Naseer Ahmad Akhtar *v* Suresh Agarwal and another
[2015] SGHC 256

Case Number	: Originating Summons No 217 of 2015 (Summonses Nos 4299 and 2918 of 2015)
Decision Date	: 02 October 2015
Tribunal/Court	: High Court
Coram	: Hoo Sheau Peng JC
Counsel Name(s)	: Khoo Boo Teck Randolph and Tan Huiru Sally (Drew & Napier LLC) for the plaintiff; Ranvir Kumar Singh (Unilegal LLC) for the defendants.
Parties	: Naseer Ahmad Akhtar — Suresh Agarwal — Pang Hee Hon

Companies – Members – Meetings

Civil Procedure – Stay of Proceedings – Stay of Execution

2 October 2015

Hoo Sheau Peng JC:

Introduction

1 In Originating Summons No 217 of 2015 ("the present application"), the plaintiff, Naseer Ahmad Akhtar, a member and director of Infotech Global Pte Ltd ("Infotech") sought an order that: (a) an extraordinary general meeting ("EGM") of Infotech be convened; and (b) one person be sufficient to constitute a quorum at the EGM. This application was brought under s 182 of the Companies Act (Cap 50, 2006 Rev Ed) (I will refer to this provision simply as "s 182" and the Companies Act as the "CA"). He sought these orders so that a set of nine resolutions, which provide, *inter alia*, for the removal of the first defendant, Suresh Agarwal, from his directorship and for the appointment of one Eric Tiong Hin Won ("Eric Tiong") in his place, may be considered.

2 After considering the matter, I granted the application and ordered that:

(a) An EGM of Infotech be convened for the purpose of considering the resolution set out in the first paragraph of the schedule to the present application: *ie*, the resolution to remove the first defendant as director and to appoint Eric Tiong in his place.

(b) At the said EGM, the presence of one member of Infotech, either in person or by proxy, shall be deemed to constitute a meeting and that the presence of the said member shall be sufficient to form a quorum.

3 As the defendants have appealed against my decision, I now provide detailed reasons to supplement the brief grounds I gave at the making of the orders on 24 August 2015.

Facts

4 Infotech is a limited exempt private company engaged in the business of providing software consultancy and system integration services. Infotech's Articles of Association ("Infotech's AA") are based largely on Table A of the CA. Article 68 of Infotech's AA provides that no business may be

transacted at a general meeting unless a quorum comprising two members are present either in person or by proxy.

5 At the time of its incorporation on 12 March 2007, Infotech's founding directors and shareholders were the plaintiff and the first defendant. Up to the time of the application, they remained the only directors on Infotech's Board of Directors ("BOD"). The plaintiff, a citizen of Pakistan, is ordinarily resident outside Singapore. The first defendant, a Singapore citizen, was appointed the managing director of Infotech on 2 May 2007, a position he continued to occupy at the time of the application. In this capacity, the first defendant managed Infotech's day-to-day operations. On 26 February 2010, the first defendant's wife, Agarwal Shilpa Suresh, was appointed as the company secretary. Subsequent to incorporation, there were five other allotments of shares to the plaintiff and the first defendant. A different number of shares were distributed through each allotment, but always in the ratio of 65:35 in the plaintiff's favour.

6 On 2 July 2014, the second defendant, Pang See Hon, was appointed as an advisor to Infotech. He resigned on 4 June 2015. At the time of his appointment, the second defendant was given 5,000 shares, which came out of the existing shareholdings of the plaintiff and the first defendant (also in the ratio of 65:35). Following these transfers to the second defendant, the 500,000 issued shares in Infotech were held by the parties in the following proportions:

(a) the plaintiff held 321,750 shares (64.3% of the total share capital);

(b) the first defendant held 173,250 shares (34.7% of the total share capital);

(c) the second defendant held 5,000 shares (1% of the total share capital).

7 Not long after, the relationship between the plaintiff and the first defendant deteriorated, culminating in multiple allegations and counter-allegations of malfeasance and defalcation that were also repeated in the present application. In the main, the plaintiff questioned the first defendant over substantial withdrawals of funds from Infotech. In turn, the first defendant queried the plaintiff over, *inter alia*, the propriety of inter-company payments made by Infotech to Infotech (Private) Ltd ("Infotech (Pakistan)"), a company in Pakistan founded by the plaintiff in 1995.

Attempt to call for meeting for removal of first defendant

8 After many exchanges of emails, the plaintiff took steps to remove the first defendant as director and managing director of Infotech. At this juncture, I reproduce Arts 98 and 99 of Infotech's AA, which pertain to the removal of directors:

> 9 8 ***The Company may by Ordinary Resolution*** *of which notice has been given to all Members entitled to receive notices* ***remove any Director from office*** *notwithstanding anything in these Articles or in any agreement between the Company and such Director*. Such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company.
>
> 99 The Company may by Ordinary Resolution appoint another person in place of a Director removed from office under the immediately preceding Article.
>
> [emphasis added in italics and bold italics]

9 On 13 February 2015, the plaintiff requisitioned the BOD of Infotech under s 176(1) of the CA

to convene an EGM ("the 13 February 2015 requisition"). This meeting was to be called for the purpose of considering a set of nine resolutions (collectively known as the "proposed resolutions" and individually referred to as "resolution 1", "resolution 2" etc.) Of particular note are resolutions 1, 2, and 4: resolution 1 called for the removal of the first defendant from his directorship and for Eric Tiong to be appointed in his place; resolution 2 called for the immediate termination of the first defendant from his employment as managing director; while resolution 4 proposed to authorise the plaintiff to appoint "investigative accountants and/or such relevant forensic experts and solicitors" to investigate Infotech's affairs. The next day (14 February 2015), the plaintiff requisitioned the BOD under s 183 of the CA to circulate a notice of resolutions 2 to 9 to the members of Infotech in order that agreement may be sought for them to be passed by written means pursuant to s 184A of the CA ("the 14 February 2015 requisition").

10 On 25 February 2015, M/s UniLegal LLC ("Unilegal") replied on the first defendant's behalf. In the letter, Unilegal stated that, "[o]ur client vehemently objects to the passing of the proposed resolutions by any means, which are not only baseless but are also oppressive and gravely prejudicial to our client."

11 On 27 February 2015, M/s Drew & Napier LLC ("D&N") responded on the plaintiff's behalf. In the letter, the plaintiff maintained that the BOD was obliged to consider his requisitions and proposed that a BOD meeting be held at 11.00am on 11 March 2015 at the Shangri-La Hotel to consider the following two resolutions: (a) that the BOD seek members' approval for the second to ninth resolutions to be passed by written means; and (b) that an EGM be held on the same day (*ie*, 11 March 2015) to consider passing any of the proposed resolutions for which agreement had not been obtained to be passed by written means. Annexed to the letter was a notice of directors' meeting sent under Article 114 of Infotech's AA with the aforementioned two items on the agenda. It was also acknowledged that consent would be required for the BOD to call the EGM on short notice since the requisite 14 day notice period (as required under Art 65(1) of Infotech's AA) would not have been satisfied.

12 On 4 March 2015, the plaintiff, *acting in his capacity as a member of Infotech*, purported to call for an EGM to be held on 11 March 2015. The opening paragraph of the notice read:

> **NOTICE IS HEREBY GIVEN** that, *in view of the failure of the directors of [Infotech] to convene an Extraordinary General Meeting ('EGM') of [Infotech] as requested by the Notice of Requisition* dated 13th February 2015 under section 176 of the Companies Act, Cap. 50, *I, the undersigned, being a member representing not less than 10% of the capital of the Company having voting rights at general meetings, hereby convene an EGM* of the Company … for the purpose of considering and, if thought fit, to pass with or without any modification, the following resolutions … [emphasis added]

The notice contained the full list of nine resolutions that was first found in the 13 February 2015 requisition. The plaintiff requested: (a) that the defendants sign and return a form indicating his written consent to having the EGM convened on short notice; and (b) a reply stating whether the defendants would be attending the meeting.

13 On 6 March 2015, Unilegal replied to D&N's letter of 27 February 2015 to record the first defendant's refusal to (a) have resolutions 2 to 9 passed by way of writing (asserting his right to have them subject to a vote at a general meeting of the company as provided for under s 184D(1) of the CA); (b) attend either the proposed BOD meeting or EGM to be held on 11 March 2015; or (c) give his consent to have the EGM convened on short notice. There was no reply from the second defendant.

14 On 11 March 2015, neither the first nor the second defendant turned up at the Shangri-La Hotel at the appointed time either for the BOD meeting or the EGM. Given that the requisite quorum of two was not present (see Art 113 of Infotech's AA which provides that "two shall be a quorum" for a BOD meeting), the BOD meeting could not be validly constituted. Likewise, since the requisite quorum of two was not present for the EGM (see [4] above), the meeting was dissolved at 11.30am pursuant to Art 69 of Infotech's AA. On the same day, the plaintiff commenced the present application.

Subsequent applications

15 On 16 June 2015, the defendants filed Summons No 2918 of 2015 ("SUM 2918/2015") to apply for the present application to continue as if begun by writ or, in the alternative, for leave to cross examine the deponents of the affidavits. Separately, on 25 June 2015, the first defendant commenced Suit No 631 of 2015 ("S 631/2015") seeking, *inter alia*, relief under s 216 of the CA on the basis that the plaintiff's attempts to pass the proposed resolutions constituted acts which were oppressive and unfairly discriminatory.

