IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 190

Originating Application No 733 of 2025

Between

Nanyang Commercial
Management Pte Ltd

… *Claimant*

And

Matex International Ltd

… *Defendant*

JUDGMENT

[Companies — Shares — Allotment]
[Companies — Members — Rights — Proper plaintiff rule]
[Companies — Directors — Meetings — Quorum]
[Companies — Memorandum and articles of association — Effect]
[Companies — Capacity — Indoor Management Rule]
[Contract — Contractual terms — Common law rectification]
[Civil Procedure — Discontinuance — With leave]

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Nanyang Commercial Management Pte Ltd
v
Matex International Ltd

[2025] SGHC 190

General Division of the High Court — Originating Application No 733 of 2025
Christopher Tan J
22 August, 22 September 2025

22 September 2025 Judgment reserved.

Christopher Tan J:

1 The claimant in this case, Nanyang Commercial Management Pte Ltd ("Claimant"), is the largest shareholder of the defendant company, Matex International Ltd ("Defendant"). Arising from disputes between the Claimant and the Defendant, the Claimant had on 7 July 2025 requisitioned an extraordinary general meeting ("EGM") of the Defendant's shareholders, with a view to voting the Defendant's executive directors off the board. Four days after that, on 11 July 2025, the Defendant entered into two share subscription agreements – one agreement was with one Lim Yan Peng ("Lim") and the other with one Gan Peiling ("Gan") ("Subscription Agreements").

2 The Claimant filed the present originating application ("OA") seeking, *inter alia*, an injunction restraining the Defendant from completing the Subscription Agreements until the EGM requisitioned by the Claimant is held.

The Claimant based its application on two grounds.

(a) Firstly, the Subscription Agreements were motivated by an improper purpose, *viz*, to dilute the Claimant's voting power and thereby frustrate its plan to vote the Defendant's executive directors out.

(b) Secondly, the steps taken by the Defendant's board of directors to sanction the Subscription Agreements were invalid as they contravened the Defendant's constitution.

I heard the parties on 22 August 2025 and reserved my judgment.

3 In preparation for release of my judgment, I had on 17 September 2025 sought parties' clarification on a few residual points. Unbeknownst to me, parties had just signed a settlement agreement two days before (*ie*, on 15 September 2025). On 18 September 2025, Defendant's counsel responded to my request with a letter updating that parties had reached an amicable resolution and would be applying to discontinue the OA. I thus called for today's hearing to get more details from parties. The Claimant explained that although the settlement agreement was signed on 15 September 2025, various steps had to be immediately executed before parties could say for sure that the settlement will not fall through.[1] These included the resignation of the Defendant's executive directors from the board (ultimately effected on 15 September 2025) and the cancellation of the Subscription Agreements (which cancellation was notified to the Claimant on the night of 21 September 2025).

4 While the Claimant sought to discontinue the OA, Claimant's counsel nevertheless requested that I publish the judgment which I had already prepared

[1] Minutes of hearing on 22 September 2025.

for this case, given the range of legal issues that parties had canvassed in their submissions. Defendant's counsel agreed.

5 Having considered the matter, I allow the parties' application to discontinue the OA.

6 I also exercise my discretion to publish my judgment in this case, as per parties' request, notwithstanding the discontinuance of the OA. While parties did not cite any authorities on this, it is clear that the court has a discretion to release its judgment even after amicable resolution has been reached: see *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 ("*Nicky Tan*") at [81]−[84]. One needs to be mindful that the court will not answer hypothetical questions or opine on academic points, just because parties would like it to: *Nicky Tan* at [85]. However, various factors in this case militate in favour of me releasing my decision. In particular, parties' submissions had traversed various issues of law, for which there is some benefit to the court publishing its views. Furthermore, by the time I was apprised of parties' settlement, preparation of this judgment had already progressed to an advanced stage, meaning that release of the judgment would entail the consumption of only marginal judicial resources.

7 I now move to the merits of this case. Of the two grounds which the Claimant relied on for its application, set out at [2] above, I find as follows:

(a) The first ground – that the Subscription Agreements were motivated by an improper purpose – raises disputes of fact which cannot be properly resolved under the OA process. The remedies sought by the Claimant in the OA thus cannot be sustained on this ground.

(b) The second ground – that the board resolution purporting to

sanction the Subscription Agreements failed to comply with the requirements in the Defendant's constitution – has been made out.

Accordingly, had the OA not been discontinued, I would have granted an injunction pursuant to the second ground above, restraining the Defendant from completing the Subscription Agreements unless they are approved either by a board resolution complying with the Defendant's constitution or by the shareholders at a general meeting.

Facts

8 The Defendant is currently listed on the Catalist board of the Singapore Exchange ("SGX"). Founded in 1989, it is engaged primarily in the supply of textile dyes and speciality chemicals.[2] Its founder, Dr Alex Tan Pang Kee ("Dr Tan"), also serves as the Defendant's Chief Executive Officer ("CEO"). The Defendant's board comprises six directors, of whom two are executive directors and four are non-executive:[3]

(a) The two executive directors comprise Dr Tan and his son, Tan Guan Liang ("GL Tan").

(b) The four non-executive directors comprise:

(i) three independent directors, being the Chairman Wang Daofu ("Chairman Wang"), Chng Hee Kock and James Kho Chung Wah; and

(ii) one non-independent director, Yeo Hock Huat.

9 Prior to the Claimant becoming a shareholder in the Defendant, Dr Tan

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2 Tan Guan Liang's 1st affidavit dated 5 August 2025 ("Tan's 1st affidavit") at para 8.

3 Tan's 1st affidavit at p 174.

was the largest shareholder, holding about 24.32% of the Defendant's shares.[4] On 3 November 2024, the Claimant entered into a subscription agreement with the Defendant, under which it purchased 154,000,000 new shares in the Defendant. This placement of shares diluted Dr Tan's shareholdings in the Defendant from 24.32% to 17.06%. In turn, the Claimant became the Defendant's largest shareholder, owning 29.86% of the Defendant's shares.[5] The Claimant purchased this stake for 2.7¢ per share, being a premium of 50% over the volume weighted average share price at the time.[6]

10 Under the Catalist Rules, a "controlling interest" is defined to include a stake which confers 15% or more of the voting rights in the issuer. The subscription by the Claimant was thus deemed to be a transfer of a controlling interest which, under Rule 803 of the Catalist Rules, had to be approved by the issuer's shareholders in general meeting. Consequently, a meeting of the Defendant's shareholders was held on 15 January 2025, during which the Claimant's subscription was approved.[7] The subscription was completed thereafter, on 24 January 2025.[8]

11 Barely six months later, on 28 April 2025, an annual general meeting ("AGM") of the Defendant was held, at which its shareholders authorised the directors to issue *further* shares in the Defendant, so long as the issue occurred prior to the next AGM ("Share Issue Mandate"). The terms of the Share Issue

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4 Tan's 1st affidavit at para 16.

5 Tan's 1st affidavit at paras 14−16.

6 Wang Weidong's affidavit filed 20 July 2025 ("Wang's affidavit") at para 5.

7 Claimant's Skeletal Submissions dated 18 August 2025 ("Claimant's Submissions") at para 1.

8 Tan's 1st affidavit at para 19.

Mandate are encapsulated in the following resolution tabled at the AGM:[9]

> That pursuant to Section 161 of the Companies Act 1967 and Rule 806 of Catalist Rules, the Directors of the Company be authorised and empowered to: … (ii) make or grant offers, agreements or options (collectively, "Instruments") that might or would require Shares to be issued … at any time and upon such terms and conditions and for such purposes and to such persons as the Directors of the Company may in their absolute discretion deem fit … (the "Share Issue Mandate")
>
> provided that:
>
> (1) the aggregate number of Shares … to be issued pursuant to this Resolution shall not exceed 100% of the total number of issued Shares … in the capital of the Company …
>
> …
>
> (3) in exercising the Share Issue Mandate conferred by this Resolution, the Company shall comply with the provisions of the Catalist Rules of the SGX-ST for the time being in force (unless such compliance has been waived by the SGX-ST) and the Constitution of the Company; and
>
> (4) unless revoked or varied by the Company in a general meeting, the Share Issue Mandate shall continue in force (i) until the conclusion of the next AGM of the Company or the date by which the next AGM of the Company is required by law and the Catalist Rules to be held, whichever is earlier …

The Share Issue Mandate was approved by 99.97% of the voting shareholders, including the Claimant.[10]

12 Sometime towards the end of June 2025, disputes began to brew between the Defendant's executive directors and the Claimant's sole shareholder and director, Wang Weidong ("Wang").[11] On 5 July 2025, a

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9 Exhibited in Tan's 1st affidavit at pp 75–76.

