that she had tendered her resignation just a day earlier and that it was more appropriate for him to speak to Ali instead. [note: 391]

237 The Plaintiff submitted that Rahul's assertions were not backed up by evidence. It also appeared to be an afterthought because the point about Ali's categorical declaration was only added to Rahul's AEIC in an amendment midway through the trial, even though it was such an important detail. [note: 392] Moreover, it was inaccurate since Joanna was the one primed to take over from Nagender as the managing director of the Plaintiff until her resignation on 21 September 2011. [note: 393]

238 It seemed to me that there is no real inconsistency here. I note that Ali's stated reason for his visit to Singapore on 19 September 2011 was to, *inter alia*, take control of the Plaintiff's board. [note: 394] I do not think it would be too surprising if Ali did actually make the statement as Rahul alleged. Indeed, the very fact that Ali was now in Singapore must have indicated to Rahul that it was very likely that he would become the Plaintiff's managing director. Whether or not Rahul's impression was actually accurate is not the point.

Piyush's evidence that the resignations were coordinated

239 According to Piyush, there was an incident at Nagender's house sometime in June or July 2011 where some of the Defendants (Joanna, Adella, Leny and Rahul) as well as some of the other employees of the Plaintiff were present. During dinner, Nagender displayed an Excel spreadsheet on the television screen in the living room. Piyush said Nagender, Joanna, Leny, Rahul and Adella appeared to be discussing in private the contents of the spreadsheet. Although he was some distance away, Piyush saw some parts of the spreadsheet which had been filtered such that only the names of the Plaintiff's operations' team were displayed. It also showed the names of those employees followed by what appeared to be their proposed resignation dates and the notice period that they had to

serve with the Plaintiff. Piyush said he did not have a good look at the dates but recalled that they appeared to be in the near future. [note: 395]

240 Nagender denied this by saying he had not hosted any dinner at his house as alleged. However, in a lunch gathering in August 2011, he recalled displaying an Excel spreadsheet on his television which set out the respective joining dates of all the staff in the Plaintiff's employ for the purpose of showing who would be getting long service awards. [note: 396]

241 To begin, the Defendants submitted that Piyush's evidence should be disregarded altogether "because, as a witness, Piyush's credibility is in tatters". It was undisputed that Piyush had lied to the Plaintiff's solicitors in their interviews with him on 9 March and 8 August 2012 in numerous ways. [note: 397] The Defendants also alleged that Piyush was motivated by ill-will against Nagender because he was upset with Nagender for supposedly taking Piyush's ex-wife's side in his divorce. [note: 398]

242 While I accept that Piyush could not be regarded as an entirely disinterested witness, I do not think that I should dismiss what he had said entirely. Even though he had not been entirely truthful to the Plaintiff's solicitors at an informal meeting, it is a different matter altogether to dissemble in a court of law.

243 That said, Piyush's evidence regarding the Excel spreadsheet was unreliable. By his own admission, he was some distance away and it did not appear that he had a good look. Although Piyush was some distance away, there is no evidence as to whether Piyush had eavesdropped and heard what they were discussing. That could well throw some light on whether the discussion was indeed about the employees' respective joining dates and long service awards or about proposed resignation dates and notice periods that the employees had to serve with the Plaintiff. There is some merit in the Defendant's argument that it was innately improbable that a secret plan regarding the poaching of the Plaintiff's employees would be so carelessly displayed in front of other people who were not part of the plan. [note: 399]

Other evidence

The owner of the Disputed Email Address

244 One issue that cropped up in these proceedings was with respect to a set of emails which were copied to the Disputed Email Address *(ie*, nxxxxxxxx@gmail.com). [note: 400] The Defendants' consistent argument was that these emails never reached Nagender because it was not Nagender's actual email address.

245 The Plaintiff submitted that Nagender did receive these emails because the Disputed Email Address actually belonged to his daughter. [note: 401] The basis for this argument was an email which was discovered after 15 January 2014 by the Plaintiff. [note: 402] This was an email "from" the Disputed Email Address, dated 12 May 2011. The recipient of the email was Ajay. The first line stated that "[Nagender's daughter] has shared his/her itinerary with you". [note: 403]

246 Ajay explained that he had been assisting Nagender and his family with their account profiles for Singapore Airlines. He said he was the one who operated Nagender's daughter's Krisflyer account (Krisflyer is Singapore Airlines' frequent flyer programme) at the time. He had forwarded the itinerary to himself so he could copy and do the same booking for Nagender's family. [note: 404] This was done through the Krisflyer website, which had a "share itinerary" function. In order to share the itinerary,

Ajay typed the Disputed Email Address into the website, [note: 405] and got it wrong. [note: 406] As to how he got the wrong address, Ajay stated: [note: 407]

> Q. How could you have used this email address, [the Disputed Email Address]?
>
> A. In FocalScope, what happens is whenever you put any new email address, it automatically gets saved into a personal profile. So whenever you put any particular name for any particular person, that email address will automatically pop up. So what was happening, like others were making mistake, I was just copying the same wrong email address from FocalScope and copying everywhere. So whenever you type "Nagender", it will come as his personal Hotmail and Gmail address. So we were picking up the wrong email address from FocalScope and putting it. So when I wanted to share this itinerary of Natasha, I picked up that wrong email address, put it there and shared it with [Ajay's email address], and that is how the email shows it has come from [the Disputed Email Address], but the email has actually come from Singapore Airlines, your Honour.

247 FocalScope was the email management system used by the Plaintiff at the time and it was developed by Lantone (*ie*, Sandeep's company). [note: 408]

248 The Plaintiff argued that Ajay's explanation was unbelievable as it "cannot be the case that the Plaintiff's email system allows for the address books of *all* its employees to be automatically shared across the company". Rather, the address books within the email system had to be computer-specific, which meant that if the Disputed Email Address was available in the drop-down menu in the email "To:" field, it must be because they had sent an email to that address before. [note: 409]

249 The Defendants replied that the Plaintiff had no basis to make that allegation. It had not adduced any evidence on how the FocalScope system works or how it retains email addresses. [note: 410]

250 While it was obvious that the email dated 12 May 2011 was computer-generated, I could not say for sure whether it was technologically possible for the Krisflyer website to send an email from the user's personal email address. As for how Ajay had put in the wrong email address in the first place, I am unprepared to say that Ajay's evidence was implausible. I also note that Sandeep – the developer of FocalScope – was the witness who followed Ajay for cross-examination and no questions in this regard were asked of him. As the Defendants said, a shared email address book system is potentially very useful. I would accept Ajay's evidence in this regard.

251 In any event, even if I were to draw the inference that the Disputed Email Address must have belonged to Nagender's daughter, this did not necessarily mean that Nagender did in fact receive the emails which were sent there. I note that there were no responses from the Disputed Email Address. On balance, it is probable that he may not have seen these emails.

Travel Cue and Connect Group

252 The Plaintiff raised a number of assertions in relation to two companies, namely Travel Cue Management Pte Ltd ("Travel Cue") [note: 411] and Connect Group Pte Ltd ("Connect Group"). [note: 412] Annie, Adella and Leny are the shareholders in Connect Group. Connect Group is the majority shareholder in Travel Cue, while Rahul is a minority shareholder. Both companies were set up *after* the Defendants had exited the Plaintiff. The Plaintiff submitted that the alleged masterplan had been successfully carried through by the interplay between QRS, Travel Cue and Connect Group, and that

Travel Cue is "essentially the reincarnation of the New Entities". [note: 413]

253 However, nothing about Travel Cue or Connect Group was pleaded by the Plaintiff. The Defendants therefore strenuously objected to any reference to Connect Group or Travel Cue in the Plaintiff's submissions. It made the following arguments: [note: 414]

(a) Any allegation relating to Connect Group involves a separate entity from the New Entities altogether, and the reliance on the role played (if any) by such entity was a material fact which must be pleaded. Had the Plaintiff pleaded such allegation relating to Connect Group, the Defendants would have adduced additional evidence relating to an entirely discrete set of facts from those adduced at trial. To allow the Plaintiff to rely on such an allegation now would severely prejudice the Defendants' case.

(b) At the Judge's Pre-Trial Conference on 21 October 2013, the Defendants' counsel had objected to the admission of an "organogram" (which had set out, *inter alia*, the relationship of the Defendants with the New Entities as well as with Travel Cue and Connect Group), and the Plaintiff's counsel had clarified that it had no claim which related to Travel Cue and Connect Group.

(c) On 25 October 2013, the Plaintiff's solicitors amended the organogram by removing references to Travel Cue and Connect Group and re-tendered it to the Defendants' solicitors. [note: 415] This demonstrated that the Plaintiff had accepted the irrelevance of Travel Cue and Connect Group.

254 I agree with the Defendants. The Plaintiff's submissions regarding Travel Cue and Connect Group required a proper airing at trial and this, in turn, would have required both parties to properly prepare their cases in advance. The raising of these issues at such a late stage was clearly prejudicial to the Defendants. Most of the evidence relied on by the Plaintiff was elicited from Leny and Rahul in the course of cross-examination, but the "general rule is that a party is bound by his pleadings even if evidence has been given in a trial which touches on a matter which is not pleaded" (*Overseas Union Insurance Ltd v Home and Overseas Insurance Co Ltd* [2002] 2 SLR(R) 1 at [22]).

255 As the Plaintiff did not plead anything in relation to Travel Cue and Connect Group, no evidence was presented to the court by the Defendants on the reasons behind their incorporation, the details of their shareholdings, their linkages, the nature of their businesses and the extent to which Nagender, the other Defendants and new shareholders, if any, were involved in each of these new companies. Without a clear picture of the relevant facts and circumstances in relation to these companies, I am not in a position to draw any inferences or conclusions in any event.

Adella's diary

256 Adella had left her diary (essentially a notebook) behind in the Plaintiff's possession after her resignation, and the Plaintiff referred to various pages in it which seemed to suggest that the New Entities were linked.

257 I begin with a page where the words "Quest Horizon" were found on the top right corner. [note: 416] In the middle of the page were two mini flowcharts that appeared to represent corporate structures. The one on the left referred to "JV1" with a vertical line leading downward to the word "Investment". The one on the right referred to "JV2" which had two diagonal lines below, one to "JV1 51%" and another to "Cornel 49%". The word "IT" was written above JV2. It would appear from this

chart that JV1 is actually Quest Horizon while JV2 is Niado. There were boxes below JV1 and JV2 with a list of words. The box below JV1 contained the words "CRM" and "BHEA".

258 The Plaintiff submitted that this tied in with the plan to incorporate BHEA Tech and have Adella and Annie as directors. It is unclear to me how this inference could be so readily drawn. While the sketchy details in the mini flowcharts could suggest that JV1 (possibly Quest Horizon) and JV2 (possibly Niado) would both be in the "IT" business with JV1 taking up 51% in JV2 and Cornel taking up 49% in JV2, the words "CRM" and "BHEA" were, however, in a box together with a number of short phrases that appeared to be flight details (*eg*, "SIN HOU 20 Feb"). That box was linked to the box on the right which contained more flight details, with the latest date being "20 Aug". Adella said she could not really remember what they were about, but suggested that perhaps it had to do with when BHEA India was coming to Singapore to create CRM. [note: 417] It was more likely that the words "CRM" and "BHEA" were connected to those "flight details" rather than the flowcharts above them. The contents of the two boxes did not appear to have anything to do with the flowcharts above them, and may well have been added to the page at a different time.

259 Another page in the diary [note: 418] contained the words "Cebu – PZA" and "Convert – NR + LW share" (amongst others). Adella again appeared to be unsure but she said this page might have been written in February 2011 when there were plans for the Plaintiff to have a Cebu office. As for the words "Convert – NR + LW share", she explained that she wanted to "convert" Nagender ("NR") and Leny ("LW") into joining Quest Horizon. [note: 419] The Plaintiff claimed that this suggested that alongside Quest Horizon's plans to have a Cebu branch, there was some kind of arrangement to either convert Nagender and Leny's shares or to convert debt into equity. [note: 420] I am not prepared to make such speculative inferences. There is no evidence that Nagender was prepared to or had extended any loans to Quest Horizon that could later be converted to equity in Quest Horizon. Furthermore, I am not sure what the Plaintiff meant when it suggested that there was an arrangement to convert Nagender and Leny's shares, when Nagender did not have any shares in Quest Horizon to begin with and when it is completely unknown what those shares in Quest Horizon could be converted into.

260 There were also drawings of possible logos for Niado and Q4T on the same page in Adella's diary. [note: 421] One of the issues was whether they were drawn at the same time, or whether the Niado logos were drawn in May 2011 and the Q4T logos drawn in September 2011, after Rahul's resignation. [note: 422] Even though there were blank pages, it was plausible that they could have been drawn at different times. This was more or less a notebook that Adella jotted notes in, and she could scribble on any page that was convenient for her at any time.

261 Another point emphasised by the Plaintiff was that there was a single line in the diary with the phrase "Quest for Travel JV". [note: 423] This contradicted the Defendants' insistence that Q4T actually stood for "Quote for Travel". Adella attempted to explain away this inconsistency by saying that, after Rahul's resignation, he had told her he did not like the name "Quote for Travel" and so she told him that he could use "Quest for Travel" instead. [note: 424] This, however, seemed rather implausible. It was more likely an indication that she *did* have the impression that Q4T stood for Quest for Travel.

262 Finally, one of the pages in the diary listed out 35 names. [note: 425] Next to that list of names was another column that with the words "Budget", "Salary", "Office", "PUB", "Misc" and "Logo". It appeared to be mainly referring to the Plaintiff's operations staff although Piyush, who was from the finance department, was also listed on the page. Many of the names had ticks next to them, while

there were a few with question marks. Adella could not remember why she wrote this list, or what the ticks and question marks signified, although she thought that it might relate to "some events". [note: 426]

263 The Plaintiff submitted that this page suggested that there was some kind of plan for a mass resignation of the Plaintiff's employees. It asserted that this page was in fact a "target list" of employees who worked for the Plaintiff and who Adella intended to poach for the new venture. [note: 427] The Defendants' response was simply that the allegation of such a plan was never put to Adella or any of the other Defendants. [note: 428] To be fair to the Plaintiff, the Plaintiff's counsel did put to Adella that this was a target list and gave Adella the opportunity to explain what the list really was about, [note: 429] even if he did not suggest to Adella that they were planning for the targets to resign *en masse*, which is not quite the same thing.

264 Since Adella was the head of operations, there was a myriad of reasons why she would have a list of her subordinates, even if it did contain the names of a few persons who were not under her charge. Her failure to recollect what it actually was about did not mean this was a "target list". For example, there was no absolute correlation between the ticks and non-ticks with the employees who actually did end up working for Travel Cue and those who did not. [note: 430] This list certainly raised some suspicions, but it might not be as damning as it first seemed.

265 While Adella's evidence on the various pages in the diary was not always clear, I accept that a significant amount of time had passed between the time Adella made these entries and when she took the stand. Some failures of memory are expected. After looking at the diary, her evidence that she did not use the notebook from front to back but that she wrote on any page she flipped to at any point in time [note: 431] was also perfectly plausible. I agree with the Defendants that the fact that certain words and phrases are found on a single page did not necessarily indicate that those phrases are linked. [note: 432]

Deletion of data from laptops

266 Finally, I turn to the Plaintiff's submission that an adverse inference ought to be drawn against the Defendants for the steps taken by Nagender, Joanna and Rahul to delete data from their laptops. The Plaintiff had pleaded that these acts in themselves amounted to breaches of contract and duties, [note: 433] which I will consider separately, in order to avoid cluttering the analysis here.

267 On 17 October 2011, the following activities took place on the laptop used by Nagender, which had the result of wiping out data from his laptop: [note: 434]

(a) an operating system was installed at 1.05am, which resulted in deletion of data on the laptop;

(b) two separate Universal Serial Bus ("USB") devices were connected to the laptop at 2:34am and 2:37am;

(c) a program from IBM known as "Secure Data Disposal" was accessed and executed (this program allows users to permanently remove files and documents on a hard drive, such that the data on the hard drive cannot be recovered) at 6.41am; and

(d) a computer program known as "SDelete" was accessed and executed (this program allows users to securely delete files and/or directories such that the deleted files and/or directories cannot be recovered) at 7.09am.

268 On 6 October 2011, an operating system was installed on Joanna's laptop at around 10.04am. [note: 435]

269 On 5 October 2011, the following activities took place on the laptop used by Rahul: [note: 436]

(a) SDelete was accessed and executed at around 1.41pm; and

(b) an operating system was installed at around 6.51pm.

270 With respect to Rahul, it was also discovered, *inter alia*, that the following files were accessed from external storage devices on 25 September 2011 (between 8:56pm and 9:41pm) and on 26 September 2011 (between 1:54pm and 4:06pm): [note: 437]

(a) D:\New Venture;

(b) D:\New Venture\SG Marine.xlsx;

(c) D:\Griffin\Business Plan\Productivity;

(d) D:\New Venture\QRS;

(e) D:\New Venture\QRS\Staffing (NR Version) V1.xlsx; and

(f) D:\New Venture\QRS\Staffing (NR Version) V2.xlsx.

271 It is not disputed that Nagender, Joanna and Rahul took steps to remove data from their laptops. [note: 438] The Defendants argued that they did so to ensure that their personal data was removed from the laptops they were using. [note: 439] Nagender did the acts of deletion himself, [note: 440] while Rahul brought his own laptop together with Joanna's to IBM's service centre to be reformatted. [note: 441] Rahul also claimed he did not install SDelete on his laptop. However, emails from the IBM service centre showed that it was not IBM which installed the software. He had no explanation for this. [note: 442] In my view, it is more likely that Rahul himself installed and ran the SDelete software to clean his laptop of data.