16 When the parties attended before me on 30 June 2015 for the hearing of SUM 2918/2015, the defendants submitted that there were four material disputes of fact which could not be resolved by reference to affidavit evidence. These disputes concerned (a) whether there was an oral agreement between the plaintiff and the first defendant that the latter would always be a director of Infotech with equal say in the running of the company; (b) whether the plaintiff holds 130,000 shares (representing 26% of the total share capital of Infotech) on trust for the first defendant; (c) whether the plaintiff had engaged in acts which were oppressive to the first defendant; and (d) whether the proposed resolutions were in the best interests of Infotech. In response, the plaintiff submitted that the factual disputes were either irrelevant to the present application or were matters that could be resolved by reference to the documentary evidence appended to the various affidavits.

17 On 3 July 2015, I dismissed SUM 2918/2015. I did not consider the last two disputes to be relevant to the present application. Insofar as the disputes form potential claims against the first defendant, these matters ought to be considered in separate proceedings (*ie*, S 631/2015). There was no need for the present application to proceed as a writ action. As for the first two disputes, I held that it would be sufficient to test them by way of affidavit evidence and there was no need for any cross-examination. In any event, I allowed the parties to file further affidavits, before the substantive hearing of the present application, which they duly did.

The law

18 I will start by setting out the structure of s 182 before summarising the parties' arguments and identifying the issues which arise for determination. Section 182 only applies to general meetings, and not board meetings (see *Tay Say Geok & Anor v Tay Ek Seng Co Sdn Bhd* [1974] MLJ 70) and it provides:

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

in italics and bold italics]

The raison d'être of s 182

19 In order to understand s 182, it is important to appreciate the purpose of a general meeting. General meetings are occasions where the corporate will of the company is expressed through the resolutions of its members (see *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) ("*Woon*") at para 6.6). While responsibility for the daily management of the company is reposed with its board of directors (see s 157A of the CA and Art 104(1) of Infotech's AA), the general meeting still plays an important role in corporate governance. There are some matters which can only be done at a general meeting (see *Woon* at paras 6.9, 6.11 and 6.12 for examples of matters that must be done at the general meeting).

20 It is clear from the foregoing that a company which is unable to convene or conduct meetings is, while not left completely moribund, left hamstrung in some way. This is where s 182 comes in. As Peter Gibson LJ, said of the English equivalent of s 182, "[it is a] procedural section plainly intended to enable company business which needs to be conducted at a general meeting of the company to be so conducted" (see *Union Music Ltd and another v Watson and another* [2003] 1 BCLC 453 ("*Union Music*") at [32]).

The analytical framework

21 Every application for relief under s 182 proceeds in two stages (see *Re Success Plan Ltd* [2002] 3 HKC 610 at [42]). The court first has to be satisfied under s 182 that it is "impracticable to call a meeting… *or* to conduct the meeting in the manner prescribed" [emphasis added] *before* it proceeds to consider whether it should exercise its discretion in favour of the grant of relief. These stages are *sequential*: the requirement of impracticability is a condition precedent for the exercise of the court's power. If it is not satisfied, the s 182 application fails *in limine* and the question of the court's discretion does not arise for consideration. As in every application for relief, the burden of proof falls on the applicant. He has to show that the requirement of impracticability has been met and that the court should exercise its discretion in his favour (see *Leong Ah Hong v Hup Seng Co Ltd* [1963] MLJ 164 at 165A ("*Leong Ah Hong*").

22 I note that in *Lim Yew Ming v Aik Chuan Construction Pte Ltd and others* [2015] 3 SLR 931 ("*Lim Yew Ming*") at [23], Aedit Abdullah JC preferred to conduct a "holistic assessment" of the application instead of applying the "two-stage" approach set out above. He opined:

> … In the present case, the Defendants advocated that even where an impracticability exists, the court must find good reasons for the exercise of its discretion. This was essentially a two-stage approach. *The different approaches should not lead to different results*. Nonetheless, the holistic assessment has the benefit of not slicing up the analysis: matters going to impracticability and the exercise of discretion will overlap considerably. … There is therefore little to be gained by separating out impracticability and the existence of a good reason. A holistic assessment entails an assessment of whether there is indeed impracticability and whether such impracticability is of a sufficient degree as to call for the intervention of the court. [emphasis added]

23 As a practical matter, I agree that the matters going towards impracticability and that which affect the exercise of the court's discretion may overlap considerably. However, the two issues remain distinct and I am of the view that for analytical clarity, they should be given separate treatment. This proved to be particularly important in this case because, as will soon be clear, the arguments raised by the defendants in respect of the impracticability point differed from those raised

in respect of the exercise of the court's discretion. With that being said, however, I am in full agreement with Abdullah JC that the different approaches should not lead to different results.

24 I should add that once the court is minded to grant relief, there is a *third stage* where the court will have to consider what form the order should take, giving such ancillary or consequential directions as it thinks expedient.

The parties' cases

The plaintiff's arguments

25 I now turn to the parties' arguments. The plaintiff submitted that his application was "simple and straightforward". The gist of his case was that his rights as the majority shareholder of Infotech were being frustrated by the defendants' use of the quorum requirement in Art 68 (through their refusal to attend the scheduled meetings) to block the passing of the proposed resolutions. He contended, on the authority of *Lim Yew Ming*, that the inability to satisfy quorum requirements due to the intransigence of members who refuse to attend meetings suffices the test of "impracticability" set out in s 182 of the CA.

26 The plaintiff further submitted that the defendants cannot be allowed to use the quorum requirement as a *de facto* veto to prevent him, the majority shareholder, from exercising his right to appoint and remove directors by convening a meeting for this purpose. He argued that nothing short of a signed written shareholder agreement restricting the powers of the majority would bar the grant of a s 182 application for a meeting to be held for this purpose. The collateral allegations of injustice and oppression, he submitted, ought properly to form the subject matter of a separate suit. Thus, the mere existence of such claims cannot not bar the success of a s 182 application, which is designed only to facilitate the holding of a meeting.

The defendants' arguments

27 The defendants disagreed that the requisite impracticability had been shown. They submitted that resolutions 2 to 9 were matters within the exclusive competence of the BOD and not the members of Infotech at a general meeting. Thus, they argued, the plaintiff could not rely on his inability to pass resolutions 2 to 9 as grounds for seeking the assistance of this court in convening a general meeting. The defendants also submitted, for good measure, that the plaintiff had not shown that it was impracticable for a meeting of the BOD to be convened.

28 On the question of the court's discretion, broadly, the defendants relied on four reasons to resist the grant of relief. First, they submitted that resolutions 1 and 2 were inconsistent with an oral agreement concluded between the plaintiff and first defendant in February 2007 (before the incorporation of Infotech) which provided, *inter alia*, that the first defendant would have "equal say" in Infotech and that he would manage Infotech's day to day affairs. Second, they submitted that the bulk of his shares (194,999, being 38% of the total share capital) had been acquired illegally and that he held almost all of the remainder (130,000, being 26% of the total share capital) on trust for the first defendant. Thus, they argued that the plaintiff should not be entitled to use the rights attached to the shares legally registered in his name. Third, the defendants contended that the plaintiff contravened the laws of Pakistan by not obtaining the prior approval of the State Bank of Pakistan for his investment in Infotech. Thus, the court should not lend its aid to the plaintiff in the present application. Finally, they submitted that the passage of the resolutions would not be in the interests of Infotech but would merely further the plaintiff's "collateral purpose" to "wrongfully usurp" Infotech's business and serve to "cover up [the plaintiff's] wrongdoings".

29 In the alternative, the defendants submitted that even if the court were minded to grant the order, it should be qualified to preserve the parties' rights pending the resolution of S 631/2015. In particular, they argued that the order should specify that the first defendant would be allowed to continue as a director.

Analysis

30 Parsing the parties' arguments through the prism of the analytical framework set out at [21] and [24] above, the three main issues are: (a) whether the requirement of "impracticability" has been satisfied; (b) whether the discretion of the court ought to be exercised in favour of the grant of relief; and (c) the form that the order should take. I will take each point in turn.

The requirement of impracticability

31 The expression "impracticability" is to be given a wide and generous construction. The court is simply required to examine if the meeting could, as a practical matter, be conducted (see *Lim Yew Ming* at [25] citing *In re El Sombrero Ltd* [1958] 3 WLR 349 at 351 ("*Re El Sombrero*")). It is important to note that s 182 provides that impracticability may exist in one of two situations: (a) where it is impracticable to "*call* a meeting in any manner in which meetings may be called"; or (b) where it is impracticable to "*conduct* the meeting in the manner prescribed by the articles or [the CA]" [emphases added]. The calling of the meeting refers only to the process by which a general meeting of the members is *formally convened*. By contrast, the *conduct* of the meeting refers to all matters pertaining to the carriage of the meeting. This includes the procedural requirements governing the transaction of business at the meeting (*eg*, quorum requirements). Proof of either would suffice to satisfy the requirement of impracticability under s 182 (see *Leong Ah Hong* at 165A). It may be that the circumstances are such that *both* the calling *and* the conduct of the meeting are impracticable. However, this might not always be the case. Thus, I think it would be useful for parties to address their minds towards the requirements separately.