10 Tan's 1st affidavit at para 18 and p 80.

11 Wang's affidavit at para 1.

meeting was held at Orchard Hotel, where parties attempted to resolve their differences. During the meeting, which was attended by Wang and the Defendant's officers, including Dr Tan and GL Tan, various options were canvassed, including the procurement of investors to buy out the Claimant's stake in the Defendant.[12] After this meeting, the following events transpired:

(a) On 7 July 2025, the Claimant requisitioned the EGM (referred to at [1] above), proposing to table a resolution to remove Dr Tan and GL Tan as the Defendant's executive directors.[13]

(b) On 8 July 2025, the Defendant's lawyers wrote to the Claimant's lawyers stating that the Defendant had found a buyer willing to purchase the Claimant's shares in the Defendant for the same price as that which the Claimant had acquired them for, *ie*, 2.7¢ per share.[14]

(c) On 9 July 2025, the Claimant's lawyers replied stating that the Claimant had already requisitioned the EGM to remove the Defendant's executive directors and did not want to engage in any further discussions about the sale of its stake in the Defendant.[15]

13 On 11 July 2025, three of the Defendant's directors, *ie*, Chairman Wang and the two executive directors (*ie*, Dr Tan and GL Tan), signed a paper board resolution purporting to sanction the Subscription Agreements with Lim and Gan (referred to at [1] above). The resolution[16] began by noting that the Share

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12 Wang's affidavit at para 31; Tan's 1st affidavit at para 22.

13 Wang's affidavit at para 36.

14 Claimant's Submissions at para 12; email exhibited in Wang's affidavit at pp 543–544.

15 See email exhibited in Wang's affidavit at p 543.

16 Exhibited in Tan Guan Liang's 2nd affidavit dated 22 August 2025 ("Tan's 2nd affidavit") at pp 28–35.

Issue Mandate authorised the directors to issue shares in the Defendant,[17] before purporting to sanction the Subscription Agreements in the following terms:[18]

> It is in the interest of the [Defendant] for the Board of Directors to approve and authorize the Proposed Subscriptions by [Lim and Gan]. The Proposed Subscriptions by [Lim and Gan] on the terms as set out in the Subscription Agreements be and are hereby approved and confirmed in all respects.

14 On the same day that the paper board resolution above was signed (*ie*, 11 July 2025), the Subscription Agreements were signed by Lim, Gan and the Defendant. The agreement with Lim allotted her 108,000,000 new ordinary shares that gave her a 14.88% stake in the Defendant, while the agreement with Gan allotted her 102,000,000 new ordinary shares that gave Gan a 14.06% stake.[19] If completed, these allotments would dilute Dr Tan's stake from 17.06% to 12.12% and – critically – dilute the Claimant's controlling stake from 29.86% to 21.22%.[20] The issue price for the Subscription Agreements was 1.71¢ per share, being at a discount of 10% to the volume weighted average share price.[21]

15 The next day, on 12 July 2025, the three directors who had signed the paper board resolution (*ie*, Chairman Wang, Dr Tan and GL Tan) attended a physical board meeting, during which they discussed the Defendant's obligations under the Catalist Rules to announce the Subscription Agreements.[22]

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17 At para 2(a), exhibited in Tan's 2nd affidavit at p 28.

18 At para 2(b), exhibited in Tan's 2nd affidavit at p 29.

19 Wang's affidavit at para 50; Tan's 1st affidavit at para 39.

20 Wang's affidavit at p 552.

21 Wang's affidavit at para 48(b).

22 Transcripts of a recording of the meeting exhibited in Tan's 2nd affidavit at pp 41–75.

Parties' submissions

16 As alluded to at [2] above, the Claimant challenged the Subscription Agreements on two grounds, which I elaborate on below.

The Subscription Agreements were motivated by an improper purpose

17 The Claimant alleged that the Subscription Agreements were executed by the Defendant for the improper purpose of diluting the Claimant's voting power.[23] Specifically, the Claimant alleged that GL Tan had approached both Lim and Gan to acquire shares in the Defendant because these two investors were "friendly" to Dr Tan and GL Tan, the parties having been acquainted with one another for many years.[24] Combining the stakes of the executive directors (*ie*, 17.06% for Dr Tan and 0.11% for GL Tan) with Lim's stake of 14.88% and Gan's stake of 14.06% gave rise to a voting bloc of over 41% – far exceeding the Claimant's reduced stake of 21.22%. The Claimant contended that the executive directors had obviously enlisted the cooperation of Lim and Gan and planned to pool their collective voting power to defeat the Claimant's attempt to remove Dr Tan and GL Tan from the board, at the impending EGM requisitioned by the Claimant.[25]

18 The Claimant further highlighted that the Subscription Agreements were structured in a sinister manner, with Lim and Gan *each* getting a percentage stake in the Defendant falling just shy of the 15% threshold stipulated in Rule 803 of the Catalist Rules – with Lim acquiring 14.88% and Gan acquiring 14.06%. Had the 15% threshold been crossed, this would have triggered the

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23 Claimant's Submissions at para 10.

24 Claimant's Submissions at para 5.

25 Claimant's Submissions at paras 41 and 47(d).

requirement in Rule 803 of the Catalist Rules (see [10] above) that the issue of shares be approved by the shareholders in a general meeting,[26] in which case the Claimant would certainly have voted against the Subscription Agreements.[27]

19 To support the inference that the Subscription Agreements were executed for an improper purpose, the Claimant highlighted the following:

(a) The Subscription Agreements appeared to have been executed hastily,[28] having been inked on 11 July 2025, which was just four days after the Claimant requisitioned an EGM to remove the Defendant's executive directors (see [12(a)] above).

(b) The Claimant also contended that there was no commercial rationale for the Defendant to have issued shares to Lim and Gan. In particular, the Defendant was not in need of fresh capital as it already possessed sufficient liquidity.[29]

(c) Lim and Gan were allowed to purchase the Defendant's shares at an extremely hefty discount, being 10% less than the volume weighted average share price, *ie*, 1.71¢ (see [14] above).[30]

20 The Defendant, on its part, maintained that the allotment of shares to Lim and Gan germinated from an entirely benign impetus. According to the Defendant, the meeting in Orchard Hotel on 5 July 2025 (at [12] above) had galvanised GL Tan into approach Lim and Gan, to see if they were willing to

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26 Wang's affidavit at para 50.

27 Claimant's Submissions at para 47(c).

28 Claimant's Submissions at para 11.

29 Claimant's Submissions at para 10; Wang's affidavit at para 8.

30 Claimant's Submissions at para 3.

purchase the Claimant's shares.[31] Both had expressed interest.[32] It was only after Lim and Gan had been approached by GL Tan that the latter came to know that the Claimant had, by its letter of 9 July 2025 (at [12(c)] above), intimated that it was no longer interested in selling its shares in the Defendant.[33] By then, the opportunity for Lim and Gan to buy shares in the Defendant had already been "brought into focus" and, as both investors remained keen on investing in the Defendant, they were onboarded as shareholders – albeit by the placement of new shares rather than by the purchase of the Claimant's shares.[34]

21 The Defendant also refuted the factors listed at [19] above, which the Claimant had raised to support its allegation that the Subscription Agreements were executed for an improper purpose. The Defendant explained as follows:

(a) Firstly, the Defendant maintained that the Subscription Agreements had not been entered into hastily. The Defendant was required under the Catalist Rules to observe a one-month blackout period commencing on 12 July 2025 and ending on 12 August 2025 – the latter date being when the Defendant was due to announce its half-year financial results. During the blackout period, the Defendant's officers were prohibited from engaging in any trades in its securities.[35] The Subscription Agreements thus had to be concluded by 11 July 2025, to avoid the blackout period commencing the next day.

(b) Secondly, the Defendant disagreed with the suggestion that there

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31 Tan's 1st affidavit at paras 23−24; Defendant's Written Submissions dated 18 August 2025 ("Defendant's Submissions") at para 49(a).

32 Tan's 1st affidavit at paras 30−32.

33 Tan's 1st affidavit at para 33.

34 Tan's 1st affidavit at para 38.

35 Tan's 2nd affidavit at paras 9–10.

was no commercial rationale for the Subscription Agreements. While the Defendant may not have been under any pressing need for a capital injection, the placement of shares with Lim and Gan enabled the Defendant to forge strategic partnerships with their respective companies, while facilitating expansion of the Defendant's business.[36]

(c) Finally, as regards the issue of shares to Lim and Gan at a 10% discount, the Defendant explained that the margin of 10% was well within the limits allowed by the Catalist Rules.[37]

The steps taken by the board to sanction the Subscription Agreements were invalid for failure to comply with the Defendant's constitution

22 The second plank in the Claimant's case was that the steps taken by the Defendant's board of directors to sanction the Subscription Agreements were invalid, on account of failure to comply with the procedural requirements prescribed by the Defendant's constitution.[38] For example, the Claimant contended that the paper board resolution of 11 July 2025 (referred to at [13] above) was invalid, as it failed to garner the requisite board majority stipulated in the Defendant's constitution.[39] While a board meeting was held the next day on 12 July 2025 (see [15] above), the Claimant contended that this meeting could not have ratified the paper board resolution signed the day before, as the meeting failed to meet the constitution's quorum requirements.[38]

23 The Defendant, on its part, insisted that the steps taken by its board to sanction the Subscription Agreements had fully complied with the Defendant's

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36 Tan's 1st affidavit at para 17; Defendant's Submissions at para 46.