272 Nagender and Rahul's explanations were difficult to accept. I do not think it is likely that they would have gone through so much effort merely to ensure the removal of personal data. I do, however, note that all that was done to Joanna's laptop was the installation of a new operating system, which allowed forensic specialists to uncover relevant data that, in the Plaintiff's own submissions, was crucial to its case. The Plaintiff highlighted the following fragment which appeared "to be part of a business plan or some marketing and promotional material" and which it argued represented clear statements of intent that the New Entities were intended to compete with the Plaintiff: [note: 443]

The company will be developed with a "customer service and satisfaction first" in an effort to build acceptance and a positive reputation in the local industry.

> Nagender Chilkuri, Joanna Kaunang and Piyush Shukla. The team has over 50 years of experience in service operations management…
>
> …
>
> QRS will leverage the industry knowledge of its founding members to provide outstanding service to its customer. The company will initially start with three key locations, Singapore, Philippines and India. [note: 444]

273 The Plaintiff argued that, if not for the data destruction on its laptops, it could have obtained more evidence of the alleged plan by the Defendants to set up a competing conglomerate. [note: 445] The Plaintiff also emphasised the timing of the deletions, which were done after its forensic investigators were already in its office. [note: 446] It submitted that Nagender, Joanna and Rahul's acts amounted to "a covert action to destroy incriminating evidence" and the court must therefore draw an adverse inference in that regard. [note: 447]

274 While some general adverse inferences may be drawn, I am not prepared to draw the specific adverse inference that the Plaintiff had asked for, *ie*, that there was a masterplan to form a conglomerate led by Nagender to compete with the Plaintiff, just because extensive efforts were made to delete data. While I agree with the Plaintiff that the extent to which Nagender and Rahul went to wipe clean their laptops evinced that they had something incriminating to hide, it does not necessarily lead to an inference that the alleged masterplan must have existed, the evidence of which they were trying desperately to hide. Nagender, Rahul and Joanna might have wanted to prevent the Plaintiff from uncovering some of the private matters that they had been attending to during and outside working hours. These activities might or might not suffice for an employee to be summarily dismissed. But they would likely be of such a nature that they would not have wanted their employer to discover them.

275 Further, there is some merit in the Defendants' submission that if this was an *engineered* scheme to destroy evidence, it was strange that Joanna did not take more steps to ensure the permanent deletion of her data or why Rahul did not run SDelete on her computer as well to ensure that the data on the laptops of all those supposedly involved together in the alleged masterplan was removed permanently. [note: 448]

276 Ultimately, the actions of Joanna, Rahul and Nagender in deleting data from their respective laptops were merely one part of the whole mosaic of facts that had to be considered in totality.

Conclusion

The New Entities were not part of a conglomerate

277 There were essentially two competing versions of the relationship between the New Entities. The Plaintiff asserts that the New Entities were part of the same conglomerate of companies, controlled by Nagender, with the intention *not* only to compete, but also to "rip the heart out of the Plaintiff's operations". [note: 449] The Defendants, on the other hand, contend that there was no masterplan of any sort. Of the New Entities, only Quest Horizon and Niado were financially linked. The fact that the Defendants had helped each other out was simply the result of their close ties. [note: 450]

278 The Plaintiff's contention is a serious one and it had the burden of proving it. Ultimately, the Plaintiff had to convince the court, on a balance of probabilities, that Nagender had put into effect a masterplan to form a conglomerate essentially comprising the New Entities designed to compete with the Plaintiff and to staff them with ex-employees of the Plaintiff, who would resign *en masse* according to a planned schedule so that the Plaintiff would get its comeuppance for what it did to him. On the other hand, if it was more or equally likely that (a) the New Entities were separate independent undertakings joined more by the bonds of friendship of their respective shareholders than by any certain commercial arrangements as a conglomerate headed by Nagender to compete with the Plaintiff; and (b) the resignations of the Defendants (leaving aside Nagender) were for different genuine personal reasons, then the Plaintiff's contention would fail.

279 The Plaintiff generally had to rely on circumstantial evidence to establish its case. It claimed that this was due to the abovementioned destruction of data by the Defendants. [note: 451] Nevertheless, it submitted that the "strands of circumstantial evidence, when seen together, do show that the Defendants have committed a litany of breaches". [note: 452] Taken individually, each of the events might appear relatively innocuous, but it painted a very different picture in the aggregate. [note: 453] The Plaintiff highlighted numerous "coincidences" to show that the Defendants worked together on the New Entities with a view to compete with the Plaintiff, such as the fact that the names of three out of the five New Entities had the word "Quest" in it. [note: 454] The Plaintiff also emphasised the evidential value of Adella's diary, which indicated that all the New Entities were linked together. [note: 455]

280 I accept that the circumstances viewed as a whole do look rather suspicious. There are certainly parts of the Defendants' case that I find unconvincing. However, after considering the totality of the evidence, I am nevertheless of the view that the Plaintiff failed to prove that the Defendants had devised a masterplan as pleaded existed on a balance of probabilities.

281 First, it is unlikely that Nagender had planned to resign as early as February 2011, before Quest Horizon was incorporated. The lack of any ill motive at the time is a very strong factor against the finding that Nagender must have engineered the whole scheme, beginning with the incorporation of Quest Horizon as the holding company for a large conglomerate of companies that would subsequently be incorporated to mirror the commercial activities of the Plaintiff and compete with it.

282 Secondly, the idea of Nagender being a surreptitious mastermind, going as far as getting Madhu to act as his proxy (based merely on Madhu's apparent lack of involvement), is on balance difficult to accept especially when one considers that Nagender interposed his wife Kavita to be the owner and a director of QRS. If he was supposed to have a major interest in Quest Horizon, it is strange that he also did not use his wife as his nominee. If Nagender was already prepared to run the possible risk of his indirect interest being exposed by using his wife as a nominee in QRS, then on balance it would make more sense for him to similarly secure his financial interest in Quest Horizon by having his wife as a shareholder in Quest Horizon. Quest Horizon, after all, was supposed to be the holding company of the alleged conglomerate. Having regard to the totality of the evidence, I am not prepared to find on a balance of probabilities that Nagender had a financial interest in Quest Horizon or in the other New Entities apart from QRS.

283 Thirdly, having worked so closely with each other for so long, I am not at all surprised that the Defendants had helped each other in their respective endeavours in a non-financial way. The fact that they helped did not mean that they had any pecuniary interest in the New Entities beyond their shareholdings. Prasad, in particular, struck me as a helpful and efficient person who was willing to go the extra mile for his friends. Although he had no pecuniary interest whatsoever in any of the New

Entities, nevertheless he was still very generous with his time. It was crystal clear that the Defendants enjoyed a remarkably close relationship. The Plaintiff agreed that it was obvious from the Defendants' AEICs that they "viewed each other as more than ordinary colleagues and that they are an extremely close knit group". The Plaintiff however ventured further to postulate that it was precisely their loyalty to Nagender that allowed Nagender to "put his plan into action". [note: 456] Viewed as a whole, I would not read too much into the fact that they had extended non-financial help to each other in relation to the New Entities. I cannot see the other Defendants sharing any of the ill feelings which Nagender had such that they would have agreed to participate in his masterplan to compete with the Plaintiff as revenge. After considering all the evidence in its totality, it is more likely than not that the other Defendants were each pursuing their own self-interest in their own way. While they might see some possible synergies in their business start-ups and would be willing to help by cross-referring business to each other as good friends generally would, that is very different from saying that the New Entities were all part of Nagender's grand masterplan. At best for the Plaintiff, a submission might be made that Nagender had secretly manipulated the other Defendants into doing the things they did in their respective self-interest and in such a way that fitted his own secret masterplan to damage the Plaintiff, but without the other Defendants knowing or even suspecting Nagender's real motives, intentions or masterplan.

284 Fourthly, all the Defendants had their own good reasons for resigning. I am not able to find that all of them had individually made up those reasons to cover up a planned scheme to resign according to a pre-set timetable orchestrated by Nagender. After considering all the evidence, I do not believe that there was a link between the resignations and the setting up of a conglomerate of New Entities as part of an alleged masterplan spearheaded by Nagender to compete with the Plaintiff. There is insufficient evidence to establish that Nagender had actively solicited, encouraged or coordinated the resignations of the other Defendants from the employ of the Plaintiff. The fact that their resignations were proximate in time can be explained on the basis that for some of them, their reasons were linked with the turmoil and uncertainty with regard to the management of the Plaintiff going forward. Even if Nagender was motivated by spite to tear down the company he helped to lay the foundations for, I do not find that the other Defendants had shared Nagender's motivation nor do I think that the other Defendants would have simply abandoned well-paying jobs to start afresh, merely out of their alleged misguided loyalty to Nagender, without strong personal reasons of their own, which they have demonstrated.

285 Lastly, the fact that the New Entities shared a business address in the Changi Offices did not mean that they were part of a masterplan. It is not uncommon for companies to share premises or sub-let spaces they do not need in order to defray rental costs. Other companies which were not alleged to be part of the conglomerate also shared the Changi Offices, such as EGSoft, Signature Sparks and Net Vision. It is also consistent with the theme of friendly assistance. Nothing much can be read into the fact that the companies sharing premises have directors or shareholders who are known to each other. These companies may have businesses which support each other as part of an eco-system but it does not follow that they are necessarily financially related companies or are part of a conglomerate of companies. Indeed, as I have noted, for the companies that did actually physically use the Changi Offices, there was a premises-sharing arrangement where the cost of rent was shared proportionally.

286 Nevertheless, even if the New Entities were not linked under a masterplan to compete *as a conglomerate*, they may nevertheless have been intended by their respective directors and shareholders to compete with the Plaintiff *on their own*. I now turn to this aspect of the case.

Quest Horizon and QRS were not intended to compete with the Plaintiff

Quest Horizon and Niado

287 Quest Horizon has no business other than through its shares in Niado. Niado is an IT company in the business of software development. As mentioned (at [118] above), Cornel's plan was to develop a business-to-business booking system relating to travel procurement. Plainly, this is a different business from that of a travel agent.

288 The Plaintiff used TREX, a proprietary product owned by the Plaintiff, to allow its customers to make on-line travel bookings with it. Essentially, the Plaintiff provided this software to its customers so that they could book their on-line travel with the Plaintiff. [note: 457] The Plaintiff is not in the business of selling TREX or of licensing TREX for use by other travel agents.

289 Cornel had in mind a product that was, at least from the customer's perspective, superior to TREX. TREX is a one-to-one system that allows the client to communicate its booking requests and instructions to the Plaintiff. Unlike TREX, Niado's intended product would allow for one-to-many communications, in that the client can communicate its booking requests and instructions to many travel agents at once. It appears that this intended product was tailored to be sold to companies whose employees travelled extensively and would thus benefit from having a system that could transmit their booking requests and instructions to many travel agents at once to see which agent gave the most attractive offer. It is significant to note that if the conglomerate was alleged to be in the competing business of a travel agent, it would not make strategic sense for it to develop a system software product together with Niado for its own use that would enable a potential client to deal with other travel agents other than exclusively with itself. If the intended product is to be made widely available to companies that require the services of travel agents to allow them to secure the best offer readily, it may lead to stiff price competition amongst travel agents through transparency in pricing. That itself might draw clients away from the conglomerate's own travel agency business to that of other cheaper travel agents. This again indicates to me that Quest Horizon, which invested in Niado to develop the new product, is not likely to be part of an ambitious plan by Nagender to form a conglomerate to compete with the Plaintiff in the travel agency business.

290 No reasonable travel agent would have considered Niado a competitor if it was merely a vendor or licensor of travel booking software. The Plaintiff asserted that this product might obviate the need for travel agents like the Plaintiff altogether, [note: 458] but I think its case was overstated.

291 Indeed, the Plaintiff rightly conceded that an IT company like Niado could not by itself directly compete with the Plaintiff. However, it argued that Niado would *indirectly* compete because a travel company using Niado's software would be in a better position than the Plaintiff to service its customers. [note: 459] This argument is premised on an assumption, which might not be valid, that a travel agent is happy to adopt Niado's software that introduces more competition and enables its customers to compare its prices with that of other travel agents to get the best offer. Assuming for the sake of argument that a travel agent using Niado's software is better able to compete as a travel agent, does it mean that Quest Horizon is competing indirectly with the Plaintiff because it has invested substantially in Niado to develop such a system? Of course, *ceteris paribus*, a woodcutter who buys a better saw will be able to cut down more trees than one who does not, but I do not think it makes the saw manufacturer an indirect competitor of every woodcutter who does not buy his product. Moreover, considering the one-to-many nature of Niado's proposed software, I agree with the Defendants that the release of such a product to be sold or licensed to other travel agents might on the other hand also positively impact the Plaintiff's business by opening more opportunities for the Plaintiff to engage with *new* customers. Whether the positive effects outweigh the negative effects with the greater competition and price transparency will really depend on whether the Plaintiff is price

competitive *vis-a-vis* other travel agents. If it is, then perhaps the net result might be positive for the Plaintiff's business. On the other hand, if the Plaintiff is not price competitive, then the net result might be negative for its business should the new product be made available and widely used in the market.

QRS

292 The Plaintiff's case was not that QRS, in its present operating state, competed with the Plaintiff, but rather that it was *intended* to do so together with the rest of the New Entities. It submitted that the real question was to ask whether QRS, if they continued in 2011 and as planned by the Defendants, would have competed with the Plaintiff. The Plaintiff argued that the court should only examine the contemporaneous documentary evidence at the material time. [note: 460] It added that, nevertheless, QRS had not actually deviated from its original plans. [note: 461]

293 The Benefits document indicated that QRS's main intended business as of September 2011 did not compete with the Plaintiff. The Defendants described QRS's business as that of a human resource agency which was to provide support services to its customers. It was noteworthy that the Benefits document only referred to business programmes for home businesses, start-ups, and small and medium-sized enterprises. [note: 462] This was consistent with Joanna's evidence that QRS presently provides support services in a variety of fields, and the provision of travel-related support only makes up 30% of QRS's business. [note: 463]

294 It was undisputed that QRS was looking to hire travel coordinators in Cebu and Mumbai. The crux of the issue was whether travel coordinators and travel agents like the Plaintiff performed substantially the same function. While the work of both the travel agent and the travel coordinator may be loosely described as "coordinating" the client's travel plans, it did not mean their functions are identical. A travel coordinator and a travel agent provide complementary services. A travel coordinator administers the travel plans of the customer internally. [note: 464] A travel coordinator then provides these internal plans to a travel agent who collates them. The assigned travel agent is the one who issues the travel tickets and makes the necessary logistical arrangements. [note: 465] In a sense, the travel coordinator is an extension of the travel agent's client.

295 It is true that a travel coordinator could *potentially* make those bookings himself, but that would be quite cost inefficient, since the travel coordinator would not have the required travel agent licences or accreditation with the International Air Transport Association to allow him to issue tickets on the airlines' behalf. [note: 466] He would have to do the bookings with individual airlines manually without the ability to get an aggregate view, like a licensed travel agent would. [note: 467] Similarly, if a customer decided to contact the Plaintiff directly instead of going through a travel coordinator, the Plaintiff could also provide travel coordination services, but this does not appear to me to be the Plaintiff's primary business.

296 In summary, I find on the totality of the evidence that neither QRS nor Quest Horizon were intended to compete with the Plaintiff's business.

Breaches in relation to the Defendants' involvement in the New Entities

Breaches in relation to the alleged plan to set up the New Entities with a view to competing with the Plaintiff while still employed by the Plaintiff

297 In relation to this alleged breach (which was asserted against *all* the Defendants), I have already found that it was not proved that there was a masterplan to compete, or that there was a clear link between the resignations and the setting up of the New Entities as a conglomerate.

298 Nevertheless, even though the New Entities were not intended to be competitive, the Defendants may nevertheless still have been in breach if they could not properly devote their time and talents to the Plaintiff's business. The Plaintiff accepted that every employee will spend some part of their work time to attend to personal issues. Rather, what the Plaintiff was concerned with was the degree, extent and motive of such "personal work". [note: 468]

299 I leave aside the issues relating to the fact that some of the Defendants also took up roles as directors in the New Entities, which I will consider separately.

300 As for the amount of time spent during office hours on the New Entities, the Defendants tabulated the emails related to the New Entities to show which were sent during office hours, and which were not. [note: 469] While this was not an entirely unhelpful exercise, it was not the volume of emails but the actual amount of working time spent on drafting them that mattered. As the Plaintiff noted, some of the emails had attachments with substantive content that required significant time and effort to compile. [note: 470] Moreover, there might have been other emails which were not disclosed or destroyed. [note: 471] The Defendants could have also spent time in discussions or on other matters for which there is no documentary evidence.

301 Undoubtedly, the Defendants did spend time during working hours attending to matters relating to the New Entities. Prasad, for example, drafted quite a large number of emails, even if they were mostly administrative in nature. Nevertheless, I accept that the amount of time spent by each of the Defendants on the New Entities was insubstantial compared to the time they spent on the Plaintiff's business. Piyush attested to their habit of working long hours beyond the normal working hours. [note: 472] More importantly, there was no evidence that any of the Defendants had neglected the Plaintiff's work in any way. Indeed, the Plaintiff's financial performance in 2011 showed an 18.8% growth in revenue from 2010. [note: 473] Even if the Defendants did spend some office time working on the New Entities, the Defendants would not be in such gross breach of their duties that is sufficient to justify their summary dismissal if they nevertheless made up for it by working overtime.