32 The plaintiff submitted that it had "duly exhausted all possible avenues under the Companies Act to convene an EGM of the Company" and that "[b]oth 1D and 2D have made use of every opportunity to refuse to form a quorum for the EGM." I observe that the first half of the submission referred to the difficulty in the *calling* of a meeting; the second half referred to the difficulty in *conducting* one. Having reviewed the facts and circumstances in their totality, I was not persuaded that the plaintiff had proved that the calling of a meeting was impracticable, though I agreed that any meeting called could not practicably have been conducted in accordance with Infotech's AA.

33 To recapitulate (see [9]–[13] above), the plaintiff made *two* attempts to call for a meeting:

(a) First, he attempted, as a member of the company, to requisition the BOD to convene a meeting under s 176(1) of the CA on 13 February 2015. This failed because the BOD did not meet to consider the plaintiff's request.

(b) Second, the plaintiff attempted, once again as a member of the company, to personally call for a meeting of the company under s 176(3) of the CA on 4 March 2015 upon the failure of Infotech's BOD to do so. Section 176(3) of the CA provides that if the directors of a company fail to convene a general meeting as requisitioned, then the requisitionists may themselves convene a meeting (which should be held within three months of the requisition) in the same manner as that in which the directors may normally convene a meeting.

34 I accepted that the plaintiff's first attempt to convene a meeting through the BOD under s

176(1) of the CA was scuppered by the first defendant's refusal to attend any BOD meeting organised for this purpose. This refusal meant that the BOD was never able to call for a meeting. However, s 176(3) of the CA provides aggrieved members with a remedy, which is to convene a meeting unilaterally without the assistance of the BOD. This is what the plaintiff attempted to do when he sent the notice of meeting on 4 March 2015 calling for an EGM to be held on 11 March 2015. In the circumstances, I did not think it can be said that the *calling* of a meeting would have been impracticable. I note, parenthetically, that notice for the 11 March 2015 EGM was not served in time since Infotech's AA specifies that 14 days' notice is required but the notice was only served on 4 March 2015, seven days before the meeting (see [11] above). However, I do not think this affects the analysis — the point is that it was possible for a meeting to be called and one was duly called.

The defendants' refusal to attend the scheduled meetings

35 That being said, however, I accepted the plaintiff's submission that it would have been impracticable to *conduct* any meeting convened in a manner prescribed by Infotech's AA because such a meeting would invariably have been left inquorate. It is well-established that the deliberate refusal of other shareholders to form a quorum for a meeting can constitute the requisite impracticability under s 182 of the CA (see, *eg*, *Re El Sombrero*; *Re Opera Photographic Ltd* [1989] 1 WLR 634 ("*Re Opera*"); *Re Success Plan* at [43]). In *Lim Yew Ming* at [30], it was held that "an inability to form quorum requirements due to members not wanting to attend the meeting is an example of there being impracticability under s 182 of the Companies Act (or its equivalent), and can be grounds for judicial intervention". Abdullah JC also went on to hold that there was no necessity that this deadlock extend to day-to-day management. It would suffice if, by reason of the obstinacy of some members of the company, a particular proposal intended to be introduced by the majority shareholder could never be tabled at a general meeting for decision (see *Lim Yew Ming* at [35] and [51]).

36 It was clear, from the evidence before me, that the defendants would act (and in fact did act) in concert to block the passage of the proposed resolutions, including by refusing to attend any general or board meetings convened for the purpose of considering the resolutions. This was not disputed by the defendants, who absented themselves from the meetings scheduled for 11 March 2015 and who also subsequently deposed in their affidavits that "there is a deadlock at the levels of both the board and shareholders of Infotech Singapore in relation to the 9 resolutions which Naseer has requisitioned to be passed…". In the first defendant's first affidavit, he confirmed that "[t]hrough [his] solicitors, [he] objected to the passing of those resolutions by *any means*" (emphasis added). In the second defendant's affidavit, he stated that he aligned himself with the position taken by the first defendant. Given that Art 68 of Infotech's AA provides that a quorum of two is required and the fact that Infotech has only three members, there can be no quorum at any general meeting if the defendants do not attend.

37 In my judgment, it was irrelevant that the defendants averred that their refusal was confined only to meetings in respect of the proposed resolutions. There is no requirement that there must be a deadlock in the day-to-day management of the company (see *Lim Yew Ming* at [35]). The avowed refusal of the defendants to attend the meetings scheduled for the purpose of considering the resolutions was sufficient to constitute impracticability within the meaning of s 182.

Whether resolutions 2 to 9 should have been tabled at a BOD meeting instead

38 To my mind, the defendants' argument that resolutions 2 to 9 were matters for the BOD was neither here nor there. The short point is that it was undisputed that resolution 1 (a motion to remove the first defendant from his directorship, and to appoint Eric Tiong as director) would have to

be considered at an EGM, which cannot practicably be conducted because the quorum requirement would not be met (see [366] above). Thus, even putting aside resolutions 2 to 9, there was a sufficient basis to make out the requisite impracticability.

39 In any event, I was of the view that it was disingenuous for the defendants to have maintained that "Naseer has failed to show that it is impracticable to call a meeting of the [BOD] of Infotech Singapore to consider Resolutions 2 to 9." It was never the defendants' case that they would be willing to attend board meetings but not general meetings. The evidence clearly showed that the plaintiff had attempted to organise both a board meeting as well as a general meeting (on 11 March 2015), but the defendants were unwilling to attend either, and did not do so (see [14] and [366] above). Given that the requisite impracticability has been established, I now turn to the factors affecting the exercise of the court's discretion.

The discretion of the court

40 An order under s 182 is not granted as of right, but is a matter of discretion: (see *Lim Yew Ming* at [23]; *Re H R Paul & Son Ltd* (1973) 118 Sol Jo 166)). In *Re Woven Rugs Ltd* [2002] 1 BCLC 324, Mr Anthony Mann QC (as he then was), sitting as a deputy judge of the High Court, had to consider an application made under s 371 of the Companies Act 1985 (c 6) (UK) ("UK CA 1985"), which is *in pari materia* with s 182. At [14] of his judgment, he set out, concisely, the principles to be applied where the object of the application was to convene a meeting for the removal of a director. I gratefully adopt and summarise his holdings as follows:

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

(b) Quorum provisions cannot be regarded as conferring on the minority a form of veto in relation to company business. The rights of the majority in this regard cannot be stultified by minority members absenting themselves in order to prevent resolutions unfavourable to them from being passed (see *Re Opera* at 637B–C).

(c) The existence of parallel proceedings for minority oppression (the UK equivalent would be proceedings for unfair prejudice under s 994 of the UK CA 2006) is not necessarily a bar to the grant of an order under s 182.

(d) If there is an arrangement which effectively gives "a right in the nature of a class right" to the minority shareholder, then the court will not make the order if the result of that order would be to infringe the said right.

41 The first two propositions articulated by Mr Mann QC reflect what the plaintiff termed the "majority rule principle". In essence, the point is that shareholdings are a species of property and members may exercise the attendant voting rights that accompany them in their own self-interest (see *Phuar Kong Seng v Lim Hua* [2005] 2 MLJ 338 at [16], approved of in *Lim Yew Ming* at [26]).

This is why s 182 (and its equivalents in other jurisdictions) is often invoked by majority shareholders to break deadlocks caused by the refusal of minority members to attend meetings with a view towards blocking the passage of resolutions unfavourable to them (see Derek French, Stephen Mayson & Christopher Ryan, *Mayson, French & Ryan on Company Law* (OUP, 28th Ed, 2011) at p 402).

42 In the present case, this principle clearly applies since Art 98 Infotech's AA mirrors s 152 in providing that the company may, "*by ordinary resolution*… remove any director from office" (see [8] above). This means that the fact that the present application is brought by a majority shareholder (holding 64.3% of the shares) weighed heavily in favour of the grant of relief. Indeed, I was of the view that in this case, it presented a *prima facie* case for relief under s 182. The defendants did not dispute the applicability of this principle but instead advanced four reasons to persuade me that I should, nevertheless, not exercise my discretion in favour of the plaintiff.

The oral agreement

43 First, I examine whether the existence of an *oral* agreement, purportedly concluded between the plaintiff and first defendant before Infotech's incorporation and which provided for equal management participation, would bar the grant of relief under s 182.

(1) Is an oral agreement providing for equal management participation sufficient to bar relief under s 182 or must such an agreement be written?

44 It is common ground that an agreement as to equal management participation might preclude the grant of relief under s 182. The difference, however, is that whereas the defendants submitted that it is sufficient for such an agreement to have been made orally, the plaintiff submitted that only proof of a signed shareholders' agreement restricting the powers of the majority would do. In support of their contention, the plaintiff relied on four decisions: two seminal decisions of the English Court of Appeal decided in the 1990s and two decisions of the Hong Kong Court of First Instance decided recently. Interestingly, the defendants also relied on the decisions of the Hong Kong courts, even though they construed the decisions differently. After considering the authorities, I agreed with the defendants.