37 Row 6 of the table at para 44 of Tan's 1st affidavit.

38 Claimant's Submissions at para 33.

39 Claimant's Submissions at para 28.

constitution and that the Subscription Agreements should consequently be regarded as having been validly sanctioned by the board. To that end, the Defendant raised various arguments on how the relevant provisions in its constitution should be properly construed.

My Decision

24 I will now canvass, in sequence, the two grounds undergirding the Claimant's challenge to the Subscription Agreements as set out at [2] above, *ie*:

(a) the Subscription Agreements were motivated by an improper purpose; and

(b) the board actions purporting to sanction the Subscription Agreements were invalid as they failed to comply with the Defendant's constitution.

Whether the Subscription Agreements were motivated by an improper purpose

25 To recapitulate, the Claimant's contention was that the issue of shares to Lim and Gan were motivated by the improper purpose of diluting the Claimant's voting power. That in turn formed the foundation on which the Claimant built the following arguments:

(a) It is trite that where a company's directors issue shares in the company for an improper purpose, this constitutes a breach of the directors' fiduciary duties.[40]

(b) Following from (a), it is an ***implied*** *term in a company's constitution* that any issue of new shares by the company's directors

[40] Claimant's Submissions at para 8.

must be in accordance with their fiduciary duties.[41]

The Claimant thus argued that the issue of shares to Lim and Gan, being for the improper purpose of diluting the Claimant's voting power, constituted a breach of fiduciary duty by the Defendant's directors. That consequently violated an implied term in the Defendant's constitution that shares would be issued only in accordance with the directors' fiduciary duties. Such a violation of the Defendant's constitution was something which a shareholder, such as the Claimant, possessed the standing to restrain by way of legal action.[42]

26 I agree that in the face of a clear violation of a company's constitution, shareholders do possess the standing – in their capacity as members of the company – to bring a court application to restrain that violation. This stems from the following trite positions at law:

(a) Section 39 of the Companies Act 1967 (2020 Rev Ed) ("the Act") states that the constitution of a company, when registered:

> binds the company and the members thereof to the same extent as if it respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

This provision enshrines the principle that a company's constitution constitutes a *contract* between its members and itself, as well as between its members *inter se*.

(b) Flowing from the premise in (a), shareholders may as members of the company apply to court to restrain the breach of contract

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41 Claimant's Submissions at paras 9 and 39.

42 Claimant's Submissions at para 39.

constituted by the violation of the company's constitution. As observed by the Court of Appeal in *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2020] 2 SLR 200 (at [41]):

> Pursuant to the statutory contract between the members and the respondent, and amongst the members *inter se* (s 39(1) of the Companies Act), the respondent's members are empowered to apply to court to restrain an impending breach of the constitution or set aside an act done in contravention of the same (*Halsbury's Laws of Singapore* ([29] *supra*) at para 70.145).

For ease of reference, the relevant passage from *Halsbury's Laws of Singapore – Company Law* vol 6 (LexisNexis Singapore, 2024) (at para 70.145) is set out below:

> Every member of a company has a statutory right to have all the provisions of the Constitution observed by every other member since the Constitution is a contract among the members inter se and between the members and the company. This means that *a member may apply to court to restrain an impending breach of the Constitution or to restrain an act which would amount to such a breach*. A member may also apply to set aside an act done, or an appointment made, in breach of the Constitution. However, when a third party is involved, avoidance of a transaction that is in breach of the Constitution depends upon the third party knowing of the breach. [emphasis added]

27 An example of how a shareholder successfully restrained a violation of the company's constitution is seen in the case of *Ng Tang Hock v Teelek Realty Pte Ltd* [2020] SGHC 214 ("*Teelek*"). In that case, the plaintiff shareholder sued the company and its director seeking, *inter alia*, cancellation of certain transfers of shares. The plaintiff claimed that the transfers violated the company's articles of association, under which the plaintiff had a right of first refusal over the shares (*Teelek* at [1], [26] and [33(b)]). The High Court granted the application to cancel the transfers, holding (at [64]−[66]) that they were invalid for

contravening the company's articles of association. The defendants' appeal was allowed in part but this aspect of the High Court's holding was undisturbed: *Teelek Realty Pte Ltd v Ng Tang Hock* [2021] 2 SLR 719 at [73].

28 While I have no issues with the proposition that members possess the standing to apply to restrain violations of the company's constitution, the difficulty I face stems from the Claimant's submission that the term allegedly violated, which violation it now seeks to restrain, is one which should be *implied* within the Defendant's constitution: see [25(b)] above. Specifically, the Claimant asserted that the Subscription Agreements violated an *implied* term in the constitution that directors issuing new shares must do so in accordance with their fiduciary duties. To support its submission, the Claimant relied on the case of *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2024] 3 WLR 986 ("*Tianrui*"), where the Privy Council observed (at [72]):[43]

> It is *implicit in the contract constituted by the articles of association that the company's power to allot and issue new shares, delegated by the articles to the directors, will be exercised properly, which is to say by the directors on behalf of the company in accordance with their fiduciary duties*. The harmful consequence to the shareholder is the alteration (adverse to him) in the balance of power between the company's shareholders and the particular harm which that does to the value of the rights embedded in his shares. It is an actionable harm because the impropriety in the exercise of the power contravenes the corporate contract binding him and the company, even though the relevant fiduciary duty breached by the directors is not owed to him. [emphasis added]

29 With respect, I am not persuaded by the Claimant's submission that such a term should be implied in the Defendant's constitution. Any implication of terms should, at the very least, cross the threshold of necessity: *Chan Siew Lee v TYC Investment Pte Ltd* [2015] 5 SLR 409 at [37]. With that in mind, I see no

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[43] Claimant's Submissions at para 39(c).

necessity to imply a term that the allotment of shares must accord with the directors' fiduciary duties. There is already a sufficient arsenal of remedies which shareholders may avail themselves of when seeking redress for breach of directors' fiduciary duties:

(a) If the breach of fiduciary duty by the director violates an express term of the company's constitution, the shareholder possesses the standing to personally apply to court for an order restraining the violation: see [26] above.

(b) If no express term of the company's constitution has been violated but the breach of the director's fiduciary duty prejudices the company, shareholders can take steps under s 216A of the Act to commence a derivative action on behalf of the company.

(c) If the breach of fiduciary duty constitutes oppression that impacts upon the shareholders' personal rights, they can consider personally commencing an action under s 216 of the Act.

30 It also bears highlighting that breaches of directors' fiduciary duties are typically construed as wrongs against the company. Legal actions seeking redress for purely corporate wrongs should be commenced by the proper plaintiff, being the company itself, or via derivative actions in the company's name. As explained by the Court of Appeal in *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*"), the proper plaintiff principle is "the consequence of the fundamental doctrine of separation of legal personality that underpins company law" (at [65]). The Court of Appeal went on (in the same paragraph) to highlight the sound practical considerations undergirding the principle:

> The claimant shareholder should not be allowed to proceed by way of a *personal* action and recover at the expense of these

> other similarly affected parties. Related to this is the danger that the defendant may face a multiplicity of suits from different claimants for essentially the same wrong done to the company. This is evidently problematic and economically inefficient. [emphasis in original]

Shareholders are thus not entitled to bring personal actions under the auspices of s 216 of the Act to remedy breaches of director's fiduciary duties that are solely corporate wrongs: *Ong Heng Chuan v Ong Teck Chuan* [2021] 2 SLR 262 ("*Ong Heng Chuan*") at [33]. I see good sense in extending that constraint to personal actions by shareholders seeking to restrain breaches of fiduciary duties by prosecuting them as violations of the company's constitution.