Claims for the trip to Cebu in July 2011

302 The Plaintiff alleged that the main purpose of Nagender, Joanna and Prasad's trip to Cebu in July 2011 was to source for office space in Cebu for Quest Horizon and/or QRS under the pretext of conducting interviews for potential service staff in anticipation of a successful contract with OMS. [note: 474]

303 As such, the Plaintiff submitted that Nagender, Joanna, and Prasad had misused the Plaintiff's funds and resources for their own business venture in Cebu, *viz*, QRS and/or Quest Horizon. Accordingly, they had unlawfully and dishonestly claimed from the Plaintiff reimbursement for expenses incurred on these trips. By doing so, Nagender and Prasad were in breach of their fiduciary duties to the Plaintiff and/or their implied duties of good faith and fidelity. Joanna was also in breach of her implied duties of good faith and fidelity to the Plaintiff. [note: 475]

304 While the Plaintiff's original position was that *no* interviews were conducted, this position became untenable after Rahul managed to locate some of his email exchanges with the candidates

whom Nagender, Prasad and Joanna had interviewed on 21 July 2011. [note: 476] According to Rahul, he managed to locate these emails after personally going to Cebu. [note: 477] These emails were exchanged using Rahul's email address with the Plaintiff, which meant the Plaintiff had them in its possession but were not disclosed. The Defendants alleged that the Plaintiff has been less than forthcoming with its duty of disclosure. They also argued that the Plaintiff could not therefore maintain its previous stance that it had "no record" of the interview notes or interview plans of 21 July 2011 in Cebu. [note: 478] Notwithstanding the Defendants' assertions, I am prepared to accept that the Plaintiff simply overlooked the existence of these emails.

305 Although no interview notes or plans were disclosed because the Plaintiff's present human resources manager could not find any records of such interviews, I note that Nagender was very emphatic that they existed. [note: 479] In any event, whether or not such notes or plans existed is no longer of crucial importance since it is clear that the interviews had occurred.

306 The Plaintiff's case was that these interviews were only done so that the Defendants had a convenient cover story for being in Cebu: [note: 480]

(a) Joanna appeared to be "confused" as to the underlying purpose of the trip to Cebu as she was unable to state definitively whether they went to hire staff in preparation for the OMS tender or for the Plaintiff's proposed service support operations in Cebu.

(b) Prasad had never been involved in the recruitment of staff from the Philippines. It was odd for Prasad to go to Cebu to interview staff who were not being employed for a finance position.

(c) The Defendants did not adduce any evidence that the negotiations with OMS were at such an advanced stage that there was an urgency to get staff from Cebu at such short notice.

(d) The emails adduced by Rahul were sent "on or around 18 July 2011" (the earliest email disclosed was actually sent on 19 July but Rahul indicated that he called the interviewees "sometime around 17 or 18 July", although he said that he had actually sent emails even prior to that [note: 481]) while Prasad's first email to Colliers arranging for the viewing of premises was dated 16 July 2011. This indicated that the interviews were arranged only after plans were already made to go to Cebu to view premises for QRS.

(e) It was too coincidental that the OMS interviews were to be held at the same time that Kavita required Nagender's help to find premises for QRS. [note: 482]

307 It was evident that Nagender did go to Manila (his first stop before going to Cebu) for the purpose of a client meeting. Rita (the Plaintiff's former client services manager) accompanied Nagender to Manila and she confirmed the client meeting took place. [note: 483] Rita gave a reason why Nagender wanted to hire from Cebu instead of Manila. Apparently, the people of Cebu pronounce English words differently from those in Manila, which was a "good thing to have" in a travel agent. [note: 484] She could have gone with Nagender for the interviews in Cebu but she had other duties to attend to in Manila. [note: 485]

308 Although Rahul only emailed the interviewees after Prasad's first email to Colliers on 16 July 2011, it did not mean that the interviews served merely as a cover story. Rahul and Prasad were both dealing with different things. In any event, even from the email to Colliers, it appeared that the trip to

Cebu had *already* been set: [note: 486]

> … Me along with two senior management personnel are coming to Cebu on 20/21 July. The actual arrival times will be known on Monday 18th Jul. …

309 This was consistent with Rahul's explanation that the interview date was set on 21 July 2011 in order to coincide with the scheduled visit to Manila (which would explain the apparent "urgency" even if the OMS deal was yet to be set in stone). [note: 487] Rahul also explained that he had put out an advertisement that was specific to Cebu in July 2011 and had also asked one Louie Dalguntas to suggest possible candidates. [note: 488] Such arrangements would take some time, and would indicate that the intention to conduct these interviews was formed before the email to Colliers was sent.

310 As for Prasad, although he was effectively the CFO of the Plaintiff, it was his evidence that he was involved in the interview of non-finance staff as well. He had also gone overseas to interview candidates in the past, even if he had never gone to the Philippines to do so before. [note: 489]

311 In short, the Plaintiff has not established that the real purpose of the trip to Cebu was to advance the Defendants' agenda at the Plaintiff's expense. Accordingly, the Plaintiff has not shown that Nagender, Joanna and Prasad were in breach of their duties to the Plaintiff.

Breaches relating to BHEA Tech

312 I next have to consider the following issues: [note: 490]

(a) Whether Annie and Adella were in breach of cl 6 of their employment contracts by becoming directors of BHEA Tech.

(b) Whether Annie's shareholding and directorship, Adella's directorship and Prasad's involvement in setting up BHEA Tech were in conflict with their employment with the Plaintiff and in breach of their implied duty of fidelity.

(c) Whether Nagender had full knowledge of the above breaches and/or orchestrated the said actions, and was therefore in breach of his implied duty of fidelity and/or the following fiduciary duties to the Plaintiff:

(i) to act in good faith and in the best interests of the Plaintiff;

(ii) to act with honesty and loyalty towards the Plaintiff;

(iii) not to compete with the Plaintiff;

(iv) not to place himself in a position where his duty to the Plaintiff and his personal interests may conflict; and

(v) to serve the Plaintiff faithfully and dutifully and not to advance or promote his own interests or other external interests to the prejudice of or contrary to the interests of the Plaintiff.

313 For the sake of clarity, I have excluded from the list of issues above the Plaintiff's claims relating to the duties that I have found were not owed by the abovementioned Defendants (*eg*.

claims by the Plaintiff in relation to Adella and Prasad's fiduciary duties, as well as claims relating to breaches of terms found in the Staff Manual).

314 I first consider whether Annie, Adella and Prasad were in *actual* conflict of interest. The crux of the Plaintiff's argument was based on the fact that at the time of BHEA Tech's incorporation, BHEA India was an IT service provider of the Plaintiff, and moreover, BHEA Tech had participated in the Plaintiff's global tender for a new CRM system. [note: 491] As noted at [65] above, non-fiduciary employees are not in breach of their duty of fidelity *merely* because they are in a position where there is a *potential* conflict of interest. The Plaintiff has not shown any specific instance where Prasad, Adella and Annie actively preferred BHEA India or BHEA Tech's interest over the Plaintiff's interest, *ie*, instances of actual conflict.

315 The assistance Prasad rendered clearly did not put him in a position of conflict. One must remember that BHEA India was not a competitor, but a *supplier*. Prasad owed no duties to BHEA India or BHEA Tech and had no interest of any kind in those companies. He did not stand to gain in any way from his assistance. There was no conflict, whether actual or potential.

316 Moreover, until 22 August 2011, when the shares were allotted to BHEA India's shareholders, BHEA Tech had no legal ties to BHEA India or its shareholders whatsoever. Even after the BHEA India shareholders came in, Annie transferred her shares in BHEA Tech less than a month later, and Adella resigned as director about two weeks after that. Annie and Adella were unpaid nominal directors with no decision making powers in BHEA Tech. Similarly, they had no say in any decision as to which CRM system the Plaintiff should be buying – and certainly not at the global level. They had no pecuniary interest in BHEA India being the Plaintiff's supplier, and even as directors of BHEA Tech, they never owed any duties to BHEA India at all.

317 As for Nagender, he was part of the Plaintiff's evaluation committee (through the IT steering committee) to decide who would provide the global CRM programme, [note: 492] and he did advocate for SugarCRM during the global tender. [note: 493] The issue here is whether it was proper for him to have allowed Prasad, Annie and Adella to assist BHEA India in setting up BHEA Tech in such circumstances. Obviously he would be in breach if he had received a personal benefit from BHEA India. But here Nagender gained nothing personally from it. At best, Nagender's assistance might be considered an *indicator* that he did have some kind of improper interest in BHEA India's success in the global tender, such as a desire to invest in BHEA Tech, but this was not established by the evidence. Moreover, it is hard to see how his advocacy for SugarCRM was not *bona fide* – if he did not actually think that a customised SugarCRM was a good idea, he would not have chosen BHEA India to customise SugarCRM in the first place (and it must be noted that BHEA India was engaged by the Plaintiff in or about June 2010, [note: 494] which was well before Nagender had any inkling that he would not be the Global CEO).

318 Finally, cl 6 of Annie and Adella's employment contracts states:

> **6. Non-competition**
>
> The Employee should devote all work efforts exclusively to the Company and furtherance to the interests of the Company [*sic*]. Any engagement in additional activities or secondary employment, no matter if gratuitous or non-gratuitous, or any direct or indirect participation in any other enterprise of any kind, requires the prior written consent of the Company which shall not be unreasonably withheld provided that this additional employment does not constitute an obstacle to the performance of the professional duties and if other justified interests of the Company are

not compromised in any possibly [*sic*] way.

319 The Defendants argued that cl 6 should be read purposively, in that its aim is only to prohibit *competitive* activity, as seen from the title. I reject this interpretation. In the first place, the plain words of the clause could not bear this interpretation. The whole point of the clause is to ensure that an employee's engagement with other companies is disclosed so that the Plaintiff may assess whether it would compromise the Plaintiff's interests; if not, then the Plaintiff shall not unreasonably withhold its written consent. The entire second half of the clause would effectively be nullified if one were to read down the clause in the way the Defendants proposed.

320 That said, the circumstances behind Adella and Annie's directorships were unusual. It seems to me that it could not strictly be said that their assistance to BHEA Tech were activities outside the scope of their employment. Their involvement resulted from a request for assistance by Prasad, who had been instructed to assist BHEA India by Nagender, partly for the reason that the Plaintiff might save some money if Indraneel did not charge the Plaintiff for his subsequent visits to Singapore. Arguably, the directorships would not be caught by this clause as they were taken up in "furtherance [of] the interests of the [Plaintiff]".

321 Even if I am wrong about this, Adella and Annie's breaches of cl 6 were at best technical. The Plaintiff suffered no loss while Adella and Annie enjoyed no gain.

Adella, Annie and Rahul's directorships in the other New Entities

322 With respect to Adella and Annie's directorships in Quest Horizon, Annie's directorship in Niado and Rahul's directorship in Q4T Singapore, they were in breach of cl 6 of their employment contracts by their failure to obtain written permission from the Plaintiff. Nevertheless, these breaches did not cause the Plaintiff any provable loss.

Nagender's failure to disclose to the Plaintiff his wife's directorship in QRS

323 The Plaintiff claimed that Nagender's failure to disclose to the Plaintiff the fact that Kavita was a director in QRS was a breach of the conflict of interest prohibition at section 2.5(2) of the Staff Manual (see [25] above) and/or his implied duty of fidelity. Further and/or alternatively, he was in breach of his fiduciary duties to act in good faith and in the best interests of the Plaintiff and to act with honesty and loyalty to the Plaintiff. As I have found that the Staff Manual was not incorporated into Nagender's contract of employment, I only need to consider if he was in breach of his fiduciary duties and/or his implied duty of fidelity.

324 To begin, it is not a breach of a director's fiduciary duties and/or an employee's duty of fidelity if one fails to disclose the directorship of one's spouse in a non-competing company, much less a company that was not even operational.

325 However, I have found that it was Nagender who was the true moving spirit behind QRS. In this regard, I would have been prepared to say that Nagender was in breach of cl 6 of his employment contract as this would, at the very least, amount to *indirect* participation in another enterprise while he was still employed by the Plaintiff, a fact which he had an obligation to disclose. However, this was not pleaded. Nevertheless, he had not only failed to disclose his interest in QRS, but had *deliberately* taken steps to prevent the Plaintiff from finding out that QRS was actually his business by using his wife as a smokescreen. The fact that QRS was not competitive was immaterial. He was in breach of his duty to act with honesty and loyalty to the Plaintiff.

Unlawful use of Pivush's services

Unauthorised use of Piyush's services

326 The Plaintiff pleaded that from May to August 2011, Nagender instructed Piyush to perform a number of accounting tasks and undertake the administration of logistical matters relating to the New Entities. He was involved in the following areas: [note: 495]

(a) the proposed setting up of QRS's Indian entity;

(b) preparation of the revenue model for QRS's Indian entity;

(c) obtaining legal and tax advice in respect of the setting up of QRS's Indian entity;

(d) filling up forms in relation to the incorporation of entities for QRS in the Philippines and Thailand;

(e) the setting up of a branch office for QRS in the Philippines under the Philippines Economic Zone Authority;

(f) processing payments in respect of the setting up of QRS's Philippines entity;

(g) preparing presentation slides in respect of promoting / marketing QRS to potential customers;

(h) seeing to the paperwork involved in increasing the share capital for QRS; and

(i) preparing a costs sharing plan between the New Entities as part of a master budget.

327 The Plaintiff also pleaded that these activities were undertaken while Piyush was an employee of the Plaintiff and during office hours. [note: 496] As a fiduciary of the Plaintiff, Nagender had a duty to act in the best interests of the Plaintiff, to serve the Plaintiff faithfully and dutifully and not to use the Plaintiff's resources for his own personal benefit. By instructing Piyush to perform the aforesaid tasks, Nagender wrongfully utilised the resources of the Plaintiff. [note: 497] Accordingly, Nagender's actions as pleaded above do amount to a breach of his fiduciary duties to the Plaintiff and/or his implied duties of fidelity. [note: 498]

328 As for whether Piyush performed the tasks alleged by the Plaintiff, the Defendants' arguments seems to centre on how the Plaintiff had characterised the activities, without actually showing that work had *not* been done. For example, the Defendants admitted that while Piyush did assist in the drawing up of a costs sharing plan for the Changi Offices, they argued that it was not part of a "master budget" for the entities sharing the premises. [note: 499]

329 The Defendants also alleged that Piyush performed these various tasks on his own volition, without any encouragement from Nagender, Prasad or any of the Defendants. In other words, even though *no one actually asked him to do so*, Piyush voluntarily did the following: [note: 500]

(a) sought Indian tax advice for the incorporation of a QRS entity in India; [note: 501]

(b) prepared a revenue model for QRS's proposed Indian entity; [note: 502] and

(c) provided input on the marketing material for QRS.

330 In itself, this is a difficult proposition to accept, although it is clear enough why Nagender alleged that Piyush had gone about doing all these things on a frolic of his own, in that there was not even a *friendly request* from Nagender for Piyush's help. It is one thing for colleagues to ask each other for assistance, or even for subordinates to request for the input of their superiors, since in such situations there is no risk of there being any abuse of authority. It is different if such a request came from the company's managing director. Moreover, even though Nagender did not reply to Piyush's emails (such as the one where he attached a proposed revenue model for an Indian entity), this did not, by itself, mean that they were unsolicited. The idea that Piyush would have prepared a complex document such as a revenue model or that he had reached out to Cherry to ask her to talk to Thai lawyers (even if no money was spent on this initiative, as Nagender stated [note: 503]) to enquire about the possible incorporation of a QRS branch office without anyone asking him to do so beggars belief.

331 As for his assistance in drawing up a "costs sharing plan" for the New Entities, the Defendants claimed that Piyush was aware of the discussions that led to the incorporation of Quest Horizon, but did not show any interest in participating. In May or June 2011, Piyush found out that Quest Horizon, Niado and BHEA Tech had been incorporated. He told Prasad that he felt "excluded" by his colleagues and volunteered his assistance. [note: 504] This would be odd behaviour, since Piyush stated that he never got along with Annie, Adella, Leny, and Joanna. [note: 505] Why go out of his way to help people he did not like? Nagender himself had alleged that Piyush's dislike for Leny and Joanna stemmed from Piyush's view that they were barriers between Nagender and himself. [note: 506]

332 Based on the evidence, it was more likely that Piyush did the work for the New Entities because he was used to taking instructions from Nagender (and Prasad) and he felt obliged to comply with their instructions.

333 For the above reasons, I find that Nagender had breached his fiduciary duties by instructing Piyush to perform tasks for QRS. I note that the majority of the tasks that Piyush was alleged to have performed were in relation to QRS, which was essentially *Nagender's own company.* It does not matter whether or not QRS was competitive *vis-à-vis* the Plaintiff – Nagender was not entitled to have the Plaintiff's employees do personal tasks for him where there was no possible benefit to the Plaintiff. A director of a company is not entitled to treat the company's employees as if they were his own, and make use of them for his private benefit. While Nagender's breach in this regard did not cause the Plaintiff any loss, as Piyush himself has admitted that his activities were not done at the expense of his duties to the Plaintiff, [note: 507] this does not mean that it was proper for Nagender to have done so.

