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

[2024] SGHC(A) 17

Appellate Division / Civil Appeal No 132 of 2021

Between

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan

… *Appellants*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia
(7) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Appellate Division / Civil Appeal No 133 of 2021

Between

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan

… *Appellants*

And

(1) Fayyaz Ahmad
(2) Ansar Ahmad
(3) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Version No 1: 15 May 2024 (12:48 hrs)

Appellate Division / Civil Appeal No 134 of 2021

Between

Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa

… *Appellant*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia

… *Respondents*

Appellate Division / Civil Appeal No 135 of 2021

Between

Iqbal Ahmad

… *Appellant*

And

(1) Fayyaz Ahmad
(2) Ansar Ahmad
(3) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Version No 1: 15 May 2024 (12:48 hrs)

Appellate Division / Civil Appeal No 136 of 2021

Between

Iqbal Ahmad

… *Appellant*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia
(7) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Appellate Division / Civil Appeal No 91 of 2021

Between

(1) Fayyaz Ahmad
(2) Ansar Ahmad

… *Appellants*

And

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan
(3) Iqbal Ahmad
(4) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Version No 1: 15 May 2024 (12:48 hrs)

Appellate Division / Civil Appeal No 92 of 2021

Between

Iqbal Ahmad

… *Appellant*

And

(1) Fayyaz Ahmad
(2) Ansar Ahmad
(3) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Appellate Division / Civil Appeal No 93 of 2021

Between

Iqbal Ahmad

… *Appellant*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia
(7) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Version No 1: 15 May 2024 (12:48 hrs)

Appellate Division / Civil Appeal No 94 of 2021

Between

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan

… *Appellants*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia
(7) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Appellate Division / Civil Appeal No 95 of 2021

Between

Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa

… *Appellant*

And

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia

… *Respondents*

Appellate Division / Civil Appeal No 96 of 2021

Version No 1: 15 May 2024 (12:48 hrs)

Between

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan

… *Appellants*

And

(1) Fayyaz Ahmad
(2) Ansar Ahmad
(3) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

Appellate Division / Civil Appeal No 5 of 2022

Between

(1) Fayyaz Ahmad
(2) Ansar Ahmad

… *Appellants*

And

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan
(3) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Respondents*

In the matter of Suit No 1158 of 2017

Version No 1: 15 May 2024 (12:48 hrs)

Between

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia

… *Plaintiffs*

And

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan
(3) Shama Bano
(4) Abu Osama
(5) Iqbal Ahmad
(6) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Defendants*

In the matter of Suit No 780 of 2018

Between

(1) Fayyaz Ahmad
(2) Ansar Ahmad

… *Plaintiffs*

And

(1) Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa
(2) Ishret Jahan
(3) Shama Bano
(4) Abu Osama
(5) Iqbal Ahmad
(6) Mohamed Mustafa & Samsuddin Co. Pte Ltd

… *Defendants*

In the matter of Suit No 9 of 2017 (Family Division)

Between

(1) Ayaz Ahmed
(2) Khalida Bano
(3) Ishtiaq Ahmad
(4) Maaz Ahmad Khan
(5) Wasela Tasneem
(6) Asia

… *Plaintiffs*

And

Mustaq Ahmad @ Mushtaq
Ahmad s/o Mustafa

… *Defendant*

JUDGMENT

[Companies — Oppression — Minority shareholders]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **6**

THE ORIGINS AND INCORPORATION OF MMSCPL 6

APPOINTMENT OF MMSCPL'S OFFICERS 7

SUBSCRIPTION OF SHARES IN MMSCPL 8

EVENTS SURROUNDING MUSTAFA'S AND SAMSUDDIN'S PASSING 9

Mustafa's passing *9*

Samsuddin's passing *10*

COMMENCEMENT OF THE HIGH COURT SUITS 10

DECISION BELOW **11**

PRELIMINARY ISSUES 11

Evidence applying across High Court Suits *11*

Locus standi of the Mustafa Estate Beneficiaries *12*

The Mustaq Group's submission of no case to answer *12*

THE BENEFICIAL OWNERSHIP OF MMSCPL 13

THE CLAIMANT BENEFICIARIES' MINORITY OPPRESSION CLAIMS 17

The 5 January 1995 Allotment and 11 December 2001 Allotment *17*

The 1991 and 1993 Allotments *19*

The 1996 and 1997 Allotments *20*

Misappropriation of MMSCPL's funds *20*

Payment of consultancy fees to Zero and One *22*

Unpaid credit sales from MMSCPL to related parties *22*

Unjustified issuance of bonds *22*

Version No 1: 15 May 2024 (12:48 hrs)