31 With that in mind, I would exercise caution before acceding to a shareholder's request to *imply* terms in a company's constitution proscribing the directors from doing this or that *in breach of their fiduciary duties*. An overly indulgent response could potentially pave the way for shareholders to bring personal actions that seek to remedy what are in essence purely corporate wrongs, under the guise of exercising their personal right to restrain a breach of the contract deemed by s 39 of the Act to exist between them and the company. Of course, this concern can be ameliorated by setting up guard rails *downstream*, such as requiring shareholders bringing such actions to demonstrate that the breach of fiduciary duty was not just a corporate wrong but had impacted them personally: see *Ong Heng Chuan* at [33]. Still, circumspection is in order when evaluating the *upstream* issue of whether the floodgates should even be widened to facilitate such actions, through implying terms in a company's constitution hinging on breaches of directors' fiduciary duty, when there are no discernible violations of the constitution's express terms to begin with. One might question the merits of doing so since (as highlighted at [29] above) breaches of fiduciary duties by directors can already be tackled by a suite of established options that come with their own safeguards. Similar

concerns were expressed in an article by Chong Kai Sheng & Ezra Lim Pin, "A New Arrow in the Shareholder's Quiver?" (2025) 37 SAcLJ 563, where the learned authors astutely warned (at para 20):

> If the rule in *Tianrui* is adopted under Singapore law, there is likely to be a revamp of the landscape for shareholder litigation. Under the current regime in Singapore, the two common weapons in shareholders' arsenal are derivative actions − under common law and s 216A of the Companies Act 1967 ("Companies Act") − and what are generally known as claims under s 216 of the Companies Act. The rule in *Tianrui* could render these avenues obsolete if the wrong complained of is a director's breach of the fiduciary duty to act for proper purposes in allotting and issuing shares.

32 In any event, I need not express any conclusive views about whether *Tianrui* should be applied to the present context. Even if a term to the effect that the issue of shares must accord with the directors' fiduciary duties is implied, the evidence *as it currently stands* does not permit me to affirmatively conclude that such an implied term was breached in fact. Admittedly, the circumstances of this case may not lend themselves to a particularly charitable view as to why the shares had been issued to Lim and Gan in the way that they were. There is some force in the Claimant's complaint (at [19(a)] above) about the timing of the share issue being highly coincidental. The Defendant explained that the Subscription Agreements had to be inked on 11 July 2025 because the one-month black-out period was going to kick in the next day (see [21(a)] above). However, Lim had been discussing with the Defendant for around five years as regards purchasing a stake in the Defendant,[44] while Gan had similarly been exploring a collaboration with the Defendant "over the years".[45] Given these lengthy time horizons, the Defendant would have had ample opportunity to issue shares to Lim and Gan when no blackout period was at issue. Yet, the

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44 Tan's 1st affidavit at para 30.

45 Tan's 1st affidavit at para 31.

Defendant chose to issue substantial shareholdings to Lim and Gan just four days after the Claimant requisitioned an EGM to remove the executive directors. In addition, the Claimant rightly queried why shares were issued to Lim and Gan at a 10% discount to the volume weighted average share price (see [14] above) when the Defendant had, just three days before (*ie*, on 8 July 2025), claimed to have found an investor willing to purchase the Claimant's stake for a premium, at 2.7¢ per share (see [12(b)] above).[46] The Defendant never saw fit to reveal who the mystery investor was.[47]

33 Having said that, I am constrained by the fact that the Claimant elected to pursue its claim by way of an OA, rather than an originating claim. The OA process is typically suited for matters that do not involve substantial disputes of fact: see O 6 rr 1(2) and 1(3)(*c*) of the Rules of Court 2021 ("ROC"). In the present case, both sides filed extensive affidavits portraying their version of the events surrounding the Subscription Agreements. Despite the question marks highlighted in the preceding paragraph, I do not think it is possible for me – given the substantial factual disputes at play – to conclusively rule on the Claimant's allegation that the Subscription Agreements were motivated by an improper purpose. The true motivations underlying the issue of shares to Lim and Gan would be best determined after the testimonies of the relevant witnesses (such as the directors, Lim and Gan) have been tested on the stand.

34 I am mindful that one of the key indicators which the Claimant has relied upon, in support of its allegation that the shares had been issued to Lim and Gan for an improper purpose, is that the Defendant was *not* in need of capital when these shares were issued: see [19(b)] above. This point does *not* appear to be in

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46 Claimant's Submissions at para 12.

47 Wang's affidavit at para 44(b).

dispute, which is of course significant bearing in mind the legal thresholds discussed in the immediately preceding paragraph. As at the point when the Subscription Agreements were signed, the capital previously infused into the Defendant via the Claimant's purchase of its controlling stake (on 3 November 2024) had not even been subject to any material drawdowns[48] – the Defendant did not refute this. Given the absence of any pressing need for capital when the shares were issued to Lim and Gan, the Claimant submitted that the Subscription Agreements were commercially inexplicable, thus bolstering the inference that they *must* have been motivated by the improper purpose of diluting the Claimant's shareholdings.[49] In support of this submission, the Claimant relied on *Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776 ("*Over & Over v Bonvests*"), where the Court of Appeal held (at [122]) that:

> … as held in *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821, *the issue of shares for any reason other than to raise capital – for instance, to dilute the voting power of others – amounts to a breach of fiduciary duties* by the directors of the company and may be set aside by the court. … . [emphasis added]

35 The question is thus whether issuing new shares when the company is *not* in need of fresh capital necessarily means that the shares *must* have been issued for an improper purpose and therefore issued in breach of the directors' fiduciary duties. That question must be answered in the negative. The passage from *Over & Over v Bonvests* extracted in the immediately preceding paragraph ought *not* to be read as standing for any categorical proposition of law that issuing shares for purposes other than to raise capital must necessarily be improper. It is apparent from the judgment that the Court of Appeal was merely explaining how a hasty issue of shares, coupled with the absence of any pressing

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48 Wang's affidavit at paras 24–25.

49 Claimant's Submissions at para 10.

need for a capital injection, may lend *evidential* weight to claims that the shares were issued for an improper purpose. This much is clear from the following observation by the Court of Appeal within the same paragraph (at [122]):

> In this regard, we are in agreement with Mr Menon's contention that the lack of urgency for new funds – especially when contrasted with the speed at which the issue of new shares is carried out – is often *a good indication of what the true objective of the rights issue is*. The raising of capital for a company is always a serious matter that merits careful consideration. [emphasis added]

36 As seen from the extract at [34] above, the Court of Appeal in *Over & Over v Bonvests* had relied on *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 ("*Howard Smith*"), which is an instructive case for present purposes. In *Howard Smith*, the Privy Council upheld the lower court's decision to set aside a share allotment in the face of a positive finding that the allotment was executed with the sole purpose of diluting the majority's voting power (at 837C). The share allotment was *not* set aside simply because the company had no immediate need for fresh capital. In fact, the Privy Council in *Howard Smith* was careful to qualify (at 835C) that it would be too narrow an approach to say that the issue of shares in a company is valid only if the purpose is to raise capital:

> … it is, in their Lordships' opinion, *too narrow an approach to say that the only valid purpose for which shares may be issued is to raise capital for the company. The discretion is not in terms limited in this way: the law should not impose such a limitation on directors' powers. To define in advance exact limits beyond which directors must not pass is, in their Lordships' view, impossible.* This clearly cannot be done by enumeration, since *the variety of situations facing directors of different types of company in different situations cannot be anticipated.* [emphasis added]

37 In support of its decision, the Privy Council in *Howard Smith* cited *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483 ("*Harlowe's Nominees*"). *Harlowe's Nominees* involved a

shareholder who, in seeking a declaration that an allotment of shares by the company was invalid, made the sweeping submission that any issue of new shares "cannot be maintained as having been bona fide in the interests of the company unless the company had at the time of the exercise an immediate need of the capital to be paid up on the new shares". The Australian High Court rejected this, holding as follows (at 492−493):

> In many a case this may be true as a proposition of fact; but in our opinion *it is not true as a general proposition of law. To lay down narrow lines within which the concept of a company's interests must necessarily fall would be a serious mistake.* [emphasis added]

The Australian High Court then made it clear (at 493) that although the power to issue new shares is primarily to enable the raising of capital, there can still be other reasons for which the company can fairly and properly issue shares.

38 Reverting to the present case, the Defendant explained that the issue of shares to Lim and Gan was not meant to dilute the Claimant's shareholdings, but rather to build strategic partnerships with entities in which Lim and Gan held major stakes:

> (a) Lim is the founder and chairperson of Browzwear Solutions Pte Ltd ("Browzwear"), a leading fashion technology company which partners global fashion retailers, brands, and manufacturers. The Defendant explained that Lim's purchase of a stake in the Defendant would pave the way for the Defendant to tap into Browzwear's connections and garner access to new customers and clients in the fashion industry. The tie-up would also allow Browzwear and the Defendant to jointly develop digital colour solutions.[50]

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50 Tan's 1st affidavit at paras 24(b) and 41(a).

(b) Gan is the chief executive officer of GLG Corp Ltd, an Australian-listed company that supplies apparel and supply chain management solutions. GLG is a major client of the Defendant, having been a purchaser of the Defendant's textile dyes for a long time. The Defendant explained that Ms Gan's purchase of a stake in the Defendant would help deepen ties with GLG and facilitate collaborations over garment-related innovations. The association would also allow the Defendant to leverage its distribution network to disseminate GLG's technological know-how while increasing demand for the Defendant's dyes in the region.[51]

Presumably, given that the shares were purchased by Lim and Gan personally rather than by their companies, any such business ventures between their companies and the Defendant would have to be conducted with the appropriate declarations being made by Lim and Gan to their respective boards.