Payment of bonuses and the Australian trip

Bonus payments to Leny, Prasad, Rahul, Annie, Joanna and Adella

334 The Plaintiff claimed that Nagender exercised his discretion wrongly as a managing director and breached his fiduciary duties and/or implied duties as an employee in awarding bonuses to Leny, Prasad, Rahul, Annie, Joanna and Adella. The Plaintiff did not take issue with the *quantum* of bonuses paid to these Defendants, but rather with the fact that any bonuses were paid to them at all, given their clear involvement in the New Entities while they were all still employed by the Plaintiff. [note: 508]

335 The bonuses (which were generally paid on a quarterly basis [note: 509]) were alleged by the Plaintiff to be paid as follows over the course of May to July 2011: [note: 510]

(a) Prasad's last drawn monthly salary was $9,350. In May and June 2011 (after Prasad had tendered his resignation), Nagender procured and/or caused the Plaintiff to pay to Prasad bonus payments amounting to approximately $46,850.

(b) Joanna's last drawn monthly salary was $12,198. In July 2011, Nagender procured and/or caused the Plaintiff to pay to Joanna bonus payments amounting to approximately $13,568.

(c) Leny's last drawn monthly salary was $12,198. In May and June 2011 (after Leny had tendered her resignation), Nagender procured and/or caused the Plaintiff to pay to Leny bonus payments amounting to approximately $62,086.

(d) Rahul's last drawn monthly salary was $9,898. In May and July 2011, Nagender procured and/or caused the Plaintiff to pay to Rahul bonus payments amounting to approximately $25,240.

(e) Annie's last drawn monthly salary was $7,898. In May and July 2011, Nagender procured and/or caused the Plaintiff to pay to Annie bonus payments amounting to approximately $26,755.

(f) Adella's last drawn monthly salary was $10,048. In May and July 2011, Nagender procured and/or caused the Plaintiff to pay to Adella bonus payments amounting to approximately $25,547.

336 The Plaintiff's position was that, in general, discretionary bonuses should be paid even to departing employees if they had served dutifully and/or were effective in meeting their targets, but that when exercising this discretion, the overall conduct of the employee had to be considered. [note: 511] However, in the present case, given the circumstances regarding the Defendants' involvement in the New Entities, it was unlawful and dishonest for Nagender to authorise these payments. [note: 512]

337 I agree that it would be very unusual for a managing director to pay bonuses to employees who were guilty of serious wrongdoing against the company. However, this was not the case here. I have found that the Defendants (apart from Nagender) were at most in technical breach of their duties with respect to their involvement in the New Entities. While they had spent some of their working hours on the New Entities, this did not appear to have affected their work performances overall. In such circumstances, I do not think Nagender acted in bad faith when he authorised these bonuses.

Payment of Nagender's bonus

338 On 5 September 2011, while serving his notice period, Nagender procured and/or caused the Plaintiff to make a bonus payment to himself amounting to $64,666. [note: 513] The Plaintiff alleged that by doing so without the approval of George or the Plaintiff's board of directors, Nagender had breached his fiduciary duties and/or his implied duties as an employee. [note: 514] On the other hand, the Defendants denied that there was any requirement that Nagender had to seek the approval of the Plaintiff's board of directors or George. [note: 515]

339 George and Marcus admitted that there were no formal procedures in place for the payment of bonuses to senior management of the Griffin Group prior to 2011. [note: 516] George also accepted that Nagender had never obtained or sought the approval of the Plaintiff's board of directors in respect of bonuses payable to himself. [note: 517] While a remuneration committee had been formed in 2011, no formal procedures were put in place, [note: 518] although Marcus did add that better corporate practices prevailed after Inflexion invested in the Griffin Group and it would not be acceptable for any of the heads of the Griffin entities to unilaterally decide their own pay packages.

[note: 519]

340 As for past practice, George said that Nagender would discuss the bonus to be paid to himself (*ie*, Nagender). This usually took place over the telephone and George would verbally approve the figure if it was reasonable. [note: 520] Although Nagender did not do this in 2010, George said he "let it go" because he "did not want to push things too far". [note: 521] Nagender denied such a practice and said that, prior to 2011, his bonuses had been "validated" by Leny. [note: 522] As for his bonus for 2011, he got Joanna to approve his bonus since she was the acting general manager of the Plaintiff. [note: 523]

341 Undoubtedly, George gave Nagender a great deal of leeway when it came to his remuneration, [note: 524] notwithstanding the inherent conflict of interest in such a situation. In fact, it was George's evidence that he had asked Nagender to *increase* his proposed bonus in 2009 from his usual amount of about $27,000. [note: 525] It was possible that, based on Nagender's performance and if there had been a proper transition to a new managing director, George might well have granted Nagender the 2011 bonus anyway, as George admitted. [note: 526]

342 Despite the wide discretion which Nagender had in determining the quantum of his bonus, I do not think that this was a discretion without limits. I find that it is more likely that the practice was for Nagender to call George for the latter's approval, and that it was understood that Nagender had to do so before he could be paid his bonus. Even if that was not the case, it was apparent that things had changed in 2011. The appointment of the remuneration committee was one factor. The fact that Nagender had already *resigned* was another important factor. In such circumstances, the calculus for the company had changed. Certainly, the role of bonuses as an incentive for an employee to stay disappears. Nagender might have felt he deserved the money but he was in no position to exercise the discretion to pay bonuses to a resigning employee when the resigning employee was himself. His bonuses could not be approved or ratified by his subordinates. He had put himself in a position of *actual* conflict of interest. Accordingly, I find that he was in breach of his fiduciary duties to the Plaintiff.

Linda's bonus

343 The Plaintiff also claimed that Nagender had wrongfully exercised his discretion as managing director and that he was in breach of his fiduciary duties and/or implied duties of fidelity in procuring and/or causing the Plaintiff to pay bonuses totalling $15,000 to Ms Huynh Ngoc Dao Lam ("Linda") as such payments were not in the best interests of the Plaintiff. [note: 527]

344 The Plaintiff had employed Linda as an IT project manager with effect from 1 May 2011 on a 4-month contract on a monthly salary of $5,000. [note: 528] Nagender interviewed her. Nagender said he engaged Linda because he needed somebody "to interface with BHEA India for the customisation of the SugarCRM project". [note: 529] Linda expected a higher remuneration package than what the Plaintiff could offer her. As a compromise, Nagender agreed to pay her a salary of $5,000 with the balance $15,000 payable upon the meeting of certain targets. [note: 530]

345 Linda was originally slated to be a witness for the Defendants, but she was eventually not called to give evidence. However, the Plaintiff made references to Linda's AEIC in the course of cross-examining Nagender and Rita. Linda's account in her AEIC differed from Nagender's in one respect, which is that while she recalled Nagender having offered to bridge the gap between her expected

salary with bonus payments, she could not recall Nagender fixing and informing her of the quantum of such bonus payments, either at the interview or subsequently. [note: 531]

346 The Plaintiff submitted that, as a result of this failure to call Linda as a witness, an adverse inference should be drawn against the Defendants. It submitted that the Defendants decided not to call Linda because they feared that she would be rigorously cross-examined on this difference between her account and Nagender's, and reveal Nagender's self-serving account of the facts to be completely untrue. [note: 532] With respect, this was a slender basis upon which to found an adverse inference. The discrepancy between Linda's version, where the shortfall in her expected salary would be bridged by bonus payments, and Nagender's version, where the shortfall of $15,000 would be payable upon certain targets being met, does not appear to me to be significant. Both materially relate to an understanding that the shortfall would be made up in the form of bonus payments, which would naturally be subject to work performance.

347 Further, the Plaintiff also alleged that even if there was an agreement with Linda on the bonus to be paid to her, Nagender still wrongly exercised his discretion in coming to the arrangement and/or paying the bonus. SugarCRM would be obsolete once Salesforce was implemented as the Global CRM system for the Griffin Group. The Griffin Group's contract with Salesforce, Inc was signed on 22 July 2011. Therefore, Linda's continued employment in the Plaintiff post-July 2011 for the further development of SugarCRM was completely unnecessary. [note: 533]

348 I preferred Nagender's account to the Plaintiff's allegations. In the first place, although the $15,000 figure seems excessive at first glance, nevertheless if one were to calculate the average amount paid to Linda over four months, inclusive of her base pay, she would only be getting $8,750 a month, which does not seem excessive for a skilled worker. Even though SugarCRM would eventually be obsolete, there would undoubtedly be a cross-over period before the new system is implemented, during which the Plaintiff would benefit from having an operational and improved CRM system. Moreover, no plausible reason has been suggested as to why Nagender would have wanted to wrongfully benefit Linda in the first place. In such circumstances, it cannot be said that Nagender was in breach of his duties for paying the bonus to Linda pursuant to an understanding or agreement reached between them at the time when Nagender hired Linda.

Linda's Australia trip

349 In a similar vein, the Plaintiff also pleaded that Nagender was in breach of his duties for approving Linda's trip to Australia from 3 September 2011 to 10 September 2011 and sanctioning the reimbursement of her travel expenses when there was no reason for her attendance. [note: 534]

350 According to Rita, the trip to Australia was organised by Annie, Madhu and herself for staff in two of the Plaintiff's teams. The trip had two aims. The first was to familiarise those teams with the locations of airports, vessels and offshore rigs in Australia, which was useful for staff when making route recommendations. The second was that it would be a team building opportunity for the two teams. [note: 535]

351 The Plaintiff described the Australia trip as a "complete joyride" [note: 536] and that there was no reason for Linda to go since she was a mere contract worker whose role in the Plaintiff, if any, was in relation to IT matters and not client management and business development. Therefore, Nagender had exercised his discretion wrongly in allowing Linda to go on the trip. [note: 537]

352 Rita testified that she was actually the one who made the decision for Linda to go on the trip, for the following reasons:

(a) She wanted to ensure that there would be sufficient drivers who could take turns driving. Linda was one of the few people who could drive. Moreover, she was from Australia and knew the country. Linda could help with the navigation required. [note: 538]

(b) Although Linda was nearing the end of her employment, Rita saw no reason to exclude her from consideration. [note: 539]

(c) Linda had done a great job on the SugarCRM upgrading project and demonstrated a good work attitude. [note: 540]

353 It was clear that the participants enjoyed themselves during the trip, [note: 541] but that did not necessarily mean that the trip must have been a "complete joyride". There was nothing wrong in Nagender not wanting to override Rita's decision, [note: 542] which was in no way unjustifiable. I accept the evidence of Rita and the reasons stated by her for including Linda on the trip. Under the circumstances, I find that Nagender was not in breach of his duties for approving Linda's trip to Australia.

Golf membership in Laguna National Golf and Country Club

354 On 17 June 2011, Signature Sparks purchased a 10-year corporate membership (with three nominees) in Laguna National Golf and Country Club ("Laguna"). [note: 543] The three nominees for the first year of the corporate membership were Nagender, Joanna and Peter McSweeney ("Peter"). Peter was the Plaintiff's business development manager at the time. Then in around July 2011, Nagender caused the Plaintiff to pay $75,000 to Signature Sparks, which defrayed part of the sum of $200,000 that Signature Sparks paid to Laguna to acquire for itself the aforesaid golf membership.

355 Nagender effected this payment to Signature Sparks in a most unusual way. First, Nagender instructed Piyush to issue three cheques of $25,000 (dated 5 July 2011) on behalf of the Plaintiff in favour of Nagender, Joanna and Peter, which were countersigned by Nagender. This was followed by the submission of a claim, along with the nomination letter from Laguna, by each nominee, to the Plaintiff. Oddly, the name of Signature Sparks had been *redacted* from the nomination letters. Nagender then instructed Piyush to record the total payment of $75,000 in the Plaintiff's books and accounts as "Golf Membership". Next, Nagender got Peter and Joanna to *cash* out the cheques. Finally, Peter and Joanna handed the cash to Nagender [note: 544] (although there is an inconsistency in that Joanna recalls paying the cash to Kavita instead [note: 545]).

356 The Plaintiff pleaded that Nagender's involvement was a breach of his fiduciary duties as well as his implied duties of fidelity, and that Joanna was in breach of her implied duties of fidelity. [note: 546]

Nagender's rationale

357 Nagender claimed that he thought it would be beneficial for the Plaintiff to have a golf membership as it was increasingly evident that the Plaintiff's customers enjoyed golfing activities. Nagender tasked Peter with obtaining a golf membership for the Plaintiff. After doing some research,

Peter told Nagender about the prices at Laguna. [note: 547] Subsequently, Peter informed Nagender that there was a 3-nominee corporate membership in Laguna that was available for $200,000 and there were two or three other parties interested in purchasing the membership. [note: 548]

358 Nagender also asserted that he did not wish to commit the Plaintiff to pay $200,000 for a corporate membership. He had considered purchasing individual golf term memberships (which cost $25,000 for each individual member for one year of membership only) for some of the Plaintiff's staff to test out the utility of the golf membership. [note: 549] However, as the offer for the three-nominee membership that came along with the corporate membership was for a limited time only, he decided that the most cost-effective solution was for him to take up the corporate membership through Signature Sparks and the nominees of the corporate membership to be three of the Plaintiff's staff for one year. If the Plaintiff decided against taking up the golf membership after one year of trial, it would then only have spent $75,000, the equivalent cost if the Plaintiff had taken up three individual golf term memberships for one year directly with Laguna instead. If the Plaintiff wished to take over the 10-year corporate membership, Signature Sparks could transfer it to the Plaintiff for the balance $125,000 (being $200,000 less $75,000) plus the transfer fee of about $50,000. In this instance, the total cost to the Plaintiff for the three "trial term memberships" for the year before would essentially have been only the transfer fees of about $50,000, which was about $25,000 less than if the three individual one-year term memberships (costing $75,000) were to be taken out directly with Laguna. [note: 550]

359 The Defendants further pleaded that the payment of $75,000 by the Plaintiff to Signature Sparks was for the nominations and utilisation of the golf membership in Laguna for Nagender, Joanna and Peter so that they could entertain the Plaintiff's clients. [note: 551]

Analysis

360 Nagender tried to show that there was a potential cost saving of $25,000 for the Plaintiff in his hypothetical case should the Plaintiff decide to take up the corporate membership after the one-year trial period. I find it hard to believe that Nagender was so generous as to have Signature Sparks spend $200,000 on buying a corporate golf membership for itself so that the Plaintiff could enjoy a potential cost saving of $25,000. A closer look would show that the Plaintiff did not enjoy any cost saving.

361 Basically, the cost comparison put forth by Nagender is between Option A: the Plaintiff purchasing three individual one-year term memberships from Laguna for $75,000 and then subsequently purchasing a 10-year corporate membership from Laguna for $200,000 (thus getting a total of 11 years of membership for a total cost of $275,000); and Option B: the Plaintiff initially paying Signature Sparks $75,000 for golfing use by three of the Plaintiff's nominees for a year, and then paying Signature Sparks $125,000 to take over the balance of the 10-year corporate membership plus paying another $50,000 as transfer fee (thus getting a total of only 10 years of membership essentially for a total cost of $250,000). There is a supposed saving of $25,000 according to Nagender but he avoided mentioning that the overall length of the membership is *shorter by a year*. The average cost for each year of membership works out to be the same for both at $25,000 per year. From this perspective, there is no real benefit to the Plaintiff to speak of.

362 In any event, whether it is Option A or Option B, Nagender had instead increased the overall cost of the golf membership for the Plaintiff because if the Plaintiff had purchased the 10-year corporate membership straightaway instead of doing so in two steps, the average cost of each year of membership is only $20,000 per year. Computed over ten years, Nagender had increased the cost

of the golf membership for the Plaintiff by $50,000 instead. I find it hard to believe that he had the interest of the Plaintiff in mind where this corporate golf membership transaction was concerned.

363 If one were to compare it with the cost of $75,000 per year for three individual memberships, then the average cost per year for a 10-year corporate membership is very much cheaper at an average cost of $20,000 per year. On any view, it is certainly far more economical to take up the 10-year corporate membership. The parties also spilled much ink on the utility (or lack thereof) of the golf membership in the context of the Plaintiff's business. These arguments however do not take us very far. Leaving aside the question of cost, a corporate golf membership is of course *potentially* useful for a company like the Plaintiff. It is probably not *necessary*, but that is not the same thing. In any event, the Plaintiff never had the benefit of the golf membership. It never owned it. All it got was, at best, a one year licence (to use the term loosely) for three of its employees, at a hefty total cost of $75,000 to golf for only one year.

364 Could such an arrangement have been *bona fide*? Everything pointed to the contrary. The Defendants claimed that Nagender had been *entirely* transparent about the manner by which the golf membership had been purchased. [note: 552] This could not have been further from the truth.