THE SAMSUDDIN ESTATE BENEFICIARIES' CLAIM OF AN EXPRESS TRUST 23

Mustaq's breaches of his duties as executor and trustee of the Samsuddin Estate and as administrator and trustee of the Mustafa Estate *24*

THE MUSTAQ GROUP'S DEFENCES 25

RELIEFS GRANTED AND COSTS 28

Suit 1158 and Suit 780 ..... *28*

Suit 9 ..... *29*

Costs *30*

THE PARTIES' CASES ON APPEAL 30

THE APPEALS FILED BY THE MUSTAQ GROUP 31

THE APPEALS FILED BY THE SAMSUDDIN ESTATE BENEFICIARIES 33

ISSUES IN THE APPEALS 34

APPLICABLE PRINCIPLES FOR MINORITY OPPRESSION CLAIMS 36

THE MUSTAQ GROUP'S SUBMISSION OF NO CASE TO ANSWER 37

THE *LOCUS STANDI* ISSUE 41

THE OWNERSHIP AND LEGITIMATE EXPECTATIONS ISSUE 44

ALLOTMENT OF SHARES TO MUSTAFA AND SAMSUDDIN AND PAYMENT FOR THOSE SHARES 46

PAYMENT OF PARTNERSHIP INCOME AND DIVIDENDS TO MUSTAFA AND SAMSUDDIN 47

THE COMMON UNDERSTANDINGS 50

THE GIFT ALLEGATION 55

Version No 1: 15 May 2024 (12:48 hrs)

CONCLUSION ON THE OWNERSHIP OF THE SHARES IN MMSCPL 57

THE 1995 AND 2001 ALLOTMENTS 59

THE EOGM MINUTES 62

Authenticity and admissibility 62

Comparison of signatures 70

SAMSUDDIN'S WILL 72

CONCLUSION ON THE 1995 AND 2001 ALLOTMENTS 75

THE 1991 AND 1993 ALLOTMENTS 75

BACKGROUND TO THE 1991 AND 1993 ALLOTMENTS 75

THE SAMSUDDIN ESTATE BENEFICIARIES' CONTENTIONS AND THE JUDGE'S FINDING 76

THE 1991 AND 1993 ALLOTMENTS WERE NOT OPPRESSIVE 77

THE DIRECTORS' LOANS ISSUE 80

THE QUANTUM OF DIRECTORS' LOANS TAKEN 80

THE PARTIES' CONTENTIONS AND THE JUDGE'S DECISION 82

THE DIRECTORS' LOANS WERE OPPRESSIVE 84

THE DIVIDEND-FEES ISSUE 86

THE PARTIES' CONTENTIONS AND THE JUDGE'S DECISION 86

THE NON-PAYMENT OF DIVIDENDS AND EXCESSIVE DIRECTORS' FEES WERE OPPRESSIVE 88

THE CASHBACK SCHEME ISSUE 94

EXISTENCE OF THE CASHBACK SCHEME 95

MUSTAQ'S INVOLVEMENT IN THE CASHBACK SCHEME 98

The 17 April 2017 Call 98

Version No 1: 15 May 2024 (12:48 hrs)

The Staff Briefing on 11 November 2017 ..... *100*

The 5 February 2018 Call *101*

The e-mails of the former employees *104*

CONCLUSION ON THE CASHBACK SCHEME ISSUE 105

THE CONSULTANCY FEES ISSUE 106

THE PARTIES' CONTENTIONS AND THE JUDGE'S FINDING 106

THE PAYMENT OF CONSULTANCY FEES TO Z&O IS PRIMA FACIE OPPRESSIVE 108

THE RELATED-PARTIES TRANSACTION ISSUE 111

THE CREDIT SALES REGISTER 112

THE CREDIT SALES TRANSACTIONS 112

THE JUDGE'S FINDINGS AND THE PARTIES' CASE ON APPEAL 114

SUFFICIENT EVIDENCE TO ESTABLISH RELIABILITY OF CREDIT SALES REGISTER AND OPPRESSION 117

THE BONDS ISSUE 120

THE REASONS FOR THE BONDS ISSUANCE 120

THE JUDGE'S FINDINGS AND THE PARTIES' CASES ON APPEAL 123

NO PRIMA FACIE CASE OF OPPRESSION ESTABLISHED 125

The Samsuddin Estate Beneficiaries were not prejudiced *125*

The Judge was correct in finding that there was insufficient evidence to establish a prima facie case of oppression *130*

WHETHER THE ALLEGED ACTS OF MISAPPROPRIATION CONSTITUTE A PERSONAL WRONGDOING 133

THE DEFENCES ISSUE 137

LACHES 137

Version No 1: 15 May 2024 (12:48 hrs)