39 In accordance with the views expressed in *Howard Smith* and *Harlowe's Nominees*, I do not consider it open to me to simply dismiss the commercial considerations listed in the preceding paragraph as improper, simply because they do not relate to the raising of capital. Of course, whether the Subscription Agreements were *in fact* motivated by these commercial considerations is a separate matter. On that front, I would repeat the view expressed at [33] above: the OA process is not appropriate for me to conclusively determine the veracity of the Defendant's claims about the commercial motivations underlying the Subscription Agreements. The salient witnesses should preferably have their testimonies tested on the stand.

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[51] Tan's 1st affidavit at paras 24(a), 31–32 and 41(b).

40 I would also observe that, as in any instance where "purpose" is introduced as the test for impugning an act, the attendant question which inevitably arises is whether the improper purpose must be the *sole* purpose or (where it is one of multiple purposes) at least the *dominant* purpose behind the commission of the act. Indeed, in the context of s 216 of the Act, it has been held that a rights issue would be unfair if there is no commercial reason to raise capital through a rights issue, or if the ***dominant*** *purpose* of the rights issue is to dilute non-subscribing shareholders: see *The Wellness Group Pte Ltd v OSIM International Ltd* [2016] 3 SLR 729 at [183]. In that vein, even if the improper purpose alleged by the Claimant (*ie*, diluting the Claimant's voting power) existed, its relative weight *vis-à-vis* the other commercial purposes professed by the Defendant at [38] above (if they existed) in motivating the Subscription Agreements is also an issue best determined at a trial.

41 That the factual underpinnings behind the improper purpose issue are not entirely straightforward is underscored by the fact that the Claimant itself had voted in favour of the Share Issue Mandate, despite the mandate having been procured at a point when (according to the Claimant's own case[52]) the Defendant had no need for additional capital. The Claimant had thereafter even recommended, on multiple occasions, that the Defendant issue new shares to various parties, pursuant to the Share Issue Mandate.[53] The Claimant's course of conduct thus contradicted its contention that it was improper for the Defendant to issue new shares when there was no need for fresh capital.

42 The Claimant also alleged that the Subscription Agreements failed to

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52 Wang's affidavit at paras 24–25.

53 Tan's 1st affidavit at para 51.

comply with the Catalist Rules[54] and that this was indicative of the Defendant's directors having sanctioned the issue of shares to Lim and Gan for an improper purpose.[55] I am not persuaded that this is a ground for me to grant the reliefs sought by the Claimant. Firstly, it is in dispute whether the Defendant had indeed infringed the Catalist Rules. The Defendant has filed an affidavit containing a point-by-point rebuttal of the Claimant's arguments, with a view to showing that not one of the Catalist Rules had been infringed.[56] Furthermore, the Claimant has not adduced any evidence showing SGX's position on this. In fact, the Subscription Agreements have yet to be submitted to SGX for approval.[57] Finally, even if the Subscription Agreements infringed the Catalist Rules, the Claimant failed to explain why that necessarily leads to the conclusion that the shares were issued to Lim and Gan for an improper purpose.

43 As such, based on the affidavit evidence, I do not think the remedies sought under the OA can be justified by the first ground advanced by the Claimant, *ie*, that the Subscription Agreements were motivated by an improper purpose. Whether such an improper purpose existed in fact, as well as the weight to be attributed to it (*vis-à-vis* any other legitimate commercial purposes) in motivating the Subscription Agreements, is best determined at trial.

Whether the board actions purporting to sanction the Subscription Agreements were in compliance with the Defendant's constitution

44 I now turn to the second ground raised by the Claimant to challenge the Subscription Agreements, being that the board actions purporting to sanction

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54 Wang's affidavit at para 52.

55 Wang's affidavit at para 54.

56 Tan's 1st affidavit at para 44.

57 Tan's 1st affidavit at para 43.

the Subscription Agreements were invalid on account of failing to comply with the Defendant's constitution.

45 By way of background, it is necessary to recapitulate how the Defendant's board came to be authorised to issue new shares. Section 161 of the Act prohibits company directors from issuing shares without the prior approval of the company in general meeting. Insofar as the Defendant is concerned, the need for compliance with s 161 of the Act is reinforced in its constitution, specifically Art 4(A) – the text of which reads:[58]

> Subject to the Statutes, this Constitution and the Listing Rules, no shares may be issued by the Directors without the prior approval of the Company in General Meeting pursuant to Section 161 of the Act …

The Share Issue Mandate which was obtained at the AGM on 28 April 2025 was expressed to have been procured in compliance with s 161 of the Act. The relevant portion of the Share Issue Mandate (extracted more comprehensively at [11] above) reads:

> … pursuant to Section 161 of [Act] … , the *Directors of the* [Defendant] be authorised and empowered to … make … agreements … that … would require Shares to be issued … at any time and upon such terms and conditions and for such purposes and to such persons as *the Directors of the* [Defendant] may in their absolute discretion deem fit … [emphasis added]

46 As seen from the extract, the Share Issue Mandate authorised "the *Directors*" [emphasis added] to issue fresh shares. The Claimant submitted that the reference to "the Directors" in the Share Issue Mandate means the *board* of directors of the Defendant.[59] I agree that this must be the case. An analogy can be drawn with s 157A(1) of the Act, which stipulates that "[t]he business of a

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58 Exhibited in Wang's affidavit at p 74.

59 Claimant's Submissions at para 27.

company is to be managed by, or under the direction or supervision of, *the directors*" [emphasis added]. The term "directors" in s 157A(1) has been understood to mean the company's board (see, *eg*, *TYC Investment Pte Ltd v Chan Siew Lee Jannie* [2018] 4 SLR 293 at [55]). Consequently, to fall within the authorisation bestowed by the Share Issue Mandate on "the Directors", any issue of shares must be sanctioned by the Defendant's *board* of directors.

47 It was the Defendants' case that the Subscription Agreements were indeed sanctioned by the Defendant's board, by way of the paper board resolution dated 11 July 2025 (referred to at [13] above).[60] I find this submission to be untenable. It was imperative that any board action sanctioning the issue of shares pursuant to the Share Issue Mandate comply with the Defendant's constitution. This was underscored by the very terms of the Share Issue Mandate itself, para (3) of which explicitly mandated that "in exercising the Share Issue Mandate conferred by this Resolution, the Company shall comply with … the Constitution of the Company" (see extract at [11] above). Yet, as the Claimant correctly pointed out,[61] the paper board resolution of 11 July 2025 was passed in contravention of Art 103 of the Defendant's constitution. This article, which governs the passing of paper board resolutions (*ie*, without a physical meeting), requires that the resolution be passed by a *majority* of the directors. The text of Art 103[62] is set out below:

> A resolution in writing signed by *a majority* of the Directors shall be as effective as a resolution duly passed at a meeting of the Directors and may consist of several documents in the like form, each signed by one or more Directors. … [emphasis added]

As the paper board resolution of 11 July 2025 was signed by only three directors

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60 Tan's 2nd affidavit at para 18.

61 Claimant's Submissions at paras 24 and 28.

62 Article 103 is exhibited in Wang's affidavit at p 99.

(*ie*, Chairman Wang and the two executive directors), it clearly failed to qualify as a "majority" of the Defendant's six-member board (the members of the Defendant's board are set out at [8] above).

48 During the hearing before me,[63] Defendant's counsel contended that one of the three directors approving the paper board resolution of 11 July 2025 was Chairman Wang who, as chairperson of the board, held a casting vote. As such, even if there had been a three-to-three split in the board on whether to approve the Subscription Agreements, Chairman Wang's casting vote would have carried the day in any event. I should add that the Defendant's submission on this point ran counter to the advice which its own corporate secretary had rendered during the board meeting on 12 July 2025 (referred to at [15] above). This board meeting was held just one day after the signing of the paper board resolution and attended by the three directors who signed it, *ie*, Chairman Wang and the two executive directors, Dr Tan and GL Tan. During the meeting, the corporate secretary specifically apprised the directors that the paper board resolution lacked the requisite majority. In response, Dr Tan tried to suggest that the votes of the three directors signing the paper board resolution could be supported by the casting vote of Chairman Wang. The corporate secretary disagreed, explaining that under the Defendant's constitution, the casting vote is not operative in the case of *paper* board resolutions. The portion of the board meeting's minutes capturing the relevant exchange is extracted below:[64]

> Chairman Wang: … In this case, yesterday, the management of the company has sent the resolution to each director. Three directors have already signed the resolution. The other two directors have expressed opposition. Can yesterday's action

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63 Minutes of hearing on 22 August 2025.