365 The Defendants had no explanation for the surreptitious way in which Nagender got the Plaintiff to make payment to Signature Sparks. The easiest thing to do would have been to issue a cheque to Signature Sparks, rather than have the Plaintiff issue separate cheques to the employee nominees, and then have the nominees cash out the cheques to pay Signature Sparks. The Defendants rationalised this by saying that Nagender did not try to hide the transaction as he had discussed it with Marcus and Khuman. They also argued that the nomination letters were given to Piyush as part of the administration and records-keeping processes. Therefore there was no attempt to hide the true purpose of the cheque payments to each of the individual nominees – it was clearly for the purposes of the golf membership. [note: 553]

366 As mentioned above, Nagender claimed that he had informed Marcus and Khuman as to his reasons behind the decision to take out a corporate membership in Signature Sparks's name. This was when they purportedly met at a restaurant in Laguna on 28 June 2011. [note: 554] However, both Marcus and Khuman said they did not recall Nagender talking about this. [note: 555] There is no evidence of that conversation, but there was a separate conversation on 29 June 2011 which was secretly taped by Nagender, [note: 556] and I reproduce the relevant part of the transcript below:

> NR [*ie*, Nagender] : … So if someone says… you know what… it was mis…
>
> **b00134**
>
> NR: …miserable for me to go and get this 75000 dollars Golf stupidities… it was a misery to make a decision about it. On one side I am saying… wait a minute I need to…
>
> **b00135**
>
> NR: …to grow, I need to get customers… the business is moving in a different way… do I pay 200000 dollars and get a full time membership or do I get 75… who do I discuss this with.
>
> **b00136**
>
> NR: … it is a requirement in my… If I tell him (referring to AK)… okay 75000 dollars for a golf

membership… he'll say take a toss. But for offshore and….

b00137

NR: …it is proving to be important. I take two people from SWIRE and I take one from EMAS offshore. That's how I started with EMAS. Whole golf game finished.

b00138

NR: …having tea and Swire says… "You are not dealing with Griffin… oh… I have been dealing with them for last 5 years… my god… its (sic) been good sailing." EMAS says… okay come down. We are doing 120…

b00139

MH: That's just good business

NR: …tickets. Okay… (MH interrupts… yeh) but these are also certain gut feel (sic) so made a dec… *now I feel I made a mistake. I should have gone in for a…*

b00140

NR: *…full blown membership rather than a term membership… yaaa… but again it is a question of decision at that point of time…where I said if I am not using it I only lose 75* … [note: 557]

[emphasis added in italics]

367 This conversation took place *after* the corporate golf membership had been purchased on 17 June 2011 by Signature Sparks (albeit before the Plaintiff issued the cheques dated 5 July 2011 each to Nagender, Joanna and Peter for onward payment to Signature Sparks). By that time, Nagender had already decided to go through with the transaction. Signature Sparks had already purchased a "full blown membership". It is strange then that in the recorded conversation Nagender said he felt that he had made a mistake and that he should have gone for a full blown membership rather than a term membership, when he had never acquired an individual term membership in the first place for the Plaintiff. There are three points to note here.

368 First, the transcript does not show that Nagender said anything about the fact that the golf membership was in Signature Sparks's name or that the payments would be made to Nagender himself. After all, the crucial issue is not whether Nagender had disclosed that the cash payments were for a golf membership *per se*, but rather that the Plaintiff would be making payments for a golf membership that *Signature Sparks had acquired*.

369 Second, Nagender obviously knew that the cost per year for taking up the three individual term memberships at $75,000 per year is nearly four times more expensive that taking up the full blown 10-year corporate membership which works out to only $20,000 per year. From this point of view, he was trying to excuse what he did by saying that "*now I feel I made a mistake. I should have gone in for a….. full blown membership rather than a term membership…*". So he recognised his "mistake" on hindsight for purchasing very expensive individual term memberships of one year for the Plaintiff.

370 Third, Nagender was also trying to mislead Marcus and Khuman into thinking that he had purchased three individual term memberships from Laguna for the Plaintiff at $75,000, when in truth,

no such thing happened. Nagender concealed from them the fact that Signature Sparks, having purchased for itself the much cheaper 10-year corporate membership which works out to an average cost of $20,000 per year, was going to charge the Plaintiff $75,000 per year for golfing use by three of the Plaintiff's staff, thereby making for itself a profit of $55,000 for each year that the arrangement continued. There is no guarantee that Signature Sparks would transfer its corporate membership at a deeply discounted price of $125,000 for the balance of the nine years of corporate membership to the Plaintiff at the Plaintiff's insistence. Signature Sparks gave no written binding option to the Plaintiff to purchase the corporate membership from Signature Sparks at $125,000 after one year. In my assessment, if this "licensing" arrangement had not been discovered and had gone on for the full life of the 10-year corporate membership in the name of Signature Sparks, then Signature Sparks would stand to gain a total of $550,000. The "licensing" arrangement need go on for only three years for Signature Sparks to more than fully recover its entire cost of purchasing the 10-year corporate membership for only $200,000. After that, it would be a pure profit of $75,000 per annum for the next seven years. Nagender was thus trying to make money off the Plaintiff whilst acting as its fiduciary. Such is the depth and scale of the deception and dishonesty in this transaction.

371 Even if the Plaintiff were to refuse to purchase the balance nine years of the corporate membership for $125,000 at the end of one year (on the assumption that there was a binding option which the Plaintiff did not want to exercise), Signature Sparks would still have got for itself a huge subsidy of $75,000, which would have brought down its cost of owning a nine-year corporate membership at an average cost of only $13,888 per annum.

372 The next issue related to the fact that *someone* had redacted the words "Signature Sparks" from the nomination letters submitted by the nominees to Piyush as supporting documents for the three cheques totalling $75,000. [note: 558] The obvious candidate was Nagender, as he had both the means and motive to accomplish it. Nagender denied having anything to do with it, and claimed he did not know who did it, although he claimed that he had asked Peter to photocopy the letters and submit them to the Plaintiff (which would suggest that it was *Peter* who blanked the letters). [note: 559] The Defendants argued that the Plaintiff should have called Peter as a witness to testify to this, and an adverse inference should be drawn against the Plaintiff and Peter in this regard. [note: 560] Yet Nagender himself could not see a reason why Peter would do such a thing. [note: 561] Whatever it is, I believe that Nagender had caused the words "Signature Sparks" to be redacted from the supporting documents given to the Plaintiff for its records. In the same way, I also find that he was responsible for the convoluted manner by which the Plaintiff paid the $75,000 to Signature Sparks by not issuing the Plaintiff's cheques directly in the name of Signature Sparks but in the names of the Plaintiff's nominees, and for these nominees to cash the cheque and hand the cash to either himself or Kavita. For obvious reasons, Nagender did not want the transaction in the Plaintiff's records ever to reveal the involvement of Signature Sparks. Clearly, Nagender knew that it was a highly improper transaction. Erasure of "Signature Sparks" from the documentary trail was therefore a part of his overall concealment to minimise the risk of discovery.

373 The Defendants also raised the argument that the Plaintiff had budgeted for a golf membership for 2011. [note: 562] It was only late in the day that inspection of electronic copies of the budget documents on 26 November 2013 revealed that there were *hidden* columns with a reference to $60,000 for a golf membership (which did not match the $75,000 that was actually paid out). The Defendants argued that as the Plaintiff could not explain why the columns were hidden, an adverse inference should be drawn against it. [note: 563] Considering that the budgets bearing the hidden columns were attached to the original emails sent from the Plaintiff to GGG, which were prepared by Nagender and Prasad or at their direction, [note: 564] it seemed to me the question of why the

columns were hidden is one that the Defendants should be answering instead.

374 To summarise, as a result of these arrangements, Nagender acquired an asset for Signature Sparks, which was effectively subsidised by the Plaintiff. He has not only failed to disclose his interest in the matter, he took *deliberate steps* to prevent the Plaintiff from finding out. He had put himself in a position where, if the value of the golf membership went up, he could sell it to a third party, at an increased profit. If the value went down, he could simply sell it to the Plaintiff using the excuse that the "trial" was successful, or even continue to "sell" one-year term licences to the Plaintiff at an enormous gain to himself. It was a win-win situation for Nagender, at the Plaintiff's expense.

375 For the above reasons, I find that Nagender was in blatant breach of both his duties as a fiduciary and his implied duties as an employee.

376 There is another point of significance which should be dealt with at this juncture. At [108], I stated that Nagender would likely have firmed up his intention to quit the Plaintiff sometime between May and July 2011. I note that Signature Sparks purchased the 10-year corporate golf membership on 17 June 2011. This further suggests to me that perhaps on 17 June 2011, he might still not have made up his mind to resign yet because if he did, he would not be able to exploit the profitable transaction of having Signature Sparks sell one-year term golf licences to the Plaintiff at $75,000 per annum. To do so, he must still be at least the managing director of the Plaintiff to cause this to happen on a yearly basis. No evidence was led to demonstrate that the corporate golf membership would be really useful for Signature Sparks itself. With this further bit of evidence from the date of the purchase of the corporate golf membership by Signature Sparks, I am prepared to further refine the probable date of Nagender's firm decision to resign to be sometime between 17 June 2011 and end July 2011. This reinforces my view that as of February 2011, when Quest Horizon was incorporated, it was more likely to be the private activity of its shareholders than one which involved a masterplan of Nagender being put into action.

Joanna's involvement

377 The next question is whether Joanna too was in breach of her implied duty of fidelity arising out of the golf membership transaction. It is clear to me that her level of involvement was far lower than that compared to Nagender (and even Peter, although I am not suggesting that Peter was knowingly complicit in Nagender's scheme). She said that Peter told her that it was Signature Sparks that acquired the membership and the Plaintiff only needed to pay the cost of having the three of them as nominees for a year which was $25,000 each. Essentially, all she did was to fill in the application form that Peter provided her, encash the Plaintiff's cheque for the sum of $25,000 and thereafter hand the funds to Kavita, on Nagender's instructions. [note: 565]

378 The Plaintiff's case was that Joanna was in breach of her duty of fidelity by "knowingly participating" in the scheme as she had clearly failed to act in the Plaintiff's best interests. [note: 566] It was also argued that she should have made inquiries as to why the membership was taken out in the name of Signature Sparks and why the payment was made in that manner, or put a stop to the payments, or alerted GGG in the UK. [note: 567]

379 However, there is nothing to suggest that Joanna knew the nomination letters had been tampered with or that no record was made of the fact that the moneys were transferred to Signature Sparks. The evidence does not show that she was aware that Nagender's actions were not in the Plaintiff's best interests. She did not profit by the arrangement. She was merely following Nagender's instructions, like Piyush and Peter. I therefore find that she was not in breach of her implied duty of

fidelity.

Tenancy of residential premises for Nagender

380 By way of a tenancy agreement dated 1 June 2011 ("the Tenancy Agreement"), [note: 568] the Plaintiff entered into a two-year tenancy commencing 1 June 2011 for premises at Frankel Place at a monthly rental of $6,550 as residential lodgings for Nagender. [note: 569] This was about two and a half months before his resignation from the Plaintiff's employment on 16 Aug 2011. Under cl 4(f)(i) of the Tenancy Agreement, the Plaintiff could only terminate the Tenancy Agreement after 12 months from the commencement of the Tenancy Agreement and after giving three months' notice if Nagender resigned from the Plaintiff's employment. [note: 570]

381 The Plaintiff's case was that Nagender knew that he would be resigning from the Plaintiff's employment prior to the commencement of the tenancy period; yet, he procured and/or caused the Plaintiff to enter into the Tenancy Agreement and thereby exposed the Plaintiff to liability to pay for at least 15 months' rent. [note: 571] He was therefore in breach of his fiduciary duties and/or his implied duty of fidelity to the Plaintiff. [note: 572]

382 Nagender claimed that he had always been entitled to accommodation being provided by the Plaintiff as a term of his employment. In anticipation of relocating to London (*ie*, in expectation of becoming the Global CEO), he purchased a much smaller property in Pine Vale (which transaction was completed sometime in mid-2010) for his children's use in the event that they wanted to stay in Singapore while he was in London [note: 573]. He then put his previous apartment at Ocean Park up for sale in 2010, [note: 574] which sale was completed in June 2011.

383 I note that Nagender and his wife had executed the Option to Purchase for the Ocean Park property on 25 March 2011, which was accepted by the purchasers on 8 April 2011. [note: 575] This fact reinforces my earlier finding that Nagender would not have intended to resign as early as February 2011. Even if he had an intention to cause damage to the Plaintiff, I do not think he would have put himself through the hassle of selling the Ocean Park property, leaving no place for himself to stay, and having perhaps to look for a replacement property. While he had another property in Pine Vale, the liveable area was half the size of his previous accommodation in Ocean Park, [note: 576] which he said was too small for his household's needs. [note: 577]

384 In any event, I have found that Nagender would likely have made up his mind to resign sometime between 17 June and end July 2011. As at the date of the Tenancy Agreement, *ie*, 1 June 2011, Nagender therefore had no intention to leave the Plaintiff and he did nothing wrong when he procured the Plaintiff to enter into the Tenancy Agreement.

385 Even if Nagender already had made up his mind to resign when the Tenancy Agreement was entered into, Nagender had not resigned yet and he was also obliged to give six months' notice of his resignation. Clearly, the reasonable expectation would be that the Plaintiff would continue to provide Nagender with rented accommodation whilst he served out his notice period. Nagender resigned on 16 August 2011 and his expected notice period would therefore run out on 16 February 2012. If he had not been summarily dismissed, he would have stayed in the rented property for a good eight and a half months. Surely the expectation would still be for the Plaintiff to continue to provide him with rented accommodation for this period. Viewed in this light, it was not extravagant for Nagender to have the Plaintiff enter into the Tenancy Agreement. Further, a minimum tenancy term of 15 months does not appear to me to be out of the ordinary.

386 Accordingly, I am not able to find that Nagender had entered into the Tenancy Agreement on behalf of the Plaintiff in bad faith. Nagender's obligations to the Plaintiff did not require him to drastically reduce his family's standard of living by moving to Pine Vale, especially since he had sold the Ocean Park property because he had been led to believe he would be made the Global CEO. In my view, if he had stayed on, the Plaintiff would not have complained about him staying in Frankel Place and leaving Pine Vale empty. Most importantly, his frame of mind at the time the Tenancy Agreement was entered into was that he was still staying on with the Plaintiff. For these reasons, I find that Nagender did not breach his fiduciary duties and/or his implied duty of fidelity when he procured the Plaintiff to enter into the Tenancy Agreement.

Destruction of information on the Plaintiff's laptops

387 It was not disputed that Nagender, Joanna and Rahul deleted the data on their laptops by the acts described at [267] to [270] above. The Plaintiff relied on the following contractual terms and duties owed by these Defendants to the Plaintiff:

(a) Clause 17 of Nagender and Rahul's employment contracts.

(b) The following fiduciary duties owed by Nagender to the Plaintiff:

(i) to act in good faith and in the best interests of the Plaintiff; and

(ii) to act with honesty and loyalty towards the Plaintiff.

(c) The implied term of fidelity owed by Nagender, Rahul and Joanna to the Plaintiff.

Whether there was a breach of cl 17

388 Clause 17 of Nagender and Rahul's employment contracts stated:

> **17. Confidentiality of Information**
>
> The Employee shall be authorized to gain access to certain computer systems, programs and data. The Employee must not attempt, alone or with others, to gain access to data or programs to which they have not been authorized to gain access.
>
> The Employee must not, except with specific prior authority from the Management, load into any computer via disk, typing, electronic data transfer or by any other means, any other software programme or application. The Employee must not use or insert into any computer any floppy disk, CD-ROM, DVD, removable hard drive, memory stick, or any other device for the storage and transfer of data programs.
>
> The Employee must not use any modern link or network link or any other internet or internet link to access any other computer or information service without prior written approval, and the Employee must not download any file without specific prior written approval from the Management. The Employee must not connect any piece of computer equipment to any network or other items of computer equipment without written approval.
>
> The Employee shall be responsible for any action taken against the Company for breaches of copyright resulting from any breach of this condition, which may render the Employee liable to

summary dismissal.

389 The Defendants invited me to read the clause much more narrowly by interpreting it purposively. They argued that it was apparent that cl 17 had two primary purposes, namely: [note: 578]

(a) It protected the Plaintiff's confidential information from being accessed, stored onto an external device and transferred, or alternatively from being transmitted by way of internet.

(b) It placed liability for copyright infringement on the employee. It was in this context that the prohibition against loading any software onto the Plaintiff's computers, as well as the downloading of any files, was instituted.

390 They further argued that a strict, literal reading of cl 17 would result in absurdity, as it would prevent employees from using on the Plaintiff's computers any USB flash drive, for example. Moreover, a plain reading of the clause did not contain any prohibition on the storage of data or document files, but merely prohibited the loading into the Plaintiff's computer of any software. [note: 579]

391 Undoubtedly, in interpreting a clause in a contract, the court should take into account the commercial purpose of the provision. Nevertheless, I find no reason to depart from the plain and obvious meaning of the clause. There are plenty of possible reasons why an employer may wish to prevent an employee from installing software without permission, which is not limited to fears of copyright infringement. Therefore, Nagender and Rahul were in breach of cl 17 by installing and running the software SDelete on the Plaintiff's laptops without permission.

392 However, this was, ultimately, merely a technical breach, as no loss was caused to the Plaintiff. The Plaintiff had a terminal server system which was described in Sandeep's AEIC. This meant that, in general, employees of the Plaintiff generally worked on documents which were stored on a central server rather than on individual laptops. They accessed the server using "dumb terminals" which had no capability to save documents. The information stored on the terminal servers were backed up daily, which made it "virtually impossible" for company information contained in these servers to be destroyed. [note: 580]

393 However, there remained a number of laptops still in circulation. Information might be lost if, instead of working on the file directly on the server itself, the file was downloaded to the laptop and worked on locally. Alister (the Griffin Group's chief information officer) accepted that it was a "fairly simple and easy process" to subsequently save that document to the server at the end of the session, although he emphasised that it was a manual process. [note: 581] Nagender, Joanna and Rahul had testified that they had a regular practice of saving work documents back onto the Plaintiff's terminal servers. [note: 582] The Plaintiff contended that it was highly unlikely that the three of them had manually uploaded every single work document that they worked on back onto the Plaintiff's server. [note: 583] In my view, the fact that it is a manual process does not necessarily make it "highly unlikely".