The doctrine of laches does not apply *138*

No Prejudice to the Mustaq Group *139*

ACQUIESCENCE 142

THE ESTATE DUTIES ISSUE 143

BREACH OF DUTIES OWED TO THE MUSTAFA-SAMSUDDIN ESTATES 143

REMEDIES FOR MUSTAQ'S BREACH OF DUTIES TOWARDS THE MUSTAFA ESTATE 144

THE COUNTERCLAIMS ISSUE 146

THE RELIEFS ISSUES 147

THE ALLOTMENTS RELIEF ISSUE 151

THE SPECIAL AUDIT RELIEF ISSUE 154

THE EFFORTS RELIEF ISSUE 159

THE CASHBACK SCHEME RELIEF ISSUE 164

MUSTAFA ESTATE SHAREHOLDING VALUATION ISSUE 165

THE COSTS ISSUE 174

THE POST-JUDGMENT INTEREST ISSUE 176

THE VALUER'S FEES AND DISBURSEMENTS 178

CONCLUSION 180

Version No 1: 15 May 2024 (12:48 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and another
v
Ayaz Ahmed and others and other appeals

[2024] SGHC(A) 17

Appellate Division of the High Court — Civil Appeal Nos 132 to 136 and 91 to 96 of 2021 and 5 of 2022
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
17, 18 August 2023, 7 February 2024

15 May 2024 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 The present appeals arise from three suits filed before the General Division of the High Court, namely HC/S 1158/2017 ("Suit 1158"), HCF/S 9/2017 ("Suit 9") and HC/S 780/2018 ("Suit 780") (collectively, the "High Court Suits").

2 Mr Mustafa s/o Majid Khan ("Mustafa") had two wives, *ie*, Ms Momina ("Momina") and then Mdm Asia ("Asia"). He had one son with his first wife, Momina. That son is Mr Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa ("Mustaq"). Mustafa had five children with his second wife, Asia: Mr Ayaz Ahmad ("Ayaz"), Ms Khalida Bano ("Khalida"), Mr Ishtiaq Ahmad ("Ishtiaq"), Mr Maaz Ahmad Khan ("Maaz") and Ms Wasela Tasneem ("Wasela"). Asia

and her five children are the beneficiaries of Mustafa's estate (the "Mustafa Estate") and the plaintiffs in Suit 1158 (the "Mustafa Estate Beneficiaries") and Suit 9.

3 Mr Samsuddin s/o Mokhtar Ahmad ("Samsuddin") had five children with his wife, Ms Sitarun Nisha ("Sitarun"). Two of these five children are Mr Fayyaz Ahmad ("Fayyaz") and Mr Ansar Ahmad ("Ansar"), with the others being Nausaba Khatoon, Mohamed Zakaria and Mohammad Asrar Ahmad. Mustaq and Fayyaz were the two trustees and executors of Samsuddin's estate (the "Samsuddin Estate"). The five children and Sitarun are the beneficiaries of the Samsuddin Estate. Fayyaz and Ansar are the plaintiffs in Suit 780 (the "Samsuddin Estate Beneficiaries").

4 The Mustafa Estate and the Samsuddin Estate are registered owners of shares in a company known as Mohamed Mustafa & Samsuddin Co Pte Ltd ("MMSCPL"), which is the sixth defendant in Suit 1158 and Suit 780. Where necessary, we refer to the Mustafa Estate Beneficiaries and the Samsuddin Estate Beneficiaries collectively as the "Claimant Beneficiaries", and the Mustafa Estate and the Samsuddin Estate collectively as the "Mustafa-Samsuddin Estates".

5 As mentioned, Mustaq is the son of Mustafa and Mustafa's first wife, Momina (who was also Samsuddin's cousin). Mustaq and his wife, Ms Ishret Jahan ("Ishret"), are both shareholders and directors of MMSCPL, and are the first and second defendants in both Suit 1158 and Suit 780. Mustaq and Ishret have four children: Ms Shama Bano ("Shama"), Mr Abu Osama ("Osama"), Ms Shams Bano ("Shams") and Ms Bushra Bano ("Bushra"). Shama and Osama are directors of MMSCPL, and the third and fourth defendants in both Suit 1158 and Suit 780. Mustaq is the sole defendant in Suit 9. Mr Iqbal Ahmad

Version No 1: 15 May 2024 (12:48 hrs)

("Iqbal"), Ishret's brother, is a director and the company secretary of MMSCPL and the fifth defendant in both Suit 1158 and Suit 780. As counsel for Iqbal confirmed that Iqbal's case is aligned with the case of Mustaq and Ishret, we consider it appropriate to regard Mustaq, Ishret and Iqbal collectively, and will refer to them as the "Mustaq Group".