64 Tan's 2nd affidavit at pp 46–47.

> constitute an effective result of the board meeting resolution?
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> Corp Secretary: According to the company's constitution, *if you want to pass the board meeting resolution, you will need a majority. There must be four directors*. Now there are three directors who agree, two directors who oppose. So, there is one more director who must vote.
>
> Dr Tan: *According to Article 99 and 103, our, the chairman has a casting vote* in the event of a resolution. In this case, our three votes, *in addition to the casting vote of the Chairman's, will result in four votes*.
>
> Corp Secretary: If we look at the company's constitution, the chairman has a casting vote, but it is not reflected in the board resolution. Therefore, *the chairman cannot have a casting vote in the board resolution. It can only be in the board meeting*. …
>
> [emphasis added]

49 Having looked at Art 99 of the Defendant's constitution, which governs the chairperson's casting vote, I would agree with the Defendant's corporate secretary that the chairperson's casting vote *cannot* be used to support the paper board resolution. Article 99 reads:[65]

> Questions arising *at any* ***meeting*** of the Directors shall be *determined by a majority of votes of the Directors present. In case of an equality of votes* (except where only two (2) Directors are present and form the quorum or when only two (2) Directors are competent to vote on the question in issue), *the chairperson of the meeting shall have a second or casting vote*. Where only two (2) Directors are present at and form the quorum or when only two (2) Directors are competent to vote on the question(s) in issue, the Chairperson of the meeting shall not have a second or casting vote. [emphasis added in italics and bold italics]

A plain reading shows that the chairperson's casting vote operates only at *meetings* and not *paper* board resolutions. This much is clear from how Art 99

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65 Article 99 is exhibited in Wang's affidavit at p 98.

is prefaced by a reference to "questions arising *at any meeting* of the Directors" [emphasis added]. As such, Chairman Wang's casting vote did nothing to remedy the paper board resolution's failure to comply with the majority requirement prescribed by Art 103 of the Defendant's constitution.

50 The Defendant further argued that during the physical board meeting on 12 July 2025, Chairman Wang and the two executive directors had discussed the Subscription Agreements and *implicitly* signified their approval thereof, thereby reaffirming the paper board resolution signed the day before.[66] Presumably, the Defendant's case was that even if the paper board resolution of 11 July 2025 was defective (on account of its failure to garner the requisite majority), the physical meeting on 12 July 2025 (at which Chairman Wang's casting vote *could* properly be invoked) had *ratified* any such defect and thereby clothed the Subscription Agreements with the valid sanction of the board.[67] I reject this argument as well. Preliminarily, on the face of the meeting minutes, there appears to be no clearly discernible resolution by the directors approving the Subscription Agreements. Rather, the meeting focused more on whether the Subscription Agreements could be announced despite the Defendant's sponsor not having cleared the text of the announcement.

51 More importantly, even if the three directors attending the board meeting on 12 July 2025 had expressly approved the Subscription Agreements, any such approval would have been invalid for the simple reason that the board meeting *lacked a quorum*. Article 98 of the Defendant's constitution provides for two limbs under which a quorum is deemed as met:[68]

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66 Tan's 2nd affidavit at para 17.

67 Tan's 2nd affidavit at para 18.

68 Article 98 is exhibited in Wang's affidavit at p 98.

> The quorum necessary for the transaction of the business of the Directors shall be
> - [Limb 1] *a simple majority of the Directors* ***present*** *and the Chief Executive Officer* or
> - [Limb 2] the presence of not less than three-fourths of the Directors for the time being.
>
> A meeting of the Directors at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors.
>
> [emphasis added in italics and bold italics]

52 During the hearing before me, Defendant's counsel contended that there *was* a quorum at the board meeting held on 12 July 2025, under the first limb of Art 98, which requires a simple majority of the "Directors present" plus the CEO. Specifically, Defendant's counsel construed the term "Directors present" in the first limb to mean the directors *in attendance* at the board meeting. In this case, there were three directors in attendance, *ie*, Chairman Wang, GL Tan and Dr Tan. A simple majority of these three directors who were "present" would be constituted by two directors, being Chairman Wang and GL Tan. Defendant's counsel thus contended that both these directors, together with the CEO (Dr Tan), satisfied the quorum requirement under the first limb of Art 98.

53 The Defendant's interpretation, which construed the term "Directors present" in Art 98 to mean the directors *in attendance* at the meeting, leads to illogical outcomes. Unlike requirements for the passing of *resolutions*, where the threshold is understandably pegged as a proportion of the number of attendees voting (subject to there being a quorum), pegging the *quorum itself* as a proportion of the number of attendees – in this case pegging it as a simple majority of the number of directors *in attendance* – makes no sense. Such a requirement demarcates the quorum with goalposts that keep shifting, with the threshold perpetually hovering just *below* the actual number of attendees. By that interpretation: (a) if all six directors attend the meeting, the quorum under the first limb of Art 98 would be four directors and the CEO; (b) if four or five

directors attend, the quorum *drops* to three directors and the CEO; and (c) if three directors attend (as was the case here), the quorum *drops even further*, this time to just two directors and the CEO. This reduces the quorum requirement to nonsense.

54 For the term "Directors *present*" to be intelligible, it must (at least in the context of Art 98) refer to the directors "for the time being". This means that if there are six directors in office for the time being, the quorum under Art 98 would be met by the attendance of:

(a) (under the first limb) four directors – being a simple majority of the six-member board – and the CEO; or

(b) (under the second limb) five directors, being the lowest number that meets the three-fourths mark.

The attendance of just three directors at the board meeting of 12 July 2025 thus failed to meet either limb of the quorum requirement in Art 98. Contrary to the Defendant's submission, a quorum under the first limb of Art 98 *cannot* (at least with the current state of the board) be constituted by just two directors plus the CEO. While that position may hold if there are only three directors on the board, in which case two directors would suffice to comprise a simple majority of the directors on the board, the fact is that the board currently has six directors.

55 The construction advanced by Defendant's counsel stemmed from the inelegant placement of the word "present" in the first limb of Art 98. Admittedly, the interpretation which I have suggested in the preceding paragraph – reading the word "present" as "for the time being" (rather than "in attendance") – is not entirely without difficulty. The phrase "for the time being" is expressly used in the *second* limb of Art 98 (see extract at [51] above). One might question why,

if it was indeed the drafting intent for that phrase to *also* apply in the first limb, did the drafter not simply extend that phrase to cover both limbs of Art 98.

56 The only conclusion I can draw is that the term "present" in the first limb of Art 98 of the Defendant's constitution was inserted in error, with the drafter having meant to refer to the directors "for the time being". In my view, the mistake should be rectified *as a matter of construction*, by construing the term "Directors present" in Art 98 in the manner that it was obviously intended to be drafted. This follows the approach in *East v Pantiles (Plant Hire) Ltd* [1982] 2 EGLR 111 ("*East v Pantiles*"), where the English Court of Appeal explained that such rectification may be effected if the following two conditions are met:

> … first, there must be a clear mistake on the face of the instrument; secondly, it must be clear what correction ought to be made in order to cure the mistake. If those conditions are satisfied, then the correction is made as a matter of construction.

The above doctrine of rectification, also known as rectification at common law (*cf* rectification as an equitable remedy), has been invoked in our case law: see, *eg*, *Soon Kok Tiang v DBS Bank Ltd* [2011] 2 SLR 716 at [46]−[48], upheld on appeal in *Soon Kok Tiang v DBS Bank Ltd* [2012] 1 SLR 397 at [56].

57 I should add that the doctrine has further evolved under English law. In *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 ("*Chartbrook*"), Lord Hoffman sought to qualify the first condition in *East v Pantiles* (*ie*, "a clear mistake on the face of the instrument") by holding (at [24]) that when the court seeks to determine if there is a clear mistake, it is not confined to examining "the face of the instrument" but must instead have regard to the document's background or context. It should nevertheless be observed that there may be some constraints to importing this development in English law to our jurisprudence given that, unlike in England, our law of evidence is governed by

the strictures of the Evidence Act 1893 (2020 Rev Ed) ("EA"). Specifically, any extraneous evidence that might otherwise be used to paint the background from which the court infers the existence of a "clear mistake" could potentially be caught by the EA's prohibitions against parol evidence: see *Sun Electric Pte Ltd v Menrva Solutions Pte Ltd* [2021] 5 SLR 648 ("*Sun Electric*") at [66]−[71]. The EA provisions which could *potentially* prohibit the court from having regard to facets of the background surrounding the instrument being interpreted include ss 95 and 96: see generally Goh Yihan, "Clarifying Rectification in Singapore" (2015) 27 SAcLJ 403 at paras 16–19. Contrarily, some of these background facts may (depending on the factual matrix) be admissible under certain *other* EA provisions, such as ss 97 and 99: see *Sun Electric* at [74]−[77].