45 The first decision is *Harman and another v BML Group Ltd* [1994] 1 WLR 893 ("*Harman*"). In that case, the applicants were the holders of 260,000 "A" class shares in a company. Mr B was the holder of 190,000 "B" class shares. The articles of the company provided that Mr B would be entitled to remain as a director for as long as he (or a family company associated with him) held the "B" shares. The articles also provided that a shareholders' meeting would not have a quorum unless a "B" shareholder (or his proxy) was present. Subsequently, a dispute arose between the applicants and Mr B following which the applicants applied to court to seek an order that a meeting be held and that a meeting of two (without the need for the presence of any "B" shareholder or his proxy) be sufficient to constitute a quorum. In overturning the decision of the judge below and refusing the order, Dillon LJ (with whom Leggatt and Henry LLJ agreed), said (at 898),

> … it is not right, in my view, to invoke section 371 to override class rights attached to a class of shares which have been deliberately—*in this case by the shareholders' agreement*—imposed for the protection of the holders of those shares, although they are a minority. … [emphasis added]

46 In *Ross v Telford and another* [1998] 1 BCLC 82 ("*Ross*"), the applicant (a 50% shareholder in the company) sought an order that a meeting be convened and that a quorum of one be sufficient to constitute a meeting. He sought this order so that he may cause the company to commence an

action against the first defendant (who held the remaining 50% of the shares in the company). In rejecting the application, Nourse LJ (with whom Roch and Phillips LLJ agreed) said (at 87h–i and 88c–d),

> In support of his submissions Mr Lander has relied on what he would call the principle of the thing, which is that *s 371 is a procedural section not designed to affect substantive voting rights or to shift the balance of power between shareholders in a case where they have agreed that power shall be shared equally* and where the potential deadlock is something which must be taken to have been agreed on with the consent and for the protection of each of them.
>
> …
>
> *In my view the submissions of Mr Lander are correct.* In particular, I am satisfied that neither of the two decisions relied on by Mr Sterling is authority for the proposition that s 371 enables the court to break a deadlock between two equal shareholders and that that is confirmed by the decision of this court in *Harman v BML Group Ltd*. …
>
> [emphasis added]

47 The description of s 182 as a "procedural section" is no empty characterisation, but a statement of s 182's juridical effect. It seems to me that the *ratio* of *Harman* and *Ross* is that s 371 of the UK CA 1985 affords a remedy of a procedural, and not substantive, nature. It cannot be used to effect substantive changes in the parties' rights in the company. Situations involving class rights (*Harman*) and equal shareholdings (*Ross*) are but specific instantiations of this general rule. In the later case of *Union Music*, the company in question had two shareholders: the applicant, who had a 51% shareholding, and the defendant, who had 49%. In the company's articles of association, there was a clause which specified that no business could be transacted at a shareholders' meeting unless both shareholders (or their duly authorised proxies or representatives) were present. The defendant argued that this clause precluded the grant of a s 371 order. In rejecting this argument, Peter Gibson LJ (with whom Buxton LJ and Morland J agreed), said (at [42]),

> [The clause], however, seems to me more in the nature of a quorum provision than a provision for a class right, which it plainly was not, *or a substantive right. Thus, the present case, as it seems to me, is one which is distinguishable from both the Harman and the Ross cases*. The position is similar to that in the *Opera Photographic* case [emphasis added]

48 Mr Mann QC accurately summarised the legal position in *Re Woven Rugs* when he wrote, "[i]f there is an arrangement which effectively gives *a right in the nature of a class right* to the respondent shareholder, then the court will not make an order if the result of that order would be to infringe that class right" [emphasis added] (at [14(e)]). I agree with this proposition of law. To paraphrase, it seems to me that what Mr Mann QC meant was that the *substantive* rights of shareholders (whether for equal management participation or a guaranteed directorship or otherwise) cannot be abrogated by s 182.

49 More important, for present purposes, is that neither of these cases say that such "substantive rights" or "*quasi* class rights" must be conferred by way of a written shareholders agreement. This is consistent with the later decision of the English High Court in *Alvona Developments Ltd v Manhattan Loft Corporation (AC) Ltd and another* [2005] EWHC 1567 (Ch). In that case, the applicant (a 70% shareholder), applied under s 371 of the UK CA 1985 for an order that a meeting of the company be convened with a quorum of one so it may move a motion to remove the company's sole director from his directorship and appoint others in his place (or, in the alternative, for further directors to be

appointed in addition to him). In resisting the application, the defendant (the holder of the remaining 30% of the shares), alleged that it had been orally agreed that the company would always have one jointly appointed director. In dismissing the application, Peter Smith J held that the purport of the oral agreement was that the defendant had the right to jointly appoint a director to manage the company and that this right could not be taken away through a s 371 application.

50 Of course, the question of whether such a substantive right exists is eminently a question of fact which falls to be decided on the facts of each case. The existence of a written agreement is highly probative but there is nothing in the cases which suggest that it is a *necessary* condition to there being such a right. The Hong Kong cases cited by the plaintiffs support, rather than depart, from this position.

51 In *Alberto Forchielli v Francesco Della Valentina and another* [2011] HKCFI 262 ("*Alberto*"), the applicant, a 56% shareholder of a company, sought an order for a meeting to be convened with a quorum of one in order that he may remove the defendant (the only other shareholder) from his directorship. In resisting the application, the defendant alleged that the company was set up as a *quasi*-partnership so the grant of the order sought (which would almost certainly result in his removal) would be inconsistent with the basis upon which the company was set up. In rejecting this argument, Harris J wrote at [20]:

> It seems to me that in order for a minority shareholder to contest successfully an application for an order under section 114B, which will enable the applicant to convene a general meeting to remove him as a director, on the grounds that a company is in the nature of a quasi partnership, it would be necessary for the respondent to demonstrate that, assuming that the meeting called could be convened and conducted without the intervention of the court, he would be entitled to an injunction … ***Strong evidence would be required*** *of an unqualified right on the part of a respondent to participate in the management of a company all the time that he remained a shareholder*. In my view this requires something more than allegations that, if made out at trial, might establish that it is unfairly prejudicial for the respondent to be excluded from management of a company. ***What I anticipate will normally be required is a written agreement*** *between shareholders*, to which a company is not a party, which contains an express prohibition against removal of a director all the time he remains a shareholder, which can be enforced by injunction. [emphasis added]

Harris J did not set down any definite rule that a written agreement was required. Instead, his concern was evidential. He did not think that an application under s 114B of the Companies Ordinance (c 32) (HK) (which is *in pari materia* with s 182 of our own CA) could be so easily resisted merely by the mere allegation that there exists a substantive right to management participation. "Strong evidence" was therefore required for the court to be persuaded that the majority's hand should be stayed. This would usually, though not invariably, take the form of a written agreement.

52 This position was affirmed in the later case of *J T Limited v Kung Tat Chow* [2014] HKCFI 1556, whose facts resemble that in *Alberto*. At [32], Ng J reiterated that "the mere assertion of a quasi-partnership or an oral agreement or understanding between the two shareholders as to joint management of the company is *normally* not a sufficient ground for refusing to order a meeting under s 114B" and said at [34] that "what will *normally be required* is a written agreement, *to which a company is not a party*, containing an express prohibition against his removal as a director" [emphasis in original omitted; emphases added in italics]. It cannot be an accident that Ng J used the word "normally" twice. It seems to me that that Ng J was trying to underscore the point that while a written agreement would usually be required, he was not foreclosing the possibility that, in some cases, an oral argument would suffice.

53 This also appears to the position adopted by Abdullah JC in *Lim Yew Ming*. In that case, an argument was made that a s 182 order should not be granted because there was a "family agreement" that decision-making would proceed collectively. In rejecting that argument, Abdullah JC wrote (at [65]):

> There was certainly ***nothing in the nature of a shareholder's agreement*** , capturing all the parties' express or implied acceptance that there would be constraints, expressly or impliedly. … unlike Sum Hong Kum, the ***interests of the parties are not equal, and one person is clearly in control*** of Aik Chuan. *There was nothing to show that that control ought to be effectively lessened in any way.* The arrangements that were made in the companies held by the Defendants and the Plaintiff, with differentiated shareholdings and control of different companies by different family members, did not lead to the conclusion that there was a common basis between the parties that would be given legal effect. *The* ***wishes and hopes that may have been reflected in the differentiated shareholdings did not create a definite obligation between the Defendants and the Plaintiff that should be given effect to by the court. A definite binding bargain, whether between shareholders or partners in a joint enterprise, is what is needed.*** [emphasis added in italics and bold italics]

The way I read the case, the key is that there needs to be "a definite binding bargain" which creates "a definite obligation… that should be given effect to by the court." An example of such a bargain giving rise to enforceable obligations is where something "in the nature of a shareholder's agreement" providing for constraints on the majority's powers. Although it might not have been an issue specifically before the court, it did not appear that Abdullah JC thought that such definite binding bargains had to take the form of a written shareholders' agreement.

54 In summary, it seems to me that the cases speak with one voice. Section 182 is meant as a procedural section which cannot be allowed to interfere with the substantive rights of the shareholders in the company. Therefore, relief cannot be granted under s 182 if its effect would be to override any agreement between the shareholders as to how control of the company is to be allocated *inter se*. However, the mere allegation of such an agreement is insufficient. What is needed is "strong evidence of an unqualified right on the part of the respondent to participate in the management of a company all the time that he remained a shareholder" (see *Alberto* at [20]) which will normally, though not invariably, take the form of a written shareholders' agreement.

55 All this seems to me to be consonant with the principle of the matter. The restriction as to the ambit of s 182 is that it cannot be used to abridge the substantive rights of the minority shareholders. Such rights may be conferred by way of agreement and there is no principled reason why it should matter when it is evinced in writing or not. As a general point, the law of contracts does not require contractual obligations to be concluded in writing (save for special categories of contracts for which special provisions have been made *by statute*, *eg*, wills for which formality requirements are introduced by statute: see s 6 Wills Act (Cap 352, 1996 Rev Ed)).