6 Suit 1158 and Suit 780 concerned claims for minority oppression by the Claimant Beneficiaries against the Mustaq Group, which comprised directors of MMSCPL. In addition, it was claimed in Suit 780 that the Samsuddin Estate was entitled to certain assets held for it by Mustaq on an express trust, and that Mustaq had breached his duties as executor and trustee of the Samsuddin Estate. Suit 9 concerned a claim against Mustaq for breach of his duties as the sole administrator and trustee of the Mustafa Estate.

7 In other words, the Mustafa Estate Beneficiaries had commenced two actions. Suit 1158 was for oppression in respect of MMSCPL and Suit 9 was for breaches of duty by Mustaq in respect of the Mustafa Estate. On the other hand, the Samsuddin Estate Beneficiaries commenced one action, *ie*, Suit 780, for minority oppression in respect of MMSCPL, to claim assets held on an express trust and for alleged breaches of duty by Mustaq in respect of the Samsuddin Estate. All three actions were heard together in the proceedings below.

8 In *Ayaz Ahmed and others v Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and others and other suits* [2022] SGHC 161 ("GD"), a Judge of the General Division of the High Court (the "Judge") gave judgment for the Mustafa Estate Beneficiaries in Suit 1158 and Suit 9, and the Samsuddin Estate Beneficiaries in Suit 780. The Judge was satisfied that the Claimant Beneficiaries had successfully established their claim in minority oppression in

Version No 1: 15 May 2024 (12:48 hrs)

Suit 1158 and Suit 780. However, the Judge held that the winding-up of MMSCPL was not an appropriate remedy and ordered instead that Mustaq and Ishret buy out the Mustafa-Samsuddin Estates' shares in MMSCPL at a price subject to a valuation to be determined. The Judge further held in Suit 780 that Mustaq had breached his duties as executor and trustee of the Samsuddin Estate but rejected their claim of an express trust. Finally, the Judge granted the declaration sought by the Mustafa Estate Beneficiaries in Suit 9 that Mustaq: (a) had breached his duties as administrator and trustee of the Mustafa Estate; and (b) was liable to account to the Mustafa Estate for the losses caused to the estate by reason of the breaches found.

9 The Mustaq Group and the Samsuddin Estate Beneficiaries, being dissatisfied with various aspects of the Judge's findings as set out in the GD, filed the present cross-appeals before us. There are a total of 12 appeals before us. This is partially because the Judge had delivered her decision in various parts. Her first decision was given on 16 August 2021 and clarified on 6 September 2021 when the parties were directed to prepare formal orders of court which would include comprehensive orders on the terms of a share buy-out and any outstanding issue. On 9 December 2021, the terms of the orders were approved by the court. At the same time, the court rejected an oral application by the Samsuddin Estate Beneficiaries to set aside the share allotments in MMSCPL between 1991 to 1993. By 9 December 2021, some of the appeals had already been filed in view of the decision on 16 August 2021 and clarification on 6 September 2021. After 9 December 2021, more appeals were filed to cover the decision on 9 December 2021. The appeals may be categorised as follows:

Version No 1: 15 May 2024 (12:48 hrs)

(a) AD/CA 91/2021 and AD/CA 5/2022 are the Samsuddin Estate Beneficiaries' appeals against the Judge's Suit 780 decisions delivered on 16 August 2021 and 9 December 2021 respectively.

(b) AD/CA 92/2021 and AD/CA 93/2021 are Iqbal's respective appeals against the Judge's Suit 780 and Suit 1158 decisions delivered on 16 August 2021 and clarified on 6 September 2021. AD/CA 135/2021 and AD/CA 136/2021 are Iqbal's respective appeals against the Judge's Suit 780 and Suit 1158 decisions delivered on 9 December 2021. Iqbal is not an active participant in these appeals and essentially adopts the submissions of Mustaq and Ishret.

(c) AD/CA 94/2021 and AD/CA 96/2021 are Mustaq and Ishret's respective appeals against the Judge's Suit 1158 and Suit 780 decisions delivered on 16 August 2021 and clarified on 6 September 2021. AD/CA 132/2021 and AD/CA 133/2021 are Mustaq and Ishret's respective appeals against the Judge's Suit 1158 and Suit 780 decisions delivered on 9 December 2021.

(d) AD/CA 95/2021 and AD/CA 134/2021 are Mustaq's appeals against the Judge's Suit 9 decision delivered on 16 August 2021 and clarified on 6 September 2021 and delivered on 9 December 2021 respectively.

Significantly, the Mustafa Estate Beneficiaries have *not* appealed against any aspect of the Judge's decisions. For convenience, we will refer to the various appeals by any side collectively (*eg*, the Mustaq Group's appeal).

Version No 1: 15 May 2024 (12:48 hrs)

10 Pursuant to our directions at a Case Management Conference on 6 January 2023, the parties consolidated their appellants' cases, respondents' cases and replies in the substantive cases for: (a) the Mustaq Group; (b) the Samsuddin Estate Beneficiaries; and (c) the Mustafa Estate Beneficiaries. We set out below our decision on each of the issues raised by the parties in their cases.