58 Reverting to the present case, I find that pursuant to the doctrine of rectification at common law, it is appropriate for me to rectify the mistake in Art 98 of the Defendant's constitution by construing the term "Directors *present*" in the first limb to mean "Directors *for the time being*". In my view, both the conditions in *East v Pantiles* (see the extract at [56] above) are satisfied:

(a) The first condition is satisfied, as there is clearly a mistake on the face of Art 98. For the avoidance of doubt, in deciding that there is such a mistake, the facts of this case permit me to confine my scrutiny to the four corners of the Defendant's constitution. I see no need to resort to any parol evidence to conclude that the contracting parties could not possibly have intended the nonsensical outcome at [53] above. In other words, the developments arising from Lord Hoffman's views in *Chartbrook*, as well as the attendant concerns associated with the EA provisions in the preceding paragraph, do not come into play here.

(b) As regards the second condition, I conclude that this too is satisfied. Parties must have intended the first limb of Art 98 to refer to

the number of directors "for the time being". Given the purport of quorums for board meetings, there does not appear to be any other indicator which parties could conceivably have had in mind.

59 The Defendant nevertheless maintained that the drafting of the first limb of Art 98 of its constitution is not necessarily suggestive of a mistake. In support, the Defendant referred to *Woon's Corporations Law* (LexisNexis, 2022) ("*Woon's Corporations Law*) at Chapter H para 4652, which touches on the passing of resolutions after some attendees have left the meeting. The Defendant suggested that the first limb of Art 98 could have been intended to address just such a scenario, by setting an attendance threshold for instances where *some directors leave the meeting midstream*.[69] Specifically, the Defendant suggested that the first limb of Art 98 could be construed as prescribing the minimum number of directors *who must* ***remain*** at the meeting after some directors have taken their leave, with the threshold being pegged at a simple majority of the directors who were *in attendance at the start of the meeting*. The Defendant contended that under such a construction, there would be nothing absurd in interpreting the term "Directors present" in the first limb of Art 98 to mean the directors *in attendance*. With respect, this is a somewhat contrived construction that finds no support from a plain reading of Art 98:

(a) Firstly, Article 98 uses the word "quorum". The section from *Woon's Corporations Law* quoted by the Defendant (at para 4652) explains that this word relates to the attendance number at the *start* of the meeting and not midway through after some attendees have left:

> Unless otherwise required by the articles (now more commonly referred to as the constitution), a quorum need only be present at the commencement of a meeting and not throughout … . The departure of some members

[69] Minutes of hearing on 22 September 2025.

> that resulted in the decrease of the members present to less than the quorum, did not affect the validity of the resolution passed, even if the Chairman of the meeting is one of the members who left …

(b) Secondly, reading Art 98 in the manner suggested by the Defendant leaves the ancillary (and more critical) threshold – being *the minimum number of directors who must be in attendance at the* ***start*** *of the meeting* (before any directors take their leave) – gapingly open. Clearly, the first limb of Art 98 was meant to prescribe the threshold reflected in the italicised phrase, which is commonly understood as capturing the concept of a quorum.

As such, the drafter could not possibly have intended to prescribe the threshold for a quorum as being a simple majority of the directors *present* (in the sense of the directors *in attendance*) at the start of the meeting. The intention must have been to prescribe a simple majority of the directors in office *for the time being*. The word "present" in the first limb of Article 98 is clearly misplaced.

60 I should also add that at the Defendant's board meeting on 12 July 2025, the corporate secretary had from the very outset warned the board that a minimum of four directors was required for a quorum:[70]

> Corp Secretary: Sorry, I am the company secretary of the meeting. I would like to remind the directors that I have read the company's constitution. Actually, if you want to hold this board meeting, you must have a simple majority of the directors. At present, there are six directors in the company. *It is necessary to have four directors to have the quorum* to hold this meeting.
>
> …
>
> Chairman Wang: There is such a quorum in the rules?

[70] Tan's 2nd affidavit at pp 45–47.

> Corp Secretary: Yes. *The requirement of the quorum. It is in Article 98.*
>
> Chairman Wang: Okay. In this case, is today's meeting not in line with the requirements?
>
> Corp Secretary: In general, if it is a meeting, there must be a quorum. Typically, the company's constitution states that two directors can form a quorum. But I just saw your company's constitution. Your quorum needs a simple majority.
>
> …
>
> So, this is to say that without the quorum, the requirement to hold the meeting cannot be fulfilled.
>
> …
>
> Maybe in this case, you need to call another director to participate in this meeting. Regardless of whether he has voted, you have a quorum at the very least.
>
> [emphasis added]

As seen from the extract above, the corporate secretary's position (*ie*, that the quorum in the first limb of Art 98 required four directors) was premised on the interpretation that a simple majority of the "Directors present" meant a simple majority of *all six* directors for the time being in office, and *not* a simple majority of just the directors in attendance at the meeting. This position was not gainsaid by any of the attendees – not even the executive directors who were trying to have the Subscription Agreements sanctioned by the board. Tellingly, there is nothing in the minutes to suggest that the Defendant had *ever* construed Art 98 in a manner that even vaguely resonates with the unnatural construction which it now seeks to advance, as set out in the preceding paragraph.

61 The inescapable conclusion must be that there was no valid board action sanctioning the Subscription Agreements. Both the paper board resolution of 11 July 2025 and the board meeting on 12 July 2025 failed to provide any *valid*

sanction, given their non-compliance with the Defendant's constitution.

62 As an alternative submission, the Defendant argued that there was no need for a board resolution sanctioning the Subscription Agreements because the board's powers could be exercised by its CEO, *ie*, Dr Tan, pursuant to Art 87 of the Defendant's constitution. The Defendant reasoned that since "there were no restrictions on Dr Tan's powers" as the CEO, Dr Tan should be regarded as having been empowered to sanction the Subscription Agreements on the board's behalf.[71] In my view, this submission was plainly based on a misreading of Art 87 of the Defendant's constitution, which states:[72]

> … the Directors may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers exercisable under this Constitution by the Directors as they may think fit and may confer such powers for such time and to be exercised on such terms and conditions and with such restrictions as they think expedient and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf and may from time to time revoke, withdraw, alter or vary all or any of such powers.

All that Art 87 does is to allow the board to *delegate* its powers to the CEO. The scope of the CEO's powers would then depend on exactly what was delegated to him. In this case, the Defendant failed to adduce any evidence showing the range of functions that had been devolved to Dr Tan, in his capacity as CEO, by the board. In particular, there was nothing to suggest that the powers delegated to Dr Tan extended to executing shareholder mandates for the issue of shares.

63 In light of the above, I arrive at the following determinations:

(a) I accept the Claimant's submission that the Defendant's attempt

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71 Defendant's Submissions at para 42.

72 Article 87 is exhibited in Wang's affidavit at p 95.

to sanction the Subscription Agreements by means of the paper board resolution of 11 July 2025 violated Art 103 of the Defendant's constitution, which requires a simple majority for such resolutions.

(b) This also means that the Subscription Agreements, having been executed without being sanctioned by a valid board resolution, violated Art 4(A) of the Defendant's constitution. That provision, which encapsulates the obligation in s 161 of the Act, requires the issue of shares to be approved by the shareholders in general meeting. In the present case, such approval *was* indeed secured by way of the Share Issue Mandate. However, the Share Issue Mandate required that the issue of shares be sanctioned by "the *Directors"* – this could only mean a sanction by the *board* of directors. As the Subscription Agreements were not sanctioned by a valid resolution of the board, the issue of shares to Lim and Gan could not be regarded as having been sanctioned by "the *Directors*" (as required by the Share Issue Mandate). Given that the Subscription Agreements fell outside the ambit of the authority conferred by the Share Issue Mandate, they were consequently effected *without* the shareholder authorisation required by Art 4(A) of the Defendant's constitution.

(c) The irregularities above could not be ratified by the physical board meeting on 12 July 2025, as the meeting failed to meet the quorum requirements in Art 98 of the Defendant's constitution.

64 The Claimant submitted that the Defendant's attempt to complete the Subscription Agreements when there was no valid sanction from the board infringed s 157A(1) of the Act, which states that the business of a company "is to be managed by, or under the direction or supervision of, the directors". Following from that, the Claimant sought to invoke s 409A of the Act, which

allows affected persons to file applications restraining infringements of the Act. Specifically, the Claimant contended that s 409A of the Act gave it the standing to seek an order restraining the infringement of s 157A(1) that would otherwise occur if the Subscription Agreements were allowed to proceed.[73]

65 I find the Claimant's argument on this point difficult to follow. Section 157A of the Act merely sets out, in broad terms, the division of responsibilities within a company. The Claimant failed to explain exactly *how* s 157A would be infringed by the completion of the Subscription Agreements. This was not a case where a particular obligation prescribed by the Act had not been complied with, or where a particular prohibition was flouted: see also *Bhavin Rashmi Mehta v Chetan Mehta* [2022] SGHC 173 ("*Bhavin*") at [31]. If the Claimant thought it necessary to allege an infringement of the Act as a means of invoking s 409A of the Act, I would have thought that a more fruitful line of inquiry would be to examine if s 161(1) of the Act had been infringed. After all, the Claimant's case was that the Defendant executed the Subscription Agreements without the valid board sanction required by the Share Issue Mandate,[74] with the effective result being that shares had been issued to Lim and Gan without the shareholder approval required by s 161 of the Act (see [45] above). However, as the Claimant did not argue this point, I say no more on it.