(2) Whether there was such an oral agreement

56 With that said, it was left for me to decide if, there was strong evidence that the plaintiff and first defendant had concluded an oral agreement in February 2007 which guaranteed the latter "equal say" in the running of Infotech and that he would "manage the business of the company and its day-to-day operations" (see [28] above). In support of this claim, the defendants offered four main pieces of evidence:

(a) First, the structure of the company pointed towards such an inference: (a) the plaintiff

and first defendant were, at all times, the only two directors of Infotech; and (b) the first defendant had been the managing director since 2007, almost immediately after its incorporation.

(b) Second, the profits of Infotech's global business (*ie*, the profits from Infotech's related companies overseas) were also drawn up for division between the plaintiff and the defendant. This supported the inference that the first defendant had a "major say" in the international business.

(c) Third, even after the present dispute arose, both the plaintiff and defendant agreed to be joint-signatories to the bank accounts of Infotech in Singapore. This was evidence of an original agreement that there would be equal management participation for the plaintiff and the first defendant.

(d) Finally, the defendants tendered an unsigned shareholders' agreement ("SHA") which provided, *inter alia*, that all shareholders' meetings had to take place in the presence of the plaintiff and first defendant (cl 4.2) and that the management of the company would be assumed by the first defendant (cl 6.1). The first defendant deposed that he had prepared this document in 2007 but the document was never signed because the plaintiff had persuaded him to dispense with such a formality, assuring him that an oral agreement would suffice.

57 It seemed to me that most critical piece of evidence was the draft SHA. But to my mind, it clearly pointed *away from*, rather than towards, the conclusion that there was any such oral agreement. According to the defendants' case, the oral agreement was concluded in February 2007 — one month before Infotech was incorporated and the AA (which did not provide for the first defendant's right to management participation) was signed. In other words, they claim that there was a contract: *ie*, that the negotiations between the parties had crystallised to a point where there was *consensus ad idem* to be bound by terms which are both certain and complete (see *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [47]). If this were the case, then it was baffling that just one month later, the parties would enter into a written agreement (Infotech's AA) which does not, insofar as the question of the first defendant's right to management participation is concerned, resemble the draft SHA at all.

58 The first defendant's explanation — that the document had never been signed because the plaintiff persuaded him that an oral agreement would suffice was wholly unconvincing. The draft SHA had already been prepared so if it were really the case (as the defendants contend) that there was an oral agreement and the draft SHA reflected their agreement in all its material particulars, then it would be a simple matter to just sign it. I do not understand why there would be any hesitation on the plaintiff's part to sign it. Further, seeing as how the guarantee of management participation is a matter of some importance to the first defendant (given that he took the trouble to have the draft SHA prepared), I would have expected him to insist that the plaintiff sign it instead of blithely accepting the assurance that such a "formality" was unnecessary. It seemed to me that the only inference to be drawn from the unsigned draft SHA was that first defendant had attempted to negotiate with the plaintiff for the conclusion of such an agreement.

59 The rest of the evidence comprise a miscellany of disparate facts which seemed to me to be neither nor there. Point (a) — the fact that the first defendant had always been a managing director of Infotech — said little about whether there was an agreement that it *would always be the case*. Given that the plaintiff was not resident in Singapore but the first defendant was, it is not surprising that the latter would have conduct of the day to day management of the company. It does not, of itself, suggest that the latter's position as managing director was entrenched. Point (b) — the distribution of the profits of Infotech's global subsidiaries — also appeared to me to be a *non sequitur*.

The scope of the oral agreement as pleaded by the first defendant was narrowly confined to the management of Infotech and I did not see how the conduct of Infotech's overseas subsidiaries would be probative of the question of whether the oral agreement — which pertained to the management of Infotech — had been made.

60 Point (c) — about the parties' agreeing to be joint signatories — was a point I found extremely misleading. In his affidavit, the first defendant explained that the plaintiff had confronted him with allegations of malfeasance in December 2014 and this agreement (to have both the plaintiff and the first defendant appointed as joint signatories) arose out of addressing the plaintiffs concerns. Thus, the defendants' submission that the first defendant was retained as a joint-signatory of Infotech's account because he was entitled to equal management participation is not only factually incorrect, it is also utterly disingenuous.

61 In light of the above, the defendants fell far short of producing the "strong evidence" required to establish that the first defendant had the right to management participation and, therefore, to resist the grant of an order under s 182.

The disputes as to shareholding

62 Next, I move to the disputes concerning the plaintiff's shareholding. As noted at [5] above, it was common ground that there were a total of six allotments of shares in Infotech through which the plaintiff and first defendant acquired their shares. For ease of reference, the details of each allotment are summarised in the following table:

S/n	Date	Shares allotted to plaintiff	Consideration provided	Shares allotted to 1st Def	Consideration provided
1	12 March 2007	1	1	1	1
2	6 April 2007	32,499	$32,499	17,499	$17,499
3	15 October 2007	65,000	$65,000	35,000	$35,000
4	11 January 2008	97,500	$97,500	52,500	$52,500
5	20 June 2008	32,500	$65,000	17,500	$35,000
6	31 October 2012	97,500	$585,000	52,000	$315,000
Total		325,000	$845,000	175,000	$455,000

63 The defendants challenged the legitimacy of all but the first share issued to the plaintiff upon incorporation:

(a) In relation to allotments 2 to 4, the defendants argued that the allotments should be voided, and the plaintiff's shareholdings discounted by 194,999 shares (being 38% of the total share capital) because the plaintiff had used Infotech's money to fund the acquisition of those shares in contravention of s 76 of the CA.

(b) As for allotments 5 and 6, the defendants argued that the first defendant had paid for the 130,000 shares on behalf of the plaintiff. Thus, the plaintiff holds those shares on "resulting trust" for the first defendant, making the first defendant the beneficial owner of these shares.

64 Before I go on to examine the allegations in greater depth, I think it is important to appreciate the import of the defendants' submissions. As explained above, majority shareholders normally have the right to appoint and remove directors so the fact that an application is brought by a majority shareholder weighs heavily in favour of the grant of relief (see [42] above). The defendants' contentions, if correct, would undermine the central plank of the plaintiff's case for relief (*viz*, his substantive rights as a majority shareholder). In my view, to challenge clear legal title and the incidence of legal ownership, mere allegations would not suffice. Given the serious nature of the allegations, what is needed is some "strong evidence" to dispute the legal ownership, and to show that beneficial ownership lies elsewhere.

(1) Allotments 2 to 4

65 It is common ground that between 22 March 2007 and 12 February 2008, a total of $237,000 was remitted to Infotech from Infotech Pakistan and other overseas companies at the direction of the plaintiff. The plaintiff's case is that the bulk of these monies (i.e. $194,999) had been applied towards the purchase of the 194,999 shares in Infotech. The defendants, however, disputed this. They argued that during the same period of time, Infotech raised invoices against Infotech Pakistan which exceeded $237,000. Thus, they argue, the sum of $237,000 could *not* have been applied towards the purchase of the plaintiff's shares but were instead payments for amounts owed by Infotech Pakistan to Infotech.

66 As a preliminary point, I observe that there is a deep flaw in the defendants' argument. Even taking their argument at its highest and assuming that Infotech Pakistan owed Infotech more money than it transferred in the relevant period, it does not necessarily follow that any money it did in fact transfer would first have been applied towards payment of that debt instead of being used to pay for the allotments of shares to the plaintiff. In fact, I found that the documentary evidence pointed to the contrary, showing that the plaintiff paid for allotments 2 to 4.

67 First, there were two share issuance authorisation letters signed by *both the plaintiff and first defendant* on behalf of Infotech dated 6 April 2007 and 15 October 2007 respectively. These letters, which correspond with allotments 2 and 3 respectively, confirmed that the consideration in respect of each allotment had been received and directed the company secretary to issue share certificates for the allotments to the plaintiff and first defendant. The plaintiff did not exhibit a similar share authorisation letter in respect of allotment 4 although he did furnish a share application form (signed by him alone) dated January 2008 in which it is stated that he enclosed a cheque for $97,500 in consideration for 97,500 shares in Infotech.

68 Second, the balance sheet of Infotech dated 31 March 2009 ("balance sheet of 31 March 2009"), which was *prepared by the first defendant himself*, clearly showed that as of March 2008, the plaintiff had contributed $195,000 to Infotech's share capital. This corresponds with the plaintiff's case *ie*, that the plaintiff has transferred the requisite sum of $194,999 to pay for allotments 2 to 4.

69 Taken together, it was clear to me that the documentary record spoke for itself. I should add that this allegation was first raised by the first defendant very late in the day. It was only found in his second affidavit dated 16 July 2015. The first defendant explained that he only realised that the plaintiff did not pay for allotments 2 to 4 after seeing the plaintiff's second affidavit dated 5 June 2015, which listed the payments between 22 March 2007 and 12 February 2008 of the total sum of

$237,000. He further explained that Infotech Pakistan prepared Infotech's accounting records from the date of incorporation till March 2010 and it had been the one that categorised these payments as having been applied towards the plaintiff's share capital. The defendants explained that the first defendant had simply accepted this information at face value until the time of the present application, when they went through the documents themselves and came to a different conclusion. I had great difficulty accepting these explanations. At all times, the first defendant was the managing director of Infotech and was in charge of the day-to-day operations of Infotech. Even by his own case, it has been five years since March 2010, when Infotech Pakistan dealt with Infotech's accounting records. There was ample opportunity for any irregularities (if any) to have been discovered. In my view, the first defendant's explanation is too convenient by half. He could not so easily dissociate himself from the accounting records. His current position, adopted so late in the day, did not seem convincing.