Background facts

The origins and incorporation of MMSCPL

11 It is not disputed between the parties that prior to the incorporation of MMSCPL, Mustafa and Samsuddin commenced a wholesale business through a partnership known as Mohamed Mustafa & Samsuddin Co ("MMSC") on 11 July 1973. What is disputed between the parties, however, is their account of the facts leading up to the formation of MMSC, the reason for its formation, and the series of events leading up to MMSCPL's incorporation (see the GD at [11]–[15]).

12 According to the Claimant Beneficiaries, Mustafa and Samsuddin commenced a wholesale business through MMSC on 11 July 1973. On 23 July 1973, Mustafa and Samsuddin lodged a form with the Registrar of Business ("ROB") to state MMSC's change of its registered address from 19 Campbell Lane to 67 Serangoon Road Singapore, and that MMSC's branch would operate from 19 Campbell Lane. On 12 September 1973, Mustaq was added as a partner in MMSC.

13 On the other hand, the Mustaq Group contended that in or around 1971, Mustaq rented 1 Campbell Lane and conducted his business there under the name "Mustaq Ahmad". Sometime in 1973 when he was informed that the

Version No 1: 15 May 2024 (12:48 hrs)

master lease was about to expire, Mustaq bought 19 Campbell Lane to house his business and rented 67 Serangoon Road to store his goods (collectively, the "New Premises"). Mustaq claimed to have made all these payments with no assistance from Mustafa and Samsuddin. Sometime in May or June 1973, before Mustaq could move his goods to the New Premises, he had to visit his wife in India and Mustafa offered to help supervise the running of Mustaq's business with Samsuddin while he was away. Mustafa and Samsuddin commenced MMSC on 11 July 1973 to facilitate the move to the New Premises, on the understanding that the business operating out of the New Premises was Mustaq's business. On 12 September 1973, following Mustaq's return to Singapore, Mustaq's name was added to MMSC. It is not disputed between the parties that MMSCPL was incorporated in Singapore on 21 February 1989 to take over the business of MMSC. The MMSC partnership was terminated on 30 September 1989 following MMSCPL's incorporation. Mustaq and Samsuddin were MMSCPL's initial directors and shareholders with each subscribing to one share of MMSCPL. Mustafa was appointed a director of MMSCPL on 10 April 1989, and became a shareholder on 27 April 1989.

Appointment of MMSCPL's officers

14 Between 1989 and 2014, various other individuals were also appointed as directors of MMSCPL. The appointments (and some resignations) are set out in a table at [23] of the GD, which we reproduce here:

Version No 1: 15 May 2024 (12:48 hrs)

Individual	Date of Appointment	Position	Date of resignation/ retirement
Mustaq	21 February 1989	Director	N/A
Samsuddin	21 February 1989	Director	14 July 2003
Mustafa	10 April 1989	Director	11 March 1999
Ishret	19 June 1991	Director	N/A
Iqbal	17 January 1994	Company secretary	N/A
	3 September 2001	Director	N/A
Shama	14 February 2001	Director	N/A
Osama	14 February 2001	Director	10 February 2004
	24 December 2014	Director (re-appointed)	N/A

Subscription of shares in MMSCPL

15 A total of eight tranches of share allotments were carried out byMMSCPL since its incorporation on 21 February 1989. These allotments are set out in a table in the GD at [24], which we reproduce here:

Date	Mustaq			Ishret			Mustafa			Samsuddin		
	Shares allotted	Total shares	Percentage	Shares allotted	Total shares	Percentage	Shares allotted	Total shares	Percentage	Shares allotted	Total shares	Percentage
21 February 1989	1	1	50%	0	0	0	0	0	0	1	1	50%
27 April 1989	509,999	510,000	51%	0	0	0	190,000	190,000	19%	299,999	300,000	30%
27 June 1991	300,000	810,000	35.22%	300,000	300,000	13.04%	400,000	590,000	25.65%	300,000	600,000	26.09%

Version No 1: 15 May 2024 (12:48 hrs)

Date	Mustaq			Ishret			Mustafa			Samsuddin		
16 January 1993	340,200	1,150,200	34.85%	160,000	460,000	13.94%	247,800	837,800	25.39%	252,000	852,000	25.82%
19 May 1993	448,500	1,598,700	34.01%	239,400	699,400	14.88%	353,900	1,191,700	25.35%	358,200	1,210,200	25.75%
5 January 1995	700,000	2,298,700	42.57%	0	699,400	12.95%	0	1,191,700	22.07%	0	1,210,200	22.41%
9 April 1996	681,100	2,979,800	42.57%	207,230	906,630	12.95%	353,100	1,544,800	22.07%	358,570	1,568,770	22.41%
24 February 1997	851,370	3,831,170	42.57%	259,037	1,165,667	12.95%	441,370	1,986,170	22.07%	448,223	2,016,993	22.41%
11 December 2001	4,340,000	8,171,170	61.25%	0	1,165,667	8.74%	0	1,986,170	14.89%	0	2,016,993	15.12%