66 I also find it curious why the Claimant even saw a need to invoke s 409A of the Act, to establish its standing to restrain the completion of the Subscription Agreements. As explained at [63] above, the execution of the Subscription Agreements, not having been sanctioned by the Defendant's board, violated various articles within the Defendant's constitution. The Claimant's capacity

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73 Claimant's Submissions at paras 6 and 7.

74 Claimant's Submissions at para 27.

as a member of the Defendant would, in and of itself, confer upon it the requisite standing to file an application restraining a violation of the Defendant's constitution, which is deemed by s 39 of the Act to be a contract between the Claimant (as a member) and the Defendant: see [26] above.

The appropriate remedy

67 Notwithstanding that the Claimant possesses the standing (in its capacity as a member) to bring an action to restrain a violation of the Defendant's constitution, it does not follow that such an order will be granted as a matter of course. Even in the face of a violation of an express term in the constitution, the grant of an injunction is a *discretionary* remedy: see *Bhavin* at [38], in the analogous context of injunctions granted under s 409A of the Act to restrain infringements of the Act.

68 In exercising that discretion, it is important to bear in mind that the Court of Appeal has repeatedly taken pains to caution against letting shareholders bring personal actions under s 216 of the Act for what are in essence corporate wrongs: see *Ong Heng Chuan* at [33]; *Ho Yew Kong v Sakae Holdings Ltd* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [4]; *Ng Kek Wee* at [63]−[65]. As alluded to at [30] above, that same caution should apply when shareholders bring actions to restrain violations of the company's constitution. Without attempting to lay down any general standards governing the scope of the court's discretion in this respect, I take the view (in line with what was stated by the Court of Appeal in *Ong Heng Chuan*, at [33]) that an application by shareholders to restrain a violation of the constitution may be refused if they fail to sufficiently demonstrate that the violation impacted on their rights personally, as opposed to impacting purely on what are in essence corporate rights. Violations of the constitution falling into the latter instance are more appropriately pursued by

the proper plaintiff, being the company itself, or (if the legal prerequisites are met) by a derivative action brought in the company's name.

69 Of course, the approach in the preceding paragraph is more easily stated than applied, given that "the distinction between personal and corporate wrongs is rarely clear" (see *Ng Kek Wee* at [62]). To prevent shareholders from abusing the mechanism under s 216 of the Act by bringing personal actions to redress what are in essence corporate wrongs, the court will look at both the injury complained of, as well as the relief sought. In *Ho Yew Kong*, the Court of Appeal observed (at [116]):

> … it is unsurprising that in many of the cases reviewed above, the courts sought to identify the dividing line between oppression actions and statutory derivative actions by examining the remedy sought and the injury complained of. In our judgment, the appropriate analytical framework to ascertain whether a claim that is being pursued under s 216 is an abuse of process is as follows:
>
> (a) **Injury**
>
> (i) What is the real injury that the plaintiff seeks to vindicate?
>
> (ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?
>
> (b) **Remedy**
>
> (i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?
>
> (ii) Is it a remedy that can only be obtained under s 216?
>
> [emphasis in original]

In my view, both these indicators, *ie*, the injury and the remedy, are also useful in deciding whether an action to restrain a violation of the company's constitution may properly be pursued by the shareholder personally.

70 On the particular facts of *this* case, it is clear to me that the violation of the Defendant's constitution was not just a corporate wrong better redressed by way of a derivative action or a suit by the company. The irregular issue of shares trampled directly on the Claimant's *personal* rights as a shareholder:

(a) In terms of injury, the Claimant suffered a significant dilution of its shareholdings. The Defendant sought to dismiss this by saying that "every placement inevitably results in dilution" and that the dilution here had affected *all* the Defendant's shareholders proportionally.[75] While that is true, one must not ignore the reality of this case. By way of backdrop, the Claimant was the *largest* shareholder, holding a 29.86% stake in the Defendant. The irregular issue of shares to Lim and Gan hit the Claimant harder than any other shareholder, diluting its stake from 29.86% to 21.22% (see [14] above), wiping out almost a third of its voting power. In absolute terms, the Claimant lost about 8.64% of the total votes in the Defendant, which is no small margin by any measure. While it might be unreasonable for the Claimant to expect that the percentage of its shareholdings is not ever going to be diluted in the ordinary course of things (the Defendant being a listed company after all), it is significant that the dilution here arose from a violation of the Defendant's constitution that was perpetrated at a *pivotal* moment. Specifically, the irregular issue of shares was effected just four days after the Claimant's requisition for an EGM to remove the Defendant's directors. It does not require a stretch of the imagination to see that what happened was commercially unfair to the Claimant personally.

(b) In terms of the remedy, restraining the irregular issue of shares will meaningfully redress the prejudice suffered by the Claimant. In this

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75 Tan's 1st affidavit at para 49.

> respect, the quantum of shares issued under the Subscription Agreements was pegged to fall just shy of the 15% mark that would have required shareholder approval under the Catalist Rules (see [18] above) – Lim was issued 14.88% of the Defendant's shares while Gan was issued 14.06%. This manoeuvre had neutered the Claimant's ability to use its substantial voting stake to halt the irregular share issue. The Claimant was thus warranted in asking the court for help.

Considering the prejudice that has been caused to the Claimant by the violation of the Defendant's constitution, I conclude that there is good reason to exercise my discretion in favour of granting an injunction restraining that violation.

71 Defendant's counsel contended[76] that any irregularity in the board resolution sanctioning the Subscription Agreements cannot be a valid ground for restraining their completion, as Lim and Gan would be protected by the indoor management rule. In my view, this submission holds no merit. As alluded to by Claimant's counsel during the hearing, it is for the third party to invoke the indoor management rule: see also Hans Tijo & Daniel Ang, "No Magic to the Indoor Management Rule" [2020] LMCLQ 217 at 223. Here, there is no indication as to whether Lim and Gan (who are not party to these proceedings) ever wished to invoke the indoor management rule (as mentioned at [3] above, the Subscription Agreements have since been cancelled). The affidavits also yielded no insights as to the extent to which Lim and Gan might have lacked notice about the irregularities in the board actions purporting to sanction the Subscription Agreements.

72 Accordingly, had the OA not been discontinued, I would have been

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[76] Minutes of hearing on 22 August 2025.

minded to grant an injunction restraining the Defendant from completing the Subscription Agreements. While the Claimant had prayed that the injunction remains in place until the EGM requisitioned by the Claimant has been held (see [2] above), Defendant's counsel submitted that this would be inappropriate as an injunction must relate to the wrong done, which in this case is the violation of the Defendant's constitution.[77] Once the violation is remedied, there is no reason to extend the injunction until the EGM. I agree. Consequently I would have ordered that completion of the Subscription Agreements be restrained until they are approved either by a board resolution that complies with the Defendant's constitution or by a resolution of the Defendant's shareholders at a general meeting.

Conclusion

73 By O 16 r 3 of the ROC, a party may not discontinue an action without permission of the court except as provided for by O 16 r 2. The court will usually allow a claimant to discontinue an action if no injustice is caused to the defendant and there are no public interest considerations weighing against withdrawal of the claim: *Rohde & Liesenfeld Pte Ltd v Jorg Geselle* [1998] 3 SLR(R) 335 at [13]. In this case, as there are no factors militating against withdrawal of the OA, I grant the Claimant permission to file a notice of discontinuance. I also make no order as to costs (as per parties' request).

74 Before concluding, I would take the opportunity to remind all counsel that once a settlement is reached between parties to an action, they should inform the court promptly: see also *Nicky Tan* at [29]. In this case, I was notified of the parties' settlement on 18 September 2025, *ie*, three days after the

[77] Minutes of hearing on 22 September 2025.

settlement agreement was signed. While this delay was short in absolute terms, it must be noted that parties updated me only *after* I had reached out to them about the case. If I had not done so, it is unclear just how much longer they would have waited to apprise the court that the matter had been amicably resolved. More to the point, I did not find the reasons proffered for the reticence in updating the court (set out at [3] above) to be particularly compelling. Once a binding settlement agreement has been inked by all parties, the time would generally be ripe to immediately let the court know, so that any further expenditure of valuable judicial resources on the case can be tailored accordingly. *Even* if there are conditions attached to the (concluded) settlement agreement which have yet to be complied with, the update to the court can always be appropriately qualified.

Christopher Tan
Judge of the High Court

Yeo Lai Hock Nichol and Poh Chee Eng (Nine Yards Chambers LLC) for the Claimant;
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