(2) Allotments 5 and 6

70 For allotment 5 dated 20 June 2008, the plaintiff's case was that he wired $80,000 in two tranches — $50,000 on 8 April 2008 and $30,000 on 23 May 2008 — to pay for the shares in allotment 5. By contrast, the first defendant claimed that on 18 June 2008, he remitted an amount of $125,000 from his company, Agarwal Pte Ltd, to Infotech. Out of the $125,000, $100,000 was used to pay for the plaintiff's shares (32,500 shares at $2 each, which cost a total of $65,000) and his own (17,500 shares at $2 each, at a total of $35,000), while the remaining $25,000 was a loan from him to Infotech as working capital.

71 For allotment 6 dated 31 October 2012, the plaintiff claimed that as at 5 October 2012, Infotech owed him $614,071.07. Thus, a sum of $585,500 was deducted from his director's account in payment for the shares he received in allotment 6. By contrast, the first defendant claimed that on 11 July 2012, he withdrew $1,100,000 from his personal bank account, and deposited it into Infotech's bank account. Of this amount, $900,000 was used to pay for the 97,500 shares issued to the plaintiff (which, at the price of $6 per share, cost $585,000) and the 32,500 shares issued to him (which, at $6 per share, cost $315,000). The surplus of $200,000 was loaned to Infotech as working capital.

72 After reviewing the evidence, I preferred the plaintiff's evidence, which I found was supported by the documentary evidence. As far as allotment 5 was concerned, in the balance sheet of 31 March 2009 (prepared by the first defendant) (see [68] above), it was reflected that the plaintiff's share capital had increased from $195,000 in March 2008 to $260,000 in March 2009, accounting for the payment of $65,000 by the plaintiff. In an email dated 24 April 2009, the first defendant sent an excel spreadsheet which he described as a "…full detailed P&L and Balance Sheet". This document contained accounting entries, and recorded the transfers and deposits of two sums of $49,985 (8 April 2008) and $29,985 (23 May 2008) into Infotech's account by the plaintiff as "*share capital*". This accorded with the plaintiff's position that the sum of $79,970 (or just short of $80,000) was to pay for his shares. By contrast, I note that the main document produced by the first defendant to show a payment of $125,000 by Argawal Pte Ltd was a payment credit slip by OCBC Bank in favour of Infotech. However, there was nothing to state the purpose for such payment.

73 As for allotment 6, the draft management account for FY 2013 (once again, prepared by the first defendant) clearly showed, in the table marked "Naseer account", that the sum of $585,000 has been deducted from the plaintiff's account between June 2012 and June 2013 for "Capital Investment for new Shares issue". Furthermore, there was a share authorisation letter (once again signed by both the plaintiff and the first defendant) affirming that the consideration in respect of allotment 6 had been paid and directing the company secretary to issue the requisite share certificates. In contrast, while there was, once again, no documentary evidence to show the purpose for the deposit of

$1,100,000 by the first defendant.

74 Furthermore, I note that for both allotments, there were proper BOD resolutions signed by *both the plaintiff and the first defendant*, approving the allotments of the shares to the two parties, and acknowledging the consideration *paid* by both parties for their respective shares. In these resolutions, the BOD also authorised the company secretary to issue new share certificates.

75 Turning to the circumstantial evidence, I found the first defendant's behaviour to be inconsistent with his case that he *paid* for the shares, and that the plaintiff held these shares on resulting trust for him. In his correspondence with the plaintiff at the start of 2015 (prior to the initiation of the present application), the first defendant referred to the plaintiff variously as the "director and major shareholder of [Infotech]" and the "principal shareholder and director of [Infotech]." In their submissions, the defendants attempted to explain this away by saying that they only realised that the plaintiff held the shares on resulting trust for the first defendant at the time of preparing the first defendant's first affidavit (on 21 April 2015).

76 I found this explanation utterly unconvincing. If it were truly the case that the first defendant had funded the plaintiff's share acquisitions on those occasions (and therefore should be regarded as the beneficial shareholder), then he should be well aware of the true incidence of the beneficial ownership at all times. It was absurd for him to claim that he only realised his rights during the preparation of his first affidavit. His failure to assert his rights at the earliest opportunity was extremely telling, and suggested that his present argument was merely an afterthought.

77 I should add that the first defendant also explained that he was not the one who categorised the various payments made by the plaintiff as share capital payments. Instead, he explained that the categorisation had been performed by Infotech Pakistan, which had charge of Infotech's accounts at the time. He also disputed that he prepared the excel spreadsheet attached to his email of 24 April 2009. I was unpersuaded by the first defendant's present attempts to distance himself from the documentary evidence. What I stated at [69] above applies with equal force here. In any case, allotment 6 took place in 2012, which is well after Infotech Pakistan stopped dealing with Infotech's accounts, so this explanation, even if accepted, would only cover allotment 5 and not allotment 6.

78 To sum up, on the disputes as to the plaintiff's shareholding, I found the defendants' assertions largely unsubstantiated, contradicted by the contemporaneous documentary evidence, and inconsistent with the first defendant's conduct. The defendants failed to persuade me that these allegations constituted sufficient basis to withhold the grant of s 182 relief.

The alleged contravention of Pakistani law

79 Next, the defendants argued that the plaintiff, being a Pakistani citizen, is required under Pakistani law to obtain the prior approval of the State Bank of Pakistan to invest in foreign equities (such as shares in Infotech). Not having done this, the plaintiff was in contravention of Pakistani law and could not be allowed to assert the rights associated with his shareholding.

80 I also rejected this argument. As a preliminary point, I should state that I found the manner in which evidence of Pakistani law was introduced to be extremely unsatisfactory. In the present case, the defendants produced a letter of advice from M/s Vellani & Vellani, a firm of solicitors practising in Karachi, which was annexed to the first defendant's second affidavit. As emphasised by the Court of Appeal in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [64], if an expert opinion on foreign law is sought to be admitted, it must be contained in an affidavit sworn by the *expert himself*, and not in the affidavit of the person to whom the opinion was

addressed.

81 Even putting that aside, I found that the defendants' allegation that Pakistani law had been contravened to be weak. In the letter, it was explained that para 15 of Chapter XX of the Foreign Exchange Manual issued by the State Bank of Pakistan ("FEM") states that the prior approval of the State Bank is required before citizens can invest in foreign securities and that any such investments must be registered. The defendants' submission is that the plaintiff's failure to produce evidence of such registration is tantamount to an admission that he had never obtained the permission of the State Bank. I do not think that such an inference can be drawn. "Generally speaking, the graver the allegation the higher the standard of proof" (see *Vita Health Laboratories Pte Ltd and other v Pang Seng Meng* [2004] 4 SLR(R) 162 at [30]). An allegation that a party has contravened foreign law should not be lightly made and this court will not readily make such a finding without strong evidence. In this case, direct proof of such contravention is sorely lacking.

82 However, even taking the defendants' argument at its highest and assuming that the Plaintiff had failed to obtain prior approval of the State Bank, it is not clear to me that this automatically meant that the plaintiff's shareholdings were voided or, more pertinently, that his present application ought to be dismissed. In *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 at [106], the Court of Appeal, in dealing with the law relating to "statutory illegality", held that the relevant "inquiry is whether the statutory provision concerned is intended to prohibit only the conduct *or* whether it is, instead, intended to prohibit not only the conduct *but also the contract* as well" [emphasis in original]. The defendants had never actually proven that the mere act of investment in foreign equity is *ipso facto*, an act in contravention of Pakistani law. Neither the FEM nor the Foreign Exchange Regulation Act 1947 (Pakistan), under which the FEM was issued, proscribes Pakistani citizens from dealing in foreign equities *per se*, but merely requires that any such investments be reported and registered. It was not clear to me that international comity would require the Singapore courts to deem any acquisitions of Singapore shares which were not registered to be void. For these reasons, I dismissed the defendants' arguments in relation to the plaintiff contravening Pakistani law.

The allegation of bad faith

83 The final subsidiary issue concerns the defendants' submission that the present application should be dismissed because it was taken out in bad faith. The defendants submitted that the present application was merely designed to assist the plaintiff in further his "collateral purpose" to "wrongfully usurp control of the business, assets and monies of [Infotech] and to cover up his wrongdoings to the company." I did not accept this argument.

84 Section 182 is designed to be a "simple application" confined only to issues of a limited ambit (see *Alberto* at [24]). It is not designed to be (and, indeed, is manifestly unsuitable to be) an occasion for determining issues concerning the abuse of majority power or corporate malfeasance. In the main, the proper forum for a determination of such issues is the court hearing the oppression suit, which will not only have the benefit of the full evidence on those issues (instead of being confined only to affidavit evidence) but also the full panoply of remedies set out in s 216 of the CA at its disposal (see *Re Woven Rugs* at [32]). Thus, it seemed to me that, short of situations involving a "clear case of oppression or unfairly prejudicial conduct" (see *Vectone Entertainment Holding Ltd v South Entertainment Ltd and others* [2004] 2 BCLC 224 at [41]), the court should not normally deny the relief sought.