Events surrounding Mustafa's and Samsuddin's passing

Mustafa's passing

16 In July 2001, Mustafa died intestate. Shortly after, on 16 August 2001, the Syariah Court of Singapore issued an Inheritance Certificate stating that the beneficiaries of the Mustafa Estate were Asia, and his four sons (including Mustaq) and two daughters (GD at [26]–[27]). On 22 December 2001, Mustaq visited the Mustafa Estate Beneficiaries in Jaunpur, India. On the same day, the Mustafa Estate Beneficiaries signed a Power of Attorney drafted on Mustaq's instructions, which provided that the Mustafa Estate Beneficiaries jointly and severally appointed Mustaq to apply for and obtain a grant of probate or a grant of letters of administration for the Mustafa Estate. On 30 October 2003, the Mustafa Estate was registered as a shareholder of MMSCPL. On 18 November 2023, Mustaq filed a petition for the grant of letters of administration, and this was granted on 24 November 2003 (the "Mustafa Estate Grant of LAs"). On

Version No 1: 15 May 2024 (12:48 hrs)

28 January 2004, Mustaq extracted the Mustafa Estate Grant of LAs (GD at [28]–[29]).

Samsuddin's passing

17 Samsuddin died in April 2011. Pursuant to Samsuddin's will dated 5 November 2004 ("Samsuddin's Will"), Fayyaz and Mustaq were appointed joint and several executors and trustees of his estate. On 24 October 2012, Mustaq applied for a grant of probate (the "Samsuddin Estate Grant of Probate"), which was issued to Mustaq and Fayyaz on 25 June 2013. Based on the Syariah Court Inheritance Certificate, as stated above, the beneficiaries under the Samsuddin Estate were Sitarun, and her five children with Samsuddin (GD at [30]–[31]).

Commencement of the High Court Suits

18 The Mustafa Estate Beneficiaries commenced Suit 1158 and Suit 9 on 8 December 2017, whilst the Samsuddin Estate Beneficiaries commenced Suit 780 on 6 August 2018. As stated above, Suit 1158 and Suit 780 essentially concerned the Claimant Beneficiaries' allegations of minority oppression.

19 In addition to the claims for oppression, Suit 780 involved claims by the Samsuddin Estate Beneficiaries that: (a) Mustaq held one-third of various assets on trust for the Samsuddin Estate; and (b) Mustaq, as executor and trustee of the Samsuddin Estate, had breached his fiduciary duties to the estate to act in its best interests when he intentionally and systematically removed MMSCPL's funds, thereby causing loss to the estate.

20 As for Suit 9, that action involved the Mustafa Estate Beneficiaries' claim that Mustaq had, by virtue of his conduct which were alleged to be

Version No 1: 15 May 2024 (12:48 hrs)

oppressive, breached his duties as administrator and trustee of the Mustafa Estate.

21 In response, the Mustaq Group raised several counterclaims and defences, both factual and legal. These included allegations that Mustaq was the true beneficial owner of all the shares in MMSCPL and that the Claimant Beneficiaries' claims were barred by laches and/or acquiescence. Despite these allegations, the Mustaq Group had submitted no case to answer to the claims and elected to call no evidence.

Decision below

22 For brevity, we set out in this section only the portions of the GD that are relevant to the issues in these appeals.

Preliminary issues

Evidence applying across High Court Suits

23 In the course of the trial, the Mustafa Estate Beneficiaries and the Samsuddin Estate Beneficiaries provided different accounts as to what each party's rightful shareholding in MMSCPL should be. While the former claimed that the Mustafa Estate should have about 25% of the shares in MMSCPL, the latter claimed that Samsuddin, Mustafa and Mustaq should each have an equal one-third share in the company. In their closing submissions below, the Mustaq Group took the position that the evidence led in Suit 1158 was capable of being considered as evidence in Suit 780 and *vice versa*, but the Claimant Beneficiaries objected (GD at [80]).

24 The Judge held that in assessing the evidence adduced in the trial of the High Court Suits, the evidence led in one suit could and should be treated as

Version No 1: 15 May 2024 (12:48 hrs)

evidence in the other suits (GD at [84]–[85] and [92]). However, the Judge emphasised that this did not mean that the claimants in one suit could obtain reliefs which adversely affected the interests of claimants in another suit, if the latter set of claimants were not joined as parties in the former suit (GD at [93]). We note that the parties have not appealed against these aspects of the Judge's decision.