394 While the Plaintiff did point to a number of files which may have contained company information which was deleted from Joanna's laptop and accessed from Rahul's, [note: 584] it is unclear whether they were merely temporary files that had already been uploaded to the Plaintiff's servers.

395 In conclusion, the Plaintiff has not adduced sufficient evidence demonstrating that Nagender

and Rahul's breach of cl 17 caused the Plaintiff any loss.

Fiduciary duties and implied duty of fidelity

396 Nagender's deletion of data from the Plaintiff's laptop which was assigned to him did not, in itself, mean that he was in breach of his fiduciary duties. I believe that he undertook the deletion in order to prevent the Plaintiff from discovering the breaches that I have found him to have committed. However, there is no indication that he had set out to deliberately destroy the Plaintiff's documents in the course of deleting files and information regarding his private activities. I note that the Plaintiff's documents, in the normal course of business, would be duplicated or stored on the Plaintiff's servers because the laptops were to be used as "dumb terminals" by its employees, a fact that Nagender would be aware of. Clearly, it is a pointless exercise for Nagender to maliciously destroy the Plaintiff's documents on his laptop when it is after all already duplicated on the Plaintiff's servers.

397 In the case of Rahul and Joanna, their deletion of the company's documents on the laptops assigned to them does not, without more, amount to a breach of their implied duty of fidelity, having regard to the fact that the laptops were meant to be used as "dumb terminals" and the Plaintiff's documents would be stored on the Plaintiff's servers.

The counterclaim

Wrongful dismissal

398 I now turn to Nagender, Joanna, Rahul, Annie and Adella's counterclaims for wrongful dismissal. In essence, they claimed that the Plaintiff was in breach by dismissing them with immediate effect and without notice as required by their employment contracts. [note: 585]

399 Clause 22 of the contracts of employment for Nagender, Annie and Adella stated:

> **22. Termination of Services**
>
> Except in the case of gross misconduct, the parties agree that after confirmation of services, six months' notice in writing shall be given by either the company or yourself as the case may be, when terminating employment… In the case of gross misconduct then the employment may be terminated immediately and without notice depending on the seriousness of the incident.
>
> …
>
> [T]he Company may at any time during the term of the Agreement without notice terminate the employment of the Employee for malfeasance, breach of any confidentiality or non-compete provisions contained in this Agreement, providing false or misleading information in entering into this Agreement, for any wilful and intentional act having the effect of injuring the reputation, business or business relationships of the Company and its affiliates or for any failure to perform work responsibilities to the high standard of performance required by the Company of its professional staff.
>
> …

400 Rahul's contract is similar except that the notice period is three months, instead of six. [note: 586] The Defendants also pleaded that Joanna was entitled to three months' notice, which appears to

be based on the written contract she entered into when she was transferred to Griffin Australia. [note: 587] However, it was agreed by the parties that her contract of employment with the Plaintiff was actually an *implied* one. Nevertheless, the parties do not seem to be in dispute over the actual length of her notice period. As neither party submitted on this point, I will say no more about it.

401 The question is whether any of the breaches of duty by Nagender, Joanna, Rahul, Annie and Adella were of such gravity that the Plaintiff was warranted in summarily dismissing them. In *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722, it was held that:

(a) The common law rule that an employer can rely on any additional reasons (whether known to him or not) which existed at the time of dismissal to justify the dismissal applies in Singapore (at [49]).

(b) The question of whether the employee had acted in a manner sufficient to justify the summary dismissal is to be determined objectively by the courts (at [57]).

(c) The act must be so serious that it strikes at the root of the contract of employment, that it destroys the confidence underlying such a contract. The relevancy and effect of any misdeed complained of must be judged by reference to its effect on the employer-employee relationship (at [58], citing with approval *Cowie Edward Bruce v Berger International Pte Ltd* [1999] 1 SLR(R) 739).

402 With respect to Joanna, I have not found that she was in breach of any duty to the Plaintiff. As for Rahul, Annie and Adella, while they had committed breaches of duty, none of the breaches were so serious as to amount to gross misconduct. The four of them were therefore wrongfully dismissed by the Plaintiff.

403 As for Nagender, it was an entirely different matter. Taken together, the breaches relating to his failure to disclose his material involvement as the moving spirit behind QRS (see [325] above), his unlawful use of Piyush's services (see [333] above), the payment of his own bonuses without authority (see [342] above), and, most seriously, his acts in relation to the acquisition of the Laguna golf membership (see [374] above), certainly entitled the Plaintiff to summarily dismiss him.

Nagender as "Bad Leaver"

404 Under the Subscription Agreement, Nagender subscribed, through Signature Sparks, to 9.1% of the shares in Holdco and £1.6m worth of loan notes issued by Bidco. As a member of Holdco, Signature Sparks was bound by Holdco's Articles of Association ("the Articles"). The subscription by Signature Sparks of loan notes issued by Bidco was governed by an agreement titled "Instrument constituting £26,752,000 Series 1 Vendor Loan Stock 2016" ("the Loan Note Instrument"). [note: 588]

405 Under the contractual framework described in the preceding paragraph, the value Nagender was entitled to receive for the shares in Holdco and the loan note from Bidco was predicated on whether he should be categorised as a "Resigning Leaver", "Good Leaver" or "Bad Leaver" under Schedule 1 of the Articles. [note: 589] The Plaintiff accepted that if Nagender was validly dismissed on the grounds of dishonesty, he was a Bad Leaver. If he was wrongfully dismissed, he was a Good Leaver. If he was not dishonest but validly dismissed, he was a Resigning Leaver. [note: 590]

406 A Bad Leaver was defined as follows: [note: 591]

"Leaver" means any person who ceases or (as the case may be) will cease (through having given or been given notice) to be a Relevant Executive in circumstances where he does not or (as the case may be) will not continue immediately thereafter to be a Relevant Executive in any capacity.

"B1 Bad Leaver" means any Leaver who either holds B1 Ordinary Shares or is a B Corporate Shareholder Executive and the relevant Corporate Shareholder holds B1 Ordinary Shares and becomes a Leaver as a result for summary dismissal for acts of dishonesty, physical violence or similar.

407 Harsh consequences follow from being classified as a Bad Leaver, as it allows Holdco and Bidco to forfeit Nagender's entitlements for a pittance:

(a) Signature Sparks would be required to transfer its entire shareholding in Holdco at £1 pursuant to art 16.14 of the Articles; [note: 592] and

(b) The value of the loan note issued by Bidco to Signature Sparks would be reduced to £1 pursuant to cl 3.3 of Schedule 2 of the Loan Note Instrument. [note: 593]

408 By way of letters dated 30 November 2011, Holdco and Bidco issued notices to Nagender to inform him that they had classified him as a Bad Leaver and purported to redeem his loan note with Bidco at £1and to require that he transfer to Holdco his shares therein for £1. [note: 594]

409 Having already found that the Plaintiff was entitled to summarily dismiss Nagender, I am not concerned with whether Nagender was a Good Leaver. I only need to consider whether Nagender committed any "acts of dishonesty, physical violence or similar" which would justify the Plaintiff's characterisation of him as a "Bad Leaver".

410 The parties disagreed as to what was meant by "dishonesty" as used in Schedule 1 of the Articles. The Plaintiff submitted that dishonesty should be interpreted according to its plain and ordinary meaning as stated in the Oxford Online English Dictionaries, *ie*, "deceitfulness shown in someone's character or behaviour". [note: 595] It further argued that even if the term "dishonesty" was to be construed to refer to the legal doctrine of dishonesty, the evidence of Nagender's dishonesty was so overwhelming that it meets the requisite standard under the law, which the Defendants submitted required more evidence than in an ordinary civil case. The Plaintiff referred to the cases of *Cavenagh Investment Pte Ltd v Kaushik Rajiv* [2013] 2 SLR 543 ("*Cavenagh Investment*") (at [70] and [71]) and *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*George Raymond Zage III*") for the proposition that the test for dishonesty is an objective one, and that the court looks at whether a defendant acted in a commercially unacceptable way, and such behaviour is made out if he fails to query the irregular shortcomings of the transaction that ordinary honest people would so query. [note: 596]

411 The Defendants, in response, argued that *Cavenagh Investment* and *George Raymond Zage III* were cases that related to the requirement of dishonesty in relation to a change of position defence and the issue of dishonest assistance respectively, and that the principles of dishonesty in restitutionary and equitable trusts claims are not of general application. [note: 597] Rather, it argued that dishonesty in the present circumstances required advertent conduct, and conscious impropriety.

412 Ultimately, this is really a matter of interpretation of the Articles. It seems to me that importing

doctrines from other areas of law is not entirely helpful, and only serves to muddy the analysis. In my view, dishonesty should be given its plain and ordinary meaning. Of course, it must be such a level of dishonesty that would entitle the Plaintiff to summarily dismiss Nagender.

413 In a sense, the argument over the meaning of dishonesty was academic since Nagender's actions relating to the acquisition of the golf membership in Laguna were dishonest *by any standard*. He had not only procured the Plaintiff to issue cheques totalling $75,000 to subsidise Signature Sparks's acquisition of the Laguna corporate golf membership, he also tried to make money out of the Plaintiff of which he was a fiduciary and also made use of its employees to cover his tracks.

414 For completeness, I will also deal briefly with the Defendants' allegation that Holdco and Bidco's decision to classify Nagender as a Bad Leaver was made in bad faith, and that Holdco's board of directors had launched a campaign to marginalise Nagender from end-2010. [note: 598]

415 Nagender relied heavily on an email sent by Porter to George and Khuman on 19 May 2011 [note: 599] to establish his allegation of bad faith. The attachment was three pages long. In the section titled "The Way Forward in Our Talks with Nagender", Porter used the words "good leaver" and "bad leaver" several times. For example:

> It is likely he will want to avoid being a bad leaver – though he may not and we will have to be ready for this.
>
> With his immediate departure we should still seek to get him to agree to restrictions. I would suggest when he leaves he would be treated as a bad leaver but if he fulfils conditions such as not poaching customers; staff and not competing for (say) 2 years – we would agree to treat him as a good leaver at the end of that time and compensate him accordingly.

416 While this email was written in May 2011, I am not persuaded that it indicated that Holdco and Bidco had the intention of labelling Nagender as a Bad Leaver, come what may. Moreover, it can be seen from the transcripts of a telephone conversation on 4 July 2011 between George and Khuman that they were still talking about re-engaging Nagender, [note: 600] a fact which Nagender accepted in cross-examination. [note: 601] Finally, even *if* the Plaintiff had been acting against Nagender in bad faith, it did not mean Nagender could act in a dishonest way against the Plaintiff.

417 Accordingly, the Plaintiff is entitled to label Nagender as a Bad Leaver.

Conclusion

418 With respect to the Plaintiff's claims:

(a) I find that Nagender is liable to the Plaintiff for (a) his failure to disclose his material involvement as the moving spirit behind QRS, (b) his unlawful use of Piyush's services, (c) the payment of a bonus to himself without proper approval, (d) his installation of SDelete on the Plaintiff's laptop in breach of cl 17 of his employment contract, and (e) causing the Plaintiff to make payments to Signature Sparks in respect of the Laguna golf membership. The Plaintiff has not demonstrated that breaches (a), (b) and (d) caused them any loss. I order that damages be assessed by the Registrar for breaches (c) and (e).

(b) As for the claims against Rahul, Annie and Adella, while they were in breach of their contractual duties to the Plaintiff, the Plaintiff has not shown that these breaches caused the

Plaintiff any loss, and hence nothing needs to be referred to the Registrar for assessment.

(c) I decline to make any declaratory order that Nagender had breached his fiduciary duties or that Rahul, Annie and Adella had breached the terms of their employment contracts with the Plaintiff. The power to grant a declaration is discretionary and where the court feels that a declaration will serve no useful purpose, no declaration will be granted (see *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [74]). I find this to be the case here.

(d) I dismiss the Plaintiff's claims against Prasad, Leny and Joanna.

(e) If the parties do not wish to address the court on costs, I will award the Defendants (except Nagender) costs in respect of the work done in defending the Plaintiff's claim against them, to be taxed if not agreed. Nagender is to pay the Plaintiff costs of the work done in relation to the claims made by the Plaintiff against Nagender, to be taxed if not agreed.

419 With respect to the counterclaim:

(a) I allow Rahul, Joanna, Annie and Adella's counterclaim for wrongful dismissal against the Plaintiff with costs to be reserved to the Registrar. Damages are to be assessed by the Registrar.

(b) I decline to exercise my discretion to grant the declaration that the Plaintiff's summary termination of their respective employments is wrongful, as it serves no useful purpose.

(c) I dismiss Nagender's counterclaim against the Plaintiff for wrongful dismissal as well as Nagender and Signature Sparks' counterclaim against Holdco and Bidco. Unless the parties wish to address the court on costs, I order the Plaintiff's costs in defending Nagender's counterclaim, as well as Holdco and Bidco's costs in defending Nagender and Signature Sparks' counterclaim, to be taxed if not agreed.

Annex 1

Details of the New Entities (and Q4T Australia) at incorporation:

New Entities	**Incorporation date**	**Shareholding at incorporation**	**Directors at incorporation**
Quest Horizon	21 Feb 2011	Joanna (10%) Annie (10%) Adella (35%) Madhu (45%)	Annie Adella
Niado	27 Apr 2011	Quest Horizon (45%) Sandeep (10%) Cornel (45%)	Annie Cornel Sandeep
BHEA Tech	27 Apr 2011	Annie (100%)	Annie Adella
Q4T Australia	31 May 2011	Apoorva (100%)	Apoorva

Q4T Singapore	23 June 2011	Rahul (50%) Ajay (50%)	Rahul Ajay
QRS	3 Aug 2011	Kavita (100%)	Kavita Leny

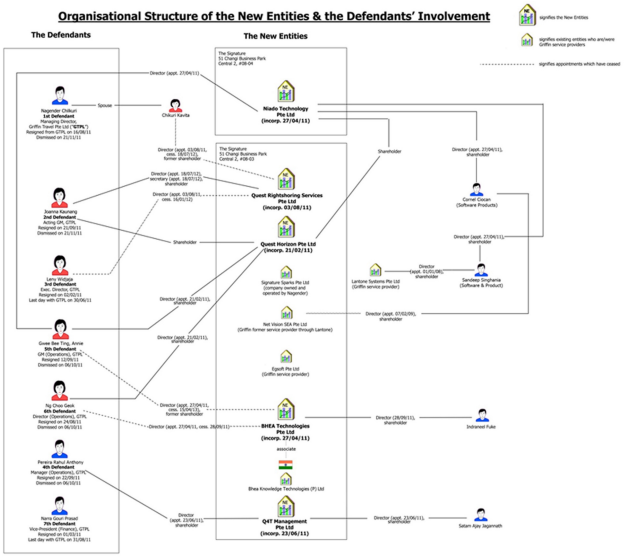
Annex 2

Timeline of key undisputed events:

Date	**Event**
23 Sep 2010	Nagender sends email saying it is timely to "move on"
6 – 8 Oct 2010	George and Nagender meet in Mumbai, India
26 Nov 2010	Nagender writes email offering to resign. George replies asking him to "please rest this".
12 Jan 2011	Shareholders' meeting in Athens, Greece
2 Feb 2011	Leny resigns from the Plaintiff
21 Feb 2011	Quest Horizon is incorporated
1 Mar 2011	Prasad resigns from the Plaintiff
25 Mar 2011	Option to Purchase for Ocean Park property is executed
28 Mar 2011	George writes email saying Nagender is not ready to be Global CEO
27 Apr 2011	BHEA Tech and Niado are incorporated
May 2011	Porter, Khuman and Nagender have conversation where Nagender is told that a search was beginning immediately for an externally sourced Global CEO
31 May 2011	Q4T Australia is incorporated
31 May 2011	Tenancy agreements for Changi Offices signed
1 June 2011	Plaintiff enters into tenancy agreement for Frankel Place
17 June 2011	Signature Sparks purchases Laguna golf membership
20 June 2011	Nagender resigns from the board of Griffin India
21 June 2011	Nagender resigns from the Global Board
23 June 2011	Q4T Singapore is incorporated
30 June 2011	Leny exits the Plaintiff after serving her notice
21 July 2011	Nagender, Joanna and Prasad go to Cebu, Philippines
22 July 2011	Marcus calls Nagender to inform him about the possible appointment of Simon Morse as the new Group executive chairman

3 Aug 2011	QRS is incorporated
16 Aug 2011	Nagender resigns as managing director of the Plaintiff
31 Aug 2011	Prasad exits the Plaintiff and returns to India after serving his notice
5 Sep 2011	Bonus is paid to Nagender
12 Sep 2011	Annie resigns from the Plaintiff
19 Sep 2011	Nagender resigns from the Plaintiff's board of directors
21 Sep 2011	Joanna resigns from the Plaintiff
22 Sep 2011	Rahul resigns from the Plaintiff
28 Sep 2011	Adella resigns from BHEA Tech
6 Oct 2011	Rahul, Annie and Adella are summarily dismissed
21 Nov 2011	Nagender and Joanna are summarily dismissed.

Annex 3



[note: 1] Statement of Claim (Amendment No 4) ("SOC"), para 3; Defence and Counterclaim (Amendment No 4) ("Defence"), para 4.