85 It did not appear to me that this was such a case. The various allegations of misconduct detailed in the first defendant's affidavits did not appear to me to rise to the level which would plainly present itself as an obstacle to the grant of an order under s 182. A genuinely aggrieved minority

shareholder can still proceed to court to vindicate his rights in separate proceedings, which are more suited for that purpose (see *Alberto* at [26]).

Conclusion

86 In conclusion, I was of the view that the four reasons raised by the defendants should not bar the grant of relief, and that I should exercise my discretion in favour of the plaintiff. It bears reiterating that the grant of an order under s 182 is not the end of the road — it is a procedural remedy to enable a meeting to be convened, and does not constitute an adjudication of the parties' substantive rights *inter se*. With that, I turn to consider the form that the orders should take.

The form the order should take

87 The defendants submitted, citing the case of *Re Sticky Fingers Restaurant Ltd* [1992] BCLC 84 ("*Re Sticky Fingers*"), that the presence of extant oppression proceedings meant that any orders granted should be "limited to enable an effective board to be brought into being without giving [the plaintiff] the opportunity of harming [the first defendant] pending the outcome of [S 631/2015]". To that end, they submitted that the court should direct that the first defendant be allowed to continue to function unimpeded as a director of Infotech pending the disposal of S 631/2015, and that any withdrawals from Infotech's bank accounts or any new contracts entered into by Infotech would be subject to the first defendant's approval. Additionally, the defendants also sought a direction that Infotech be required to ensure that Infotech Financial Technologies Ltd (a related company incorporated in the United Kingdom of which the plaintiff and first defendant are also directors) comply with a request sent by M/s Macfarlanes LLP on behalf of the first defendant on 2 April 2015 in relation to entirely separate legal proceedings taking place in the United Kingdom. After considering the matter, I agreed that the orders given should be varied but neither in the manner nor for the reason submitted by the defendants.

The relevance of extant oppression proceedings

88 As a starting point, I agree with Harman J in *Re Whitchurch Insurance Consultants Ltd* [1993] BCLC 1359 where, at 1362e, he stated that it cannot be the case that the mere existence of oppression proceedings is inevitably a bar to the grant of s 182 relief. If that were the case, there would be an incentive for minority shareholders to commence (unmeritorious) oppression proceedings just to stave off the termination of their directorships. While the court will be careful to ensure that it does not become an accessory to majority oppression, the question of whether such considerations arise must depend on the facts of each case.

89 In *Re Sticky Fingers*, the company had two members: the applicant, with a 66% shareholding; and the defendant, with a 34% shareholding. Disagreements soon broke out between them. On 8 March 1991, the defendant presented a petition under s 459 of the UK CA 1985 (an action in unfair prejudice which, in essence, is similar to an action for oppression under s 216 of our CA), seeking a buyout of his shares. Following that, the applicant twice attempted to hold board meetings to deal with, *inter alia*, the approval of the company accounts and the filing of its statutory returns but the meetings were left inquorate because the defendant was not present. On 23 May 1991, the applicant sought an order under s 371 of the UK CA 1985 that the meetings be convened with a quorum of one in order that he could pass a series of resolutions providing for the appointment of two other persons as additional directors of the company. Mervyn Davies J granted the order because he held that it was vital that the company have an effective board in order to deal with pressing matters of corporate governance. However, he stated that "it would not be right for [the applicant], to be given the opportunity of harming [the defendant]… pending the outcome of the [s 459] petition

proceedings." Thus, he qualified the orders to the extent that, pending the outcome of the s 459 proceedings, any directors appointed would have to undertake: (a) not to vote to dismiss the defendant from his directorship; (b) interfere with the defendant's conduct of the day-to-day business of the company; or (c) vote to alter the constitution or capital of the company.

90 Thus presented, it is clear that *Re Sticky Fingers* is readily distinguishable. First, the s 459 proceedings there were commenced *two and a half months before* the s 371 proceedings. In other words, the s 371 proceedings had clearly begun in the light of, and with full knowledge of the particulars of, the s 459 action. In those circumstances, it was clear that the court had to be careful to ensure that the s 371 order was not used as a tool to stifle the s 459 action. In the present case, the oppression proceedings were commenced *three months after* the s 182 application. Thus, no similar considerations apply. Second, it appears that the primary purpose for which the s 371 application was brought in *Re Sticky Fingers* was to convene a board meeting in order that the company could deal with immediate pressing matters such as the approval of the company's statutory returns. The qualifications sought would not impinge on the core purpose of the application. By contrast, the *sine qua non* of the present summons was the passage of the proposed resolutions, chief of which is resolution 1, which effects the removal of the plaintiff as director of Infotech. Should the defendants' present request be granted, the plaintiff would be deprived of substantially the whole of the benefit of the s 182 application which they sought.

91 The defendants have not shown how the grant of the present order (even if it will result in the removal of the first defendant from his directorship) will impede his claim in oppression. Thus, I saw no need to qualify the orders in the manner requested.

The narrow purpose of an order under s 182

92 With that being said, however, I was mindful that any court hearing a s 182 application should be careful about over-reaching and micromanaging the affairs of the company. The cautionary note sounded by Dillon LJ in *Harman* at 898E–F is instructive:

> For present purposes I do not regard it as the function of the court to intervene in these sort of proceedings by requiring various cross-undertakings to achieve the conduct of the business of the company on sensible terms. That is for the parties' advisers to achieve. It is not for the court to make a new shareholders' agreement between the parties and impose it on them. …

It seems to me that this is an important point of principle and of practice. On a point of principle, it is not the role of the court to intervene in the affairs of the company and dictate the way it conducts its affairs. Indeed, that runs directly counter to the core purpose of a s 182 application, which is to allow a meeting to be held so that the company run its affairs. On a point of practice, I am not sure that the court is institutionally equipped to direct how a company should be run. There are a myriad of difficulties involved in the running of any company, even at the best of times. Where relationships are friable and tensions fraught, it would be quite beyond the court to impose conditions to allow the company to keep going.

93 Thus, it was clear to me that any orders granted had to be restricted only to the narrow purpose of lifting the deadlock (which consisted solely of the defendants' refusal to attend any general meeting at which the termination of the first defendant's directorship was tabled for consideration) in the company to be resolved. Looking at the proposed resolutions, it seemed to me that the only resolution that ought to be considered at a court ordered meeting was resolution 1. Resolutions 2 to 9 were matters which touched on the operations of the Infotech and ought properly be considered by its BOD. I did not think that it was necessary to order that they be considered at an

EGM, as the plaintiff had prayed for. Resolutions 2 to 9 may be tabled for consideration by the BOD once one is put in place after the deadlock is resolved at the company level. But that, in my judgment, was not a matter for this court to pronounce on.

Orders

94 In the premises, I made the orders as set out in [2].

Stay of execution

95 Immediately after I delivered my judgment in this matter (on 24 August 2015), Mr Singh, counsel for the defendants, made an oral application for a stay of execution of the order pending an appeal. The only ground he proffered was that if no stay was granted, the first defendant would be removed from his position as director and another appointed in his place, following which the remaining resolutions would invariably be considered and passed by the BOD, which would cause him prejudice. However, when queried, he was unable to show why the quality of the potential prejudice sustained would be of such a character to be irremediable or that his appeal, even if successful, would be rendered nugatory without the grant of a stay. In light of the deficiencies in his application, I invited Mr Singh to file a formal application for a stay with full supporting reasons for my consideration. However, Mr Singh declined the offer and maintained that the oral application would suffice.

96 The general rule is that the court should not deprive a successful litigant of the fruits of litigation. Thus, a stay will only be granted if "special circumstances" can be shown (see *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 772 ("*LKY v JBJ*") at [6]). The way matters stood, I was not of the view that any special circumstances existed. It seemed to me that the gist of the defendants' argument was that the plaintiff would, if the order were granted, exercise his majority position in a manner oppressive of the minority. However, as I pointed out at [85] – [86] above, the parties' rights in relation to any allegedly oppressive acts are unaffected by the outcome of the present application and still remained to be decided in S 631/2015. In the circumstances, I saw no reason to exercise my discretion in favour of a stay and dismissed the application.

97 On 28 August 2015, the plaintiff served on both defendants a notice of EGM calling for a meeting to be held on 14 September 2015 for the purpose of considering the removal of the first defendant from his directorship and the appointment of Mr Eric Tiong in his place.

Formal application for a stay

98 On 3 September 2015, the plaintiff lodged Summons No 4299 of 2015 ("SUM 4299"), once again seeking a stay of execution of my order of 24 August 2015 pending an appeal. Accompanying the application was an affidavit filed by the first defendant in which he averred that a stay should be granted because, otherwise, irreparable damage would be caused to him such that any appeal, even if successful, would be a "pyrrhic victory". He raised the following points (which were amplified by Mr Singh in his oral submissions):

(a) First, he submitted that permanent harm would accrue to Infotech if a stay were not granted. He argued that there was a risk that Infotech's assets will be dissipated. He explained that when disagreements erupted between the parties, there was a meeting in December 2014 wherein it was agreed that the plaintiff and first defendant would be joint signatories to Infotech's bank accounts. Should he be removed as a director, this "safety mechanism" would be dismantled and the plaintiff would be free to do as he will with the $1.7m that presently remained

in Infotech's bank account. He also argued that he had been the managing director of Infotech for 8 years. Thus, should he be removed, there would be nobody who could fulfil this role, leaving Infotech devoid of proper management.