Locus standi of the Mustafa Estate Beneficiaries

25 The Judge held that the Mustafa Estate Beneficiaries, despite not being shareholders of MMSCPL, had the necessary *locus standi* to bring Suit 1158 (which concerned claims for minority oppression against the directors of MMSCPL), based on what has been referred to as the *Wong Moy* exception (as explained in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*")) (GD at [95]).

The Mustaq Group's submission of no case to answer

26 Finally, the Mustaq Group made a submission of no case to answer and elected to call no evidence in the High Court Suits. The Judge made the following decisions:

> (a) The Mustaq Group, despite having undertaken not to adduce any evidence when they chose to submit no case to answer, sought to rely in their closing submissions on various documents which had not been admitted in evidence. As the Claimant Beneficiaries had not admitted the authenticity of the documents, and there was no direct evidence of the authenticity of those documents led by the Mustaq Group, those documents were not admissible in evidence (GD at [113]–[115]).

Version No 1: 15 May 2024 (12:48 hrs)

(b) The Judge declined to exercise the power given under s 75 of the Evidence Act (Cap 97, 1997 Rev Ed) (the "Evidence Act") to compare the signatures on some documents, as this was a case where the Mustaq Group had elected to call no evidence, presumably fully aware that there would be no direct evidence of the authenticity of various disputed documents. Moreover, the Mustaq Group's argument that the Judge should exercise the power under s 75 was made belatedly following the conclusion of the trial (GD at [116]–[119]).

(c) The Mustaq Group bore the legal and evidential burden of proving that Mustaq and Ishret were the true owners of MMSCPL, in accordance with ss 103 and 105 of the Evidence Act. In particular, it was the Mustaq Group which asserted that: (i) the Mustafa-Samsuddin Estates had no interest in MMSCPL despite being registered as minority shareholders; (ii) the Mustafa-Samsuddin Estates held their shares on trust for Mustaq; and (iii) Mustaq was the beneficial owner of all the shares in MMSCPL and was entitled to run the company at his sole discretion (GD at [120]–[122]).

The beneficial ownership of MMSCPL

27 The beneficial ownership of the shares in MMSCPL was a central issue in all the High Court Suits. The Mustaq Group resisted the Claimant Beneficiaries' claims for minority oppression on the basis that Mustaq was the true beneficial owner of all the shares held in the names of the Mustafa-Samsuddin Estates.

28 The Mustaq Group essentially claimed that Mustafa and Samsuddin held their shares in MMSCPL on a common intention constructive trust or, alternatively, a resulting trust, for the benefit of Mustaq. In particular, the

Version No 1: 15 May 2024 (12:48 hrs)

Mustaq Group argued it could be inferred that Mustaq had paid for all the shares in MMSCPL. The Mustaq Group also asserted that common understandings regarding the beneficial ownership of the shares in MMSCPL were reached between Mustaq, Mustafa and Samsuddin in 1973 (the "1973 Common Understanding") and between Mustaq and the Mustafa Estate Beneficiaries in 2001 (the "2001 Common Understanding) (collectively, the "Common Understandings"). The 1973 Common Understanding allegedly entailed that:

(a) MMSC and subsequently, MMSCPL, was wholly owned by Mustaq;

(b) Mustaq would be the sole decision-maker in the business;

(c) Mustafa and Samsuddin would not need to contribute to or be responsible for the business' finances or assume risks or liabilities in respect of the business;

(d) Mustafa and Samsuddin would not receive any remuneration from the business and any payments made to them were done purely out of goodwill and solely at Mustaq's discretion, borne out of familial concern and respect; and

(e) as partners of MMSC on record, Mustafa and Samsuddin would sign any and all documents Mustaq required them to sign (GD at [61]–[63] and [128]–[129]).

29 The Mustaq Group also alleged that on or about 20 July 2001 soon after Mustafa had passed away on 17 July 2001, there was a meeting in Asia's room at Mustaq's house in India. At that meeting, Khalida, Ishtiaq and Asia agreed on behalf of all the Mustafa Estate Beneficiaries that Mustaq should continue

Version No 1: 15 May 2024 (12:48 hrs)

running the business as per the 1973 Common Understanding (*ie*, the 2001 Common Understanding) (GD at [66]–[67]).