[note: 2] Plaintiff's Executive Summary of Submissions dated 21 March 2014 ("PES"), para 3.

[note: 3] PES, para 3.

[note: 4] PCS, para 5.

[note: 5] PES, para 7.

[note: 6] PES, para 8.

[note: 7] Defendants' Reply Submissions ("DRS"), para 9.

[note: 8] DRS, para 14(e).

[note: 9] PCS, para 11.

[note: 10] SOC, para 6(a).

[note: 11] SOC, para 6(a); Defence, para 7(a).

[note: 12] Joanna's AEIC, para 93.

[note: 13] SOC, para 6(b); Defence, para 7(b)

[note: 14] SOC, para 6(c); Defence, para 7(c).

[note: 15] SOC, para 6(d); Defence, para 7(d).

[note: 16] SOC, para 6(e); Defence, para 7(e).

[note: 17] SOC, para 6(f); Defence, para 7(f).

[note: 18] Prasad's AEIC, para 85.

[note: 19] SOC, para 6(g); Defence, para 7(g).

[note: 20] Prasad's AEIC, para 4.

[note: 21] Marcus's AEIC, paras 2–3.

[note: 22] SOC, para 7.

[note: 23] PRS, para 16; SOC, para 17; Defence, para 18.

[note: 24] SOC, paras 10–11.

[note: 25] SOC, para 9

[note: 26] SOC, para 8

[note: 27] DCS, paras 132–133.

[note: 28] DCS, paras 134–135.

[note: 29] DRS, para 209.

[note: 30] PRS, para 8.

[note: 31] PRS, para 12.

[note: 32] PRS, paras 13–14.

[note: 33] See *eg* 1AB, p 34.

[note: 34] DCS, para 143.

[note: 35] PCS, para 172.

[note: 36] PRS, para 21.

[note: 37] DCS, paras 146–147.

[note: 38] PCS, para 173.

[note: 39] DCS, para 149.

[note: 40] DCS, paras 151–153.

[note: 41] NE, 20 Jan 2014, p 61, lines 7–8.

[note: 42] 1AB, p 61.

[note: 43] Prasad's AEIC, para 20.

[note: 44] SOC, para 30.

[note: 45] DRS, paras 241–242.

[note: 46] SOC, para 19.

[note: 47] Defence, para 20.

[note: 48] DCS, paras 154–155.

[note: 49] PRS, para 26.

[note: 50] PCS, para 160.

[note: 51] George's AEIC, para 20.

[note: 52] Nagender's AEIC, paras 86 – 88; George's AEIC, para 18.

[note: 53] Nagender's AEIC, paras 91 – 92.

[note: 54] George's AEIC, para 24.

[note: 55] Nagender's AEIC, para 99; NE, 6 November 2013, pp 12, lines 2 – 6.

[note: 56] Defence, para 95; Reply and Defence to Counterclaim ("Reply"), para 15.

[note: 57] Nagender's AEIC, para 90.

[note: 58] PRS, paras 433 – 435.

[note: 59] George's AEIC, para 33; see also DCS, para 527.

[note: 60] George's AEIC, para 44; see also 2AB, p 771.

[note: 61] Nagender's AEIC, para 114; 1AB, p 424.

[note: 62] George's AEIC, para 46.

[note: 63] George's AEIC, para 47.

[note: 64] George's AEIC, para 48.

[note: 65] Nagender's AEIC, para 126; see PBD, p 566.

[note: 66] PBD, p 567.

[note: 67] Nagender's AEIC, para 127; see also 1SAB, p 58.

[note: 68] 2AB, p 825.

[note: 69] NE, 14 Nov 2013, p 30 line 6 to p 31 line 1; Nagender's AEIC, para 126.

[note: 70] DRS, paras 161 – 163.

[note: 71] 2AB, p 827.

[note: 72] George's AEIC, para 57.

[note: 73] Nagender's AEIC, para 129.

[note: 74] 8AB, p 4432.

[note: 75] NE, 5 Nov 2013, p 110, lines 10–17.

[note: 76] PCS, para 130.

[note: 77] 8AB, p 4465.

[note: 78] Nagender's AEIC, para 130; NE, 14 Nov 2013, p 52 lines 15–17.

[note: 79] NE, 14 Nov 2013, p 56 line 22 to p 57 line 4.

[note: 80] NE, 14 Nov 2013, p 65 line 25 to p 66 line 17.

[note: 81] 1SAB, p 59.

[note: 82] 1SAB, p 60.

[note: 83] NE, 14 Nov 2013, p 58, lines 11–13.

[note: 84] 8AB, p 4470.

[note: 85] Nagender's AEIC, para 136.

[note: 86] 2AB, p 860.

[note: 87] 2AB, p 859.

[note: 88] 2AB, p 859.

[note: 89] 2AB, p 868.

[note: 90] 8AB, p 4471.

[note: 91] DRS, para 179.

[note: 92] George's AEIC, para 62.

[note: 93] NE, 5 Nov 2013, p 120, lines 5–9.

[note: 94] PCS, para 140.

[note: 95] PCS, para 142.

[note: 96] Nagender's AEIC, para 141.

[note: 97] DRS, para 185.

[note: 98] 2AB, p 880.

[note: 99] PCS, para 146.

[note: 100] PCS, para 148.

[note: 101] DRS, para 188.

[note: 102] 2AB, p 897.

[note: 103] NE, 14 Nov 2013, p 95, lines 2–24.

[note: 104] NE, 14 Nov 2013, p 96 line 8 to p 97 line 14; see 8AB, p 4480.

[note: 105] 2AB, p 944.

[note: 106] 2AB, p 956; 2AB, p 955.

[note: 107] 2AB, p 928.

[note: 108] NE, 21 Nov 2013, p 18 line 25 to p 21 line 3; p 22 lines 1–16; see also Nagender's AEIC, paras 185–186.

[note: 109] Morse's AEIC, paras 40 – 41.

[note: 110] Nagender's AEIC, para 266.

[note: 111] 2AB, p 967–968.

[note: 112] 2AB, p 1035.

[note: 113] PCS, para 113.

[note: 114] DRS, para 195.

[note: 115] DRS, para 196.

[note: 116] Adella's AEIC, para 58.

[note: 117] NE, 29 Nov 2013, p 172, lines 18–23.

[note: 118] Leny's AEIC, para 83.

[note: 119] Adella's AEIC, para 59.

[note: 120] Adella's AEIC, para 60; Annie's AEIC, para 43; Joanna AEIC, para 71.

[note: 121] DCS, para 64.

[note: 122] 6AB, p 3336

[note: 123] 6AB, p 3336.

[note: 124] NE, 19 Nov 2013, p 11, lines 12–22.

[note: 125] NE, 29 Nov 2013, p 178, lines 8 – 25.

[note: 126] NE, 28 Nov 2013, p 179, lines 6 – 21.

[note: 127] NE, 29 Nov 2013, p 183, lines 4–24.

[note: 128] Prasad's AEIC, paras 92 and 94.

[note: 129] Joanna's AEIC, para 73.

[note: 130] Nagender's AEIC, para 248.

[note: 131] 2AB, p 1095.

[note: 132] Cornel's AEIC, para 13; see also NE, 27 Jan 2014, p 135 lines 6–17; p 136 lines 12–14.

[note: 133] NE, 27 January 2014, p 140, lines 10–21.

[note: 134] Cornel's AEIC, para 10–11; PCS, para 569.

[note: 135] NE, 27 January 2014, p 135 line 6 to p 136 line 14.

[note: 136] Cornel's AEIC, para 13.

[note: 137] NE, 27 Jan 2014, p 139 line 22 to p 140 line 11.

[note: 138] NE, 27 Jan 2014, p 142 line 6 to p 145 line 20.

[note: 139] Cornel's AEIC, para 11.

[note: 140] NE, 27 Jan 2014, p 160 line 9 to p 161 line 8.

[note: 141] NE, 27 Jan 2014, p 154, lines 5 – 9.

[note: 142] NE, 20 Jan 2014, p 79, lines 4 – 6.

[note: 143] Annie's AEIC, para 53.

[note: 144] NE, 27 Jan 2014, p 184 lines 7 – 25.

[note: 145] NE, 20 Jan 2014, p 76 lines 9 – 11; see also 5AB p2554.

[note: 146] 9AB, pp 4529 – 4530.

[note: 147] NE, 27 Jan 2014, p 171, lines 14–17.

[note: 148] Joanna's AEIC, para 82.

[note: 149] 5AB, p 2560; see also 5AB, p 3061.

[note: 150] 5AB, p 2784.

[note: 151] 5AB, p 2704.

[note: 152] 4AB, p 2352.

[note: 153] 5 AB, p 2832.

[note: 154] NE, 29 Nov 2013, pp 213 – 215.

[note: 155] Leny's AEIC, para 87.

[note: 156] Leny's AEIC, para 88.

[note: 157] Nagender's AEIC, para 252

[note: 158] NE, 29 Nov 2013 p 214 lines 19 to 21; see also 6AB, p 3373.

[note: 159] PCS, para 342.

[note: 160] PCS, para 344–345.

[note: 161] NE, 21 Nov 2013, p 86, line 9.

[note: 162] NE, 26 Nov 2013, p 113, line 14.

[note: 163] PCS, paras 353 – 355.

[note: 164] NE, 27 Jan 2014, pp 156 – 157.

[note: 165] PCS, para 565(d).

[note: 166] NE, 27 Jan 2014, p 162 line 21 to p 163 line 23.

[note: 167] PCS, paras 358–367.

[note: 168] PCS, paras 377 – 381.

[note: 169] 5AB, pp 2831 – 2845.

[note: 170] DB, pp 197 – 206.

[note: 171] DCS, para 190.

[note: 172] DRS, paras 298 – 300.

[note: 173] NE, 27 Jan 2014, p 162 line 21 to p 163 line 19.

[note: 174] NE, 27 Jan 2014, p 229, lines 2 – 4.

[note: 175] NE, 27 Jan 2014, p 213 lines 5 – 21.

[note: 176] PCS, para 565(g).

[note: 177] PCS, para 384

[note: 178] PCS, paras 422 – 423.

[note: 179] PCS, para 388.

[note: 180] DRS, para 51.

[note: 181] DRS, para 302.

[note: 182] PCS, para 393.

[note: 183] PCS, paras 408 – 409.

[note: 184] Andy's AEIC, paras 3 – 5.

[note: 185] 6AB, p 3355.

[note: 186] NE, 14 Nov 2013, p 17, lines 6 – 13.

[note: 187] NE, 14 Nov 2013, p 16, lines 17 – 23.

[note: 188] 6AB, p 3357.

[note: 189] DRS, paras 321 – 322.

[note: 190] Andy's AEIC, para 11.

[note: 191] 6AB, p 3356.

[note: 192] NE, 14 Nov 2013, p 20, lines 6 – 24.

[note: 193] NE, 14 Nov 2013, p 9 line 5 to p 13 line 14.

[note: 194] NE, 14 Nov 2013, p 20 line 25 to p 22 line 11.

[note: 195] NE, 27 Jan 2014, p 211, lines 2 – 5.

[note: 196] NE, 27 Nov 2013, p 120, lines 11 – 19.

[note: 197] Nagender's AEIC, para 256.

[note: 198] DCS, paras 221 and 228.

[note: 199] Indraneel's AEIC, paras 40 – 41.

[note: 200] Alister's AEIC, para 40.

[note: 201] DCS, para 226; PCS, para 641.

[note: 202] Indraneel's AEIC, para 24.

[note: 203] DCS, para 405.

[note: 204] NE, 19 Nov 2013, lines 10 – 13.

[note: 205] Nagender' AEIC, para 171.

[note: 206] Indraneel's AEIC, at para 42; Nagender's AEIC, para 175.

[note: 207] Indraneel's AEIC, para 42.

[note: 208] Nagender's AEIC, paras 170 and 171.

[note: 209] Prasad's AEIC, para 107.

[note: 210] Indraneel's AEIC, paras 45 – 46.

[note: 211] Prasad's AEIC, para 107; 9AB, pp 4519 – 4521.

[note: 212] Indraneel's AEIC, para 44.

[note: 213] Indraneel's AEIC, paras 42 and 52.

[note: 214] Indraneel's AEIC, para 52.

[note: 215] 4AB 1869 – 1870.

[note: 216] NE, 27 Nov 2013, p 95, lines 16 – 25.

[note: 217] Joanna's AEIC, para 83.

[note: 218] Indraneel's AEIC, para 54.

[note: 219] 4AB, p 1923.

[note: 220] Annie's AEIC, para 61; Indraneel's AEIC, para 47.

[note: 221] Adella's AEIC, para 109.

[note: 222] Annie's AEIC, para 65.

[note: 223] Indraneel's AEIC, para 57.

[note: 224] NE, 27 Nov 2013, p 46 line 24 to p 47 line 5.

[note: 225] NE, 27 Nov 2013, p 51 line 13 to p 52 line 4.

[note: 226] PCS, para 655.

[note: 227] PCS, para 656 – 658.

[note: 228] PCS, para 659; see also PRS, para 181.

[note: 229] PCS, para 660.

[note: 230] PCS, para 661.

[note: 231] PCS, para 664.

[note: 232] DRS, para 460.

[note: 233] NE, 27 Nov 2013, p 62, lines 1 – 16.

[note: 234] 4AB, p 1900.

[note: 235] PRS, para 181(i); 4AB, pp 2054, 2056, 2058.

[note: 236] Indraneel's AEIC, para 39; see also SAB, p 1044.

[note: 237] NE, p 20 Nov 2013, p 174 line 3 to p 175 line 24; see also NE, 19 Nov 2013, p 87, lines 6 – 11.

[note: 238] NE, 13 Nov 2013, p 41.

[note: 239] NE, 13 Nov 2013, p 42 line 23 to p 43 line 3.

[note: 240] NE, 13 Nov 2013, p 46 lines 21 – 24.

[note: 241] Rahul's AEIC, para 45.

[note: 242] Rahul's AEIC, para 46.

[note: 243] Rahul's AEIC, paras 22–28.

[note: 244] Ajay's AEIC, paras 9 and 17.

[note: 245] Rahul's AEIC, para 48; Ajay's AEIC para 18.

[note: 246] Rahul's AEIC, paras 49 and 50.

[note: 247] NE, 28 Nov 2013, p 98, lines 14–22.

[note: 248] NE, 28 Nov 2013, p 192 line 10 to p 193 line 11.

[note: 249] Ajay's AEIC, paras 17 – 18.

[note: 250] NE, 27 Jan 2014, p 30 line 15 to p 33 line 22.

[note: 251] 5AB, p 2394.

[note: 252] Prasad's AEIC, para 123.

[note: 253] DCS, para 215.

[note: 254] Ajay's Supplemental AEIC, para 7.

[note: 255] Ajay's Supplemental AEIC, para 7.

[note: 256] Ajay's Supplemental AEIC, paras 8 – 9.

[note: 257] Rahul's Supplemental AEIC, para 13.

[note: 258] PBD, pp 581 – 582.

[note: 259] 5AB, p 2524.

[note: 260] Prasad's AEIC, para 122.

[note: 261] 5AB, pp 2534–2535.

[note: 262] Prasad's AEIC, para 125.

[note: 263] Adella's AEIC, para 96.

[note: 264] Adella's AEIC, para 97.

[note: 265] Nagender's AEIC, para 257.

[note: 266] Nagender's AEIC, para 258.

[note: 267] NE, 28 Nov 2013, p 104, lines 2 – 14.

[note: 268] 4AB, p 1882.

[note: 269] NE, 28 Nov 2013, p 107 line 19 to p 108 line 12.

[note: 270] PBD, p 581.

[note: 271] PCS, para 588.

[note: 272] PCS, para 589.

[note: 273] PCS, paras 590 – 604.

[note: 274] PCS, paras 605 – 607.

[note: 275] PCS, para 614.

[note: 276] Rahul's AEIC, para 75.

[note: 277] PCS, para 621.

[note: 278] PCS, para 626.

[note: 279] PCS, para 635.

[note: 280] PCS, paras 637 – 638.

[note: 281] PCS, para 595.

[note: 282] NE, 27 Jan 2014, p 35, lines 6 – 18; also p 72 line 25 to p 73 line 3.

[note: 283] NE, 28 Jan 2014, p 81, lines 11 – 16.

[note: 284] NE, 27 Jan 2014, p 22 lines 8 – 15.

[note: 285] NE, 27 Jan 2014, p 28 line 4 to p 29 line 5.

[note: 286] PCS, para 602; see also NE, 27 Jan 2014, p 72 line 1 to p 73 line 3.

[note: 287] PCS, paras 611 – 615.

[note: 288] See e.g. NE, 29 Nov 2013, p 64 line 21 to p 65 line 8.

[note: 289] Rahul's AEIC, para 75.

[note: 290] PRS, para 49.

[note: 291] DRS, paras 444 – 445.

[note: 292] DCS, para 193; see also 5AB, p 2831.

[note: 293] DCS, para 196.

[note: 294] Leny's AEIC, paras 111 – 112.

[note: 295] Nagender's AEIC, paras 229 – 230.

[note: 296] Nagender's AEIC, para 231.

[note: 297] Piyush's AEIC, para 5.

[note: 298] Nagender's AEIC, para 232.

[note: 299] NE, 21 Nov 2013, p 140, lines 3 – 12.

[note: 300] NE, 21 Nov 2013, p 138 lines 9 to p 139 line 16.

[note: 301] 8AB, p 4205.

[note: 302] Nagender's AEIC, paras 233 – 234.