(b) Second, he submitted that since the plaintiff is ordinarily resident out of jurisdiction, even if the defendants were to prevail in the appeal, it would be difficult for them to recover any funds which might wrongly have been taken out by the plaintiff in the interim.

(c) Third, he submitted that he would suffer serious reputational damage. Should he be removed from his position as managing director, many of Infotech's existing customers may come under the misapprehension that he had been in the wrong. Even if he were to be vindicated, he argued that he would have to expend significant resources travelling and meeting them to correct this misapprehension.

(d) Finally, he argued that the plaintiff would not be prejudiced if a stay were to be granted since his main objective is the examination of the company's accounts, which he is and has always been entitled to do as a director, whether with or without an order of court (see s 199 of the CA).

99 The parties attended before me on 7 September 2015. Mr Khoo, counsel for the plaintiff, first prefaced his submissions by informing the court that Mr Eric Tiong had just written to his firm to state that he would no longer take up appointment as a director of Infotech in place of the first defendant. In light of this development, Mr Khoo stated that the scheduled EGM on 14 September 2015 might not be able to proceed.

100 Turning to the application, Mr Khoo submitted that the doctrine of *res judicata* operated since an oral application for a stay had previously been made and rejected. However, he conceded that this court had the power to consider the application, if thought fit, since the order had yet to be perfected. On the merits of the application, Mr Khoo submitted that the defendants had not adduced evidence to substantiate their claim that there would be a risk of the dissipation of assets. Nevertheless, he indicated that his client was prepared to offer an undertaking that the sum of $1.7m would not be drawn down, save to be used in the ordinary business expenses of Infotech, and then only *with the prior consent of the first defendant*.

The jurisdiction to review unperfected orders

101 It is well established that the court has the inherent jurisdiction to recall its decision and to hear further arguments as long as the order has not yet been perfected (see *Thomas Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246). In *In re L and another (Children (Preliminary Finding: Power to Reverse)* [2013] 1 WLR 634, Baroness Hale of Richmond (with whom the rest of the court agreed) held that the power of the court in this regard was not limited to exceptional circumstances and that the "overriding objective must be to deal with the case justly" (at [27]). However, she cautioned that any such power had to be exercised "judicially and not capriciously" (at [38]).

102 When I considered the present matter, I was of the view that I ought to exercise my discretion to review the stay order. As noted at [95] above, I was concerned that the oral application was premature because Mr Singh might not have had adequate time to prepare for the matter and to draw my attention to all factors which might be relevant and I was prepared to leave the matter until a formal application had been filed. While Mr Singh should have taken up my suggestion on that occasion, I did not think, given the short time that had elapsed between the oral application and the

formal one, any prejudice would have accrued to the plaintiff which could not be remedied through a grant of costs. In the interests of justice, therefore, I considered the merits of the application.

The merits of the formal stay application

103 The third and fourth points — reputational damage to the first defendant and the fact that the plaintiff might not have suffered prejudice — can be dealt with quickly. Starting with the former, I did not agree that the mere grant of a s 182 application in the plaintiff's favour said *anything significant* about the first defendant's character. As emphasised in the judgment, the sole issue is about the impracticability in the conduct of the company's affairs. I did not think that the grant of the order (and the first defendant's likely loss of his directorship) would necessarily affect his reputation to any great degree. In any event, I think this point (damage to reputation) is an argument which could apply equally to any situation in which a defendant has been adjudged liable. Alone, it surely cannot be a sufficient basis upon which to grant a stay. If the first defendant's argument were accepted, then stays of execution pending appeals would routinely have to be granted. That would be an absurd result. The assertion that the plaintiff would not suffer prejudice is both factually inaccurate and a legal *non sequitur*. On the facts, the plaintiff's main objective is not the inspection of accounts, but the passage of the proposed resolutions. Thus, the grant of a stay would deprive the plaintiff of substantially the whole benefit of the application (see [90] above). On the law, it has been held in *LKY v JBJ* that the absence of prejudice to the plaintiff is not a justification for a stay. Instead, the touchstone is whether there are "special circumstances" arising out the enforcement of the judgment that justifies the grant of a stay.

104 Thus, it seemed to me that the crux of the plaintiff's concerns lay in the first and second points, which pertained to the risk that Infotech's assets might be dissipated. My preliminary view was that the first defendant had failed to show that there was any real substance to his assertion of such risk. However, I did not think it necessary for me to decide this point because of the plaintiff's offer to provide an undertaking (see [100] above). In this regard, a parallel may be drawn with the case of *Minnesota Mining & Manufacturing Co v Johnson & Johnson Ltd (No 3)* [1976] FSR 139, which related to a patent infringement action. The lower court adjudged that the patent had been infringed and issued an injunction restraining infringement. The defendants appealed and argued that a stay of the injunction should be granted because if it were not, they stood to lose a substantial sum in sales and would, more crucially, additionally lose market share as its competitors gained ground. The plaintiff offered to give an undertaking in damages. The English Court of Appeal acknowledged that the defendant should be offered some sort of protection to preserve its rights pending appeal but ultimately dismissed the application because it held that the plaintiff's offer of an undertaking would suffice (at 147, per Buckley LJ).

105 In this case, I was likewise of the view that the plaintiff's offer of an undertaking rendered the grant of a stay unnecessary. For good order, I recorded the plaintiff's undertaking in the following terms:

> Pending the conclusion of the appeal or further order, the Plaintiff undertakes that the sum of $1.7 million in Infotech will not be drawn down, save for the ordinary business expenses of Infotech and with the prior consent of D1.

Partial stay pending application to Court of Appeal

106 On 10 September 2015, the defendants wrote to the court to indicate (a) their intention to file a separate application to the Court of Appeal for a stay of execution of my order pending appeal; and (b) to request that they be granted a partial stay of execution of my order pending their application

to the Court of Appeal for a full stay. They elaborated that they had previously been under the impression, based on what Mr Khoo had stated during the hearing on 7 September 2015 that the EGM scheduled for 14 September 2015 would no longer be taking place. However, they had been informed that the EGM would take place as scheduled, necessitating the application to the Court of Appeal.

107 I saw the parties on 14 September 2015. On that occasion, Mr Khoo raised the preliminary objection that for an appeal to be brought to the Court of Appeal against the refusal to grant a stay, the defendants would require leave of court, which had not been obtained. Mr Khoo also pointed out that s 145(1) of the CA specified that every company incorporated under the Act had to have one director who is ordinarily resident in Singapore. The plaintiff (the only other director of Infotech) is not ordinarily resident in Singapore and, as far as Mr Khoo is aware, Mr Eric Tiong no longer wished to take up the appointment. Thus, even if a resolution removing the first defendant were passed, it could not take effect and the first defendant would remain a director of Infotech.

108 I did not accept Mr Khoo's preliminary objection. It has long been held, since the old case of *Cropper v Smith* (1883) 24 Ch D 305, that the High Court and the Court of Appeal possess concurrent jurisdiction as to the staying of proceedings pending an appeal (at 311, per Brett MR). This was approved of in *Au Wai Pang v AG and another* [2014] 3 SLR 357 at [76]–[78], where the Court of Appeal explained that an application to the CA for a stay under O 57 r 15 of the ROC is not, strictly speaking, an appeal but an application in the first instance. What is being invoked is the "incidental appellate jurisdiction" of the CA: the CA was assuming the "jurisdiction and powers of the court below" for the purpose of hearing matters which are "incidental to the hearing and determination of an appeal" of which an application for a stay of execution of the judgment is one (at [70]). However, the CA explained that even though the jurisdiction of both courts is concurrent, the Court of Appeal would not, because of O 57 r 15(4), exercise its jurisdiction to hear the stay application unless an application had first been brought before the High Court and refused.

109 I therefore turned to consider the merits of the application. Since it appeared that the EGM would take place on 14 September 2015, there was always the possibility that Mr Eric Tiong would take up the appointment after all. Therefore, in the interest of preserving the defendants' rights pending an application to the Court of Appeal for a full stay, I ordered that there be a partial stay of execution of my orders of 24 August 2015. This partial stay would be in effect until the conclusion of the defendants' application for a full stay before the Court of Appeal or further order.

110 Although it was not strictly a matter I had to decide on, I was inclined to accept Mr Khoo's submission that any resolution providing for the removal of the first defendant would be ineffective if it did not also provide for the appointment of a person ordinarily resident in Singapore in his place. Section 145(5) of the CA states that no director may resign or vacate his office (and any purported resignation or vacation shall be invalid) unless there remains at least one director who is ordinarily resident in Singapore. While the section does not explicitly refer to forced removals, I agree with *Woon* (at para 7.98) where it states that, purposively construed, s 145(5) would also preclude the removal of a director where the effect of such removal would be to leave the company with no directors or no director ordinarily resident in Singapore.

Costs

111 At each stage of the proceedings, the parties did not dispute that costs should follow the event. I therefore made the following costs orders:

(a) In respect of the present application, I ordered that the defendants pay the plaintiff costs which I fixed at $9,000 (with reasonable disbursements to be agreed or taxed).

(b) In respect of SUM 4299, I ordered that the defendants pay the plaintiffs costs which I fixed at $2,000 (with reasonable disbursements to be agreed or taxed).

(c) In respect of the application for a partial stay, I ordered that costs be reserved to the Court of Appeal.