[note: 303] DCS, para 323.

[note: 304] 6AB 3076.

[note: 305] Nagender's AEIC, para 237 – 239.

[note: 306] Nagender's AEIC, para 240; Joanna's AEIC, para 110.

[note: 307] 6AB, p 3326 – 3327.

[note: 308] 6AB, pp 3185 to 3192 and pp 3206 to 3209.

[note: 309] 3AB, pp 1493 – 1494.

[note: 310] 3AP, pp 1489 – 1491.

[note: 311] 3AB, p 1540 – 1544.

[note: 312] DCS, para 359(c); PCS, para 503; NE, p 185 line 5 to p 186 line 6.

[note: 313] NE, 20 Nov 2013, p 76 line 19 to p 77 line 25.

[note: 314] DCS, para 359.

[note: 315] DCS, para 316(c).

[note: 316] 6AB, pp 3230 – 3236; p 3237.

[note: 317] NE, 26 Nov 2013, p 168 line 19 to p 170 line 16.

[note: 318] 6AB, pp 3230 and 3237.

[note: 319] 6AB, pp 3245 – 3247.

[note: 320] NE, 26 Nov 2013, p 159 lines 10 to p 160 line 8.

[note: 321] 6AB, pp 3248 – 3256.

[note: 322] 6AB, pp 3258 – 3267.

[note: 323] 6AB 3268 – 3278.

[note: 324] DCS, para 248.

[note: 325] Leny's AEIC, para 118.

[note: 326] NE, 21 Nov 2013, p 63, lines 11 – 19.

[note: 327] NE, 21 Nov 2013, p 66 line 14 to p 67 line 9.

[note: 328] NE, 21 Nov 2013, p 68 line 10 to p 69 line 20.

[note: 329] PCS, para 456.

[note: 330] PCS, paras 458 – 468.

[note: 331] PCS, paras 470 – 483.

[note: 332] PCS, para 484.

[note: 333] PCS, para 486.

[note: 334] DRS, para 355.

[note: 335] DRS, paras 357 – 360.

[note: 336] DRS, para 363.

[note: 337] DRS, para 365.

[note: 338] DRS, para 361.

[note: 339] Nagender's AEIC, para 244.

[note: 340] For example, NE, 20 Nov 2013, p 18 lines 5 – 20; p 20 lines 15 – 22;

[note: 341] NE, 20 Nov 2013, p 22 – 25.

[note: 342] NE, 20 Nov 2013, p 24, lines 4 – 14.

[note: 343] PCS, para 516.

[note: 344] PCS, paras 517 – 519.

[note: 345] PCS, para 524; 6AB, p 3076.

[note: 346] PCS, para 525.

[note: 347] PCS, paras 527 – 531, 533 and 536.

[note: 348] PCS, para 486.

[note: 349] PCS, para 537.

[note: 350] PCS, para 541.

[note: 351] Nagender's AEIC, para 256.

[note: 352] PCS, paras 543 – 546.

[note: 353] PCS, paras 517 – 519.

[note: 354] 6AB, pp 3232 – 3233.

[note: 355] NE, 20 Nov 2013, p 38 line 14 to p 40 line 12.

[note: 356] PCS, para 546.

[note: 357] NE, 26 Nov 2013, p 169, lines 8 – 11.

[note: 358] SOC, para 78.

[note: 359] Leny's AEIC, para 69.

[note: 360] Leny's AEIC, para 67–68.

[note: 361] NE, 26 Nov 2013, p 107 line 22 to p 108 line 2.

[note: 362] Leny's AEIC, para 5.

[note: 363] 3AB, p 1129.

[note: 364] Leny's AEIC, para 69.

[note: 365] 3AB, p 1147.

[note: 366] NE, 26 Nov 2013, p 102, lines 1–23.

[note: 367] George's AEIC, para 101.

[note: 368] NE, 26 Nov 2013, p 104 line 14 to p 106 line 5.

[note: 369] NE, 26 Nov 2013, p 132 line 19 to p 136 line 3.

[note: 370] PRS, paras 146–147.

[note: 371] SOC, para 52.

[note: 372] Prasad's AEIC, para 85.

[note: 373] Prasad's AEIC, para 71.

[note: 374] NE, 13 Nov 2013, p 82 lines 2–19.

[note: 375] Adella's AEIC, para 48; see also NE, 5 Nov 2013, p 146, lines 2–19; p 149, lines 10–15.

[note: 376] Adella's AEIC, para 102.

[note: 377] 1SAB, pp 171–172.

[note: 378] 3AB, p 1169.

[note: 379] Annie's AEIC, paras 83–84.

[note: 380] Joanna's AEIC, para 150.

[note: 381] NE, 21 Nov 2013, p 186, lines 9–17.

[note: 382] DCS para 440(a)–(d).

[note: 383] NE, 26 Nov 2013, p 35, lines 1–24.

[note: 384] PCS, para 732,

[note: 385] DRS, para 475.

[note: 386] NE, 26 Nov 2013, p 35, lines 3–9.

[note: 387] PCS, paras 733–736.

[note: 388] Rahul's AEIC, para 66.

[note: 389] Rahul's AEIC, para 64.

[note: 390] NE, 29 Nov 2013, p 8 lines 1 – 11.

[note: 391] Rahul's AEIC, para 67.

[note: 392] PCS, para 749.

[note: 393] PCS, para 750.

[note: 394] Ali's AEIC, para 50.

[note: 395] Piyush's AEIC, paras 22–24.

[note: 396] Nagender's Supplemental AEIC, paras 21–26.

[note: 397] DRS, paras 57(d), 602 and 603.

[note: 398] DCS, para 355(a); DRS, para 604.

[note: 399] DRS, para 486.

[note: 400] CB, pp 421 – 503.

[note: 401] PCS, para 696.

[note: 402] PCS, para 695.

[note: 403] PSB, p 228 – 229.

[note: 404] NE, 27 Jan 2014, p 9 line 2 to p 10 line 6.

[note: 405] NE, 27 Jan 2014, p 11 line 17 to p 12 line 9.

[note: 406] NE, 27 Jan 2014, p 16 lines 2 – 13.

[note: 407] NE, 27 Jan 2014, p 14 line 14 to p 15 line 7.

[note: 408] Sandeep's AEIC, para 20.

[note: 409] PCS, paras 698 – 699.

[note: 410] DRS, para 510.

[note: 411] Exhibit P7 – see CB, p 515.

[note: 412] Exhibit P8 – see CB, p 518.

[note: 413] PCS, paras 712 – 713.

[note: 414] DRS paras 407 and 516.

[note: 415] DRS Annexes, Annex B.

[note: 416] 3AB, p 1214.

[note: 417] NE, 29 Nov 2013, p 223 lines 5 – 15.

[note: 418] 3AB, p 1215.

[note: 419] NE, 29 Nov 2013, p 225 line 9 to p 226 line 3.

[note: 420] PCS, para 703.

[note: 421] 3AB, p 1266.

[note: 422] NE, 29 Nov 2013, p 229 line 2 to p 230 line 7.

[note: 423] 3AB, p 1219.

[note: 424] NE, 29 Nov 2013, p 234 lines 10 – 24.

[note: 425] 3AB, p 1293.

[note: 426] NE, 29 Nov 2013, p 242, lines 1 – 22.

[note: 427] PCS, para 710.

[note: 428] DRS, para 266.

[note: 429] NE, 29 Nov 2013, p 242 line 23 to p 243 line 7.

[note: 430] NE, 29 Nov 2013, p 243 line 8 to p 246 line 10.

[note: 431] Adella's AEIC, para 68(a).

[note: 432] DRS, para 512.

[note: 433] PCS, para 20.

[note: 434] PCS, para 23.

[note: 435] PCS, para 25.

[note: 436] PCS, para 27.

[note: 437] PCS, para 27(c).

[note: 438] DCS, para 410.

[note: 439] Nagender's AEIC, para 303; Joanna's AEIC, para 155; Rahul's AEIC, para 91.

[note: 440] Nagender's AEIC, para 303.

[note: 441] Rahul's AEIC, paras 91–93.

[note: 442] NE, 28 Nov 2011 p 176 line 16 to p 178 line 21; 7AB, pp 4144H to 4144J.

[note: 443] PCS, para 68.

[note: 444] Plaintiff's Bundle of Documents ("PBD"), p 483.

[note: 445] PCS, para 69.

[note: 446] PCS, para 91.

[note: 447] PCS, para 97.

[note: 448] DRS, para 136.

[note: 449] PCS, para 160.

[note: 450] DRS, paras 42 – 47.

[note: 451] PCS, para 98.

[note: 452] PCS, para 103.

[note: 453] PCS, para 1092.

[note: 454] See PRS, para 52; PCS, paras 1092 – 1103.

[note: 455] PRS, para 53.

[note: 456] PCS, paras 12 – 14.

[note: 457] NE, 8 Nov 2013, p 38, lines 13 – 16.

[note: 458] PRS, para 97.

[note: 459] PRS, paras 101 – 102.

[note: 460] PRS, paras 106 – 108.

[note: 461] PRS, para 110.

[note: 462] 6AB, pp 3232 – 3233.

[note: 463] NE, 21 Nov 2013, p 71, lines 13 – 15.

[note: 464] NE, 20 Nov 2013, p 164 line 8 to p 165 line 20; NE, 26 Nov 2013, p 220 line 23 to p 221 line 16.

[note: 465] DRS, para 374.

[note: 466] NE, 20 Nov 2013, p 169 lines 12 – 20.

[note: 467] NE, 20 Nov 2013, p 164 line 8 to p 165 line 20.

[note: 468] PCS, para 329.

[note: 469] DCS, paras 378 – 391.

[note: 470] PCS, paras 766 – 767.

[note: 471] PRS, paras 235 – 237.

[note: 472] NE, 13 Nov 2013, p 10 line 5 to p 11 line 8.

[note: 473] 1AB, p 292.

[note: 474] PCS, para 552.

[note: 475] PCS, paras 559 – 560.

[note: 476] Exhibit D5; CB 302 – 311.

[note: 477] NE, 28 Nov 2013, p 147.

[note: 478] DCS, para 330.

[note: 479] NE, 20 Nov 2013, p 99 lines 10 – 22.

[note: 480] PCS, paras 552 – 558.

[note: 481] NE, 28 Nov 2013, p 153, lines 15 – 23.

[note: 482] PRS, para 159.

[note: 483] NE, 26 Nov 2013, p 53, lines 7 – 13.

[note: 484] NE, 26 Nov 2013, p 51 line 4 to p 52 line 18.

[note: 485] NE, 26 Nov 2013, p 50 line 14 to p 51 line 3.

[note: 486] 6AB, p 3076.

[note: 487] NE, 28 Nov 2013, p 150, lines 2 – 10.

[note: 488] NE, 28 Nov 2013, p 155 line 20 to p 157 line 13.

[note: 489] NE, 27 Nov 2013, p 250 line 15 to p 253 line 5.

[note: 490] See PCS, paras 669 – 675; see also SOC pp 63 – 68.

[note: 491] PCS, para 670.

[note: 492] NE 19 Nov 2013, p 32, lines 3 – 22.

[note: 493] 3 AB, p 1330; NE, 19 Nov 2013, p 59 line 20 to p 60 line 5.

[note: 494] Indraneel's AEIC, para 14.

[note: 495] SOC, para 66.

[note: 496] SOC, para 67.

[note: 497] SOC, para 69.

[note: 498] SOC, para 70.

[note: 499] DCS, para 367.

[note: 500] DCS, para 363 – 364.

[note: 501] See for example 6AB 3183.

[note: 502] See for example 6AB 3071.

[note: 503] NE, 20 Nov 2013, pp 71 – 72.

[note: 504] DCS, para 368.

[note: 505] NE, 13 Nov 2013, p 63 line 3 to p 64 line 15.

[note: 506] Nagender's AEIC, para 231.

[note: 507] NE, 13 Nov 2013, p 11.

[note: 508] PCS, paras 766 – 767.

[note: 509] Nagender's AEIC, para 73.

[note: 510] PCS, para 758.

[note: 511] PCS, para 774.

[note: 512] PCS, para 775.

[note: 513] PCS, para 785; DCS, para 452.

[note: 514] PCS, paras 786 – 787.

[note: 515] DCS, para 454.

[note: 516] George's AEIC, paras 72; Marcus's AEIC, para 12.

[note: 517] NE, 5 Nov 2013, p 105 line 17 to p 106 line 16.

[note: 518] George's AEIC, para 74.

[note: 519] Marcus's AEIC, para 13.

[note: 520] George's AEIC, para 73; NE, 5 Nov 2013, p 97 line 16 to p 99 line 5.

[note: 521] NE, 5 Nov 2013, p 105 line 17 to p 106 line 16.

[note: 522] NE, 20 Nov 2013, p 135, line 6.

[note: 523] NE, 20 Nov 2013, p 130, lines 6 – 20.

[note: 524] NE, 5 Nov 2013, p 108 line 6 – 23.

[note: 525] NE, 5 Nov 2013, p 97 line 16 to p 99 line 5.

[note: 526] NE, 5 Nov 2013, p 100 line 15 to p 101 line 19.

[note: 527] SOC, paras 82 – 84.

[note: 528] 3AB, pp 1397 and 1404; PCS, para 821.

[note: 529] NE, 19 Nov 2013, p 94, lines 15 – 18.

[note: 530] Nagender's AEIC, para 162.

[note: 531] Linda's AEIC, paras 8 – 10; PCS, paras 830 – 832.

[note: 532] PCS, paras 833 – 835.

[note: 533] PCS, paras 844 – 845.

[note: 534] SOC, paras 83 and 84(c).

[note: 535] Rita's AEIC, para 35

[note: 536] PRS, para 334.

[note: 537] PRS, para 336.

[note: 538] Rita's AEIC, para 36.

[note: 539] Rita's AEIC, para 40.

[note: 540] NE, 26 Nov 2013, p 62 line 20 to p 63 line 7.

[note: 541] 7AB, pp 3848 – 3851.

[note: 542] NE, 19 Nov 2013, p 120 line 14 to p 121 line 22.

[note: 543] Nagender's AEIC, para 211.

[note: 544] Defence, para 85A; NE, 15 Nov 2013, p 122 line 6

[note: 545] NE, 26 Nov 2013, p 9, lines 1 – 7.

[note: 546] SOC, paras 90 – 93.

[note: 547] Nagender's AEIC, para 206; 7AB, p 3902 – 3903.

[note: 548] Nagender's AEIC paras 207 – 209; 7AB, p 3905.

[note: 549] Nagender's AEIC, para 208.

[note: 550] Nagender's AEIC, para 210; DCS, para 97(b).

[note: 551] Defence, para 85C.

[note: 552] DCS, heading to para 473.

[note: 553] DRS, para 629.

[note: 554] Nagender's AEIC, paras 224 – 226.

[note: 555] PCS, paras 978 – 979.

[note: 556] Nagender's AEIC, para 222.

[note: 557] 3 AB, pp 1340 – 1341.

[note: 558] 2SAB, pp 895 – 897; Piyush's AEIC, para 28; *cf* 7AB pp 3874, 3879 and 3884.

[note: 559] NE, 15 Nov 2013, p 113 line 5 to p 121 line 15.

[note: 560] DCS, para 478,

[note: 561] NE, 15 Nov 2013, lines 19 – 22.

[note: 562] DCS, para 464.

[note: 563] DCS, para 464(g); see CB 627 – 628.

[note: 564] PRS, paras 345 – 346.

[note: 565] Joanna's AEIC, paras 95 – 97.

[note: 566] PCS, para 1004.

[note: 567] PRS, para 382.

[note: 568] 7AB, p 3991.

[note: 569] Nagender's AEIC, para 189.

[note: 570] 7AB, p 3994.

[note: 571] SOC, para 98.

[note: 572] SOC, para 102.

[note: 573] Nagender's AEIC, para 190; NE, 15 Nov 2013, p 161 lines 17 – 19.

[note: 574] Nagender's AEIC, para 190.

[note: 575] Rajah and Tann's fax dated 22 Sep 2014, pp 11 – 13.

[note: 576] DRS, para 644; PCS, para 1027.

[note: 577] NE, 19 Nov 2013, p 2, lines 2 – 8.

[note: 578] DRS, para 527.

[note: 579] DRS, para 529.

[note: 580] Sandeep's AEIC, paras 11 – 13.

[note: 581] NE, 7 Nov 2013, p 5 line 20 to p 6 line 14.

[note: 582] DCS, para 421 – 426.

[note: 583] PRS, para 281.

[note: 584] PRS, para 289.

[note: 585] Defence, paras 91 – 94.

[note: 586] 1AB, p 53.

[note: 587] 1AB, p 24; see also NE, 21 Nov 2013, p 74, lines 8 – 16.

[note: 588] Defence, paras 96–97; Reply, para 15.

[note: 589] 2AB, p 518 – 525.

[note: 590] PCS, para 1047.

[note: 591] 2AB, p 519.

[note: 592] 2AB, p 507.

[note: 593] 8AB, pp 4387 – 4388.

[note: 594] 2AB, pp 1069 – 1074.

[note: 595] PCS, para 1056.

[note: 596] PCS, paras 1057 – 1059.

[note: 597] DRS, para 709.

[note: 598] Defence, para 99.

[note: 599] 8 AB, pp 4475 – 4479,

[note: 600] 1SAB, pp 114 – 115.

[note: 601] NE, 14 Nov 2013, p 130 line 9 to p 132 line 8.