30 Unsurprisingly, the Claimant Beneficiaries disputed the existence of the Common Understandings (GD at [130]–[132]).

31 Having evaluated the evidence, the Judge concluded that the Mustaq Group had not discharged its burden of proving that Mustaq was the true beneficial owner of all the shares in MMSCPL. The Judge further concluded that the Mustafa-Samsuddin Estates were the beneficial owners of the shares held in their names (GD at [125] and [179]). In particular, the Judge found that the evidence adduced at trial did not support, and in fact contradicted the existence of the Common Understandings:

(a) The Mustaq Group's contention – that MMSC was set up as a formality to facilitate the operation of Mustaq's sole proprietorship (named "Mustaq Ahmad") in Mustaq's absence and the move of Mustaq's business to the New Premises, on the understanding that the business belonged solely to Mustaq – was unsupported by the documentary evidence. Documents lodged with the ROB showed that even after Mustaq was added as a partner of MMSC in September 1973, the three men viewed MMSC as a separate and distinct entity from "Mustaq Ahmad", and differentiated between Mustaq's ownership of "Mustaq Ahmad" and his ownership of MMSC (GD at [136]–[137]).

(b) The fact that Mustaq filled out the documents lodged with the ROB in respect of MMSC's affairs did not mean that that he was the only person responsible for managing the business. On the contrary, the evidence showed that Mustafa and Samsuddin were involved in the

Version No 1: 15 May 2024 (12:48 hrs)

running and management of MMSC and later MMSCPL (GD at [140]–[141] and [150]–[154]).

(c) Mustafa and Samsuddin received payments which were clearly made on the basis of their ownership of MMSC, and later, of MMSCPL. They were remunerated as partners of MMSC, which they declared as trade income in their Notices of Assessment ("NOAs") (GD at [157]).

(d) Following the incorporation of MMSCPL, Mustafa and Samsuddin were paid dividends by the company in proportion to their respective shareholdings. If these dividends were "goodwill payments" from Mustaq, as the Mustaq Group contended, there would have been no reason for Mustafa and Samsuddin to pay income tax on these dividends (GD at [158] and [160]–[161]).

(e) Mustafa and Samsuddin had assumed significant risks and liabilities on behalf of MMSCPL by providing guarantees in respect of MMSCPL's financial liabilities and had also contributed funds to MMSCPL by paying for their shares in the company. This contradicted the alleged 1973 Common Understanding which included an understanding that Mustafa and Samsuddin would not need to contribute to or be responsible for MMSCPL's finances or assume risks or liabilities in respect of the business (GD at [163]–[166]).

(f) In the correspondence between the lawyers of the Mustafa Estate Beneficiaries and Mustaq, the former had requested financial statements relating to MMSCPL and insisted that Mustaq refrain from reducing or diluting the estate's shareholding. However, Mustaq made no mention of his purported sole beneficial ownership of MMSCPL up until as late as August 2016, and even acknowledged the Mustafa Estate

Version No 1: 15 May 2024 (12:48 hrs)

Beneficiaries' interest in MMSCPL. The position that Mustaq took with respect to various documents indicating that Mustaq and Samsuddin owned shares in MMSCPL also contradicted the assertion that Mustaq beneficially owned all of the shares in MMSCPL (GD at [169]–[175]).

(g) The Mustaq Group attempted mid-trial to recast their entire narrative of the Common Understandings to posit that while MMSCPL was entirely Mustaq's, Mustaq had given shares to the Mustafa Estate and to the Samsuddin Estate in 2002 and 2004 respectively but later decided to revoke the gifts when the Claimant Beneficiaries commenced the High Court Suits against him. This was at odds with the Mustaq Group's pleaded case, *ie*, that Mustaq had always enjoyed uninterrupted beneficial ownership of all the MMSCPL shares, and it also suggested that the Common Understandings were fabrications (GD at [177]–[178]).

The Claimant Beneficiaries' minority oppression claims

32 The Judge concluded that the Claimant Beneficiaries had established a *prima facie* case of oppression by the Mustaq Group in respect of several of the acts complained of.

The 5 January 1995 Allotment and 11 December 2001 Allotment

33 The Judge found that the Claimant Beneficiaries had established a *prima facie* case that the share allotments carried out on 5 January 1995 (the "5 January 1995 Allotment") and 11 December 2001 (the "11 December 2001 Allotment") (collectively, the "1995 and 2001 Allotments") were oppressive for the following reasons:

Version No 1: 15 May 2024 (12:48 hrs)

(a) The Judge rejected the Mustaq Group's sole pleaded defence that the 1995 and 2001 Allotments were issued without the need to comply with MMSCPL's memorandum and articles of association ("MMSCPL's Constitution") in light of the Common Understandings (GD at [202] and [273]).

(b) The Judge found that there was also no evidence that these allotments were conducted in accordance with the requirements prescribed by MMSCPL's Constitution (GD at [203]–[212] and [274]–[285]).

(c) Having regard to the expert evidence adduced by the Claimant Beneficiaries, the Judge was satisfied that these allotments were carried out at an undervalue (GD at [218]–[231] and [292]).

(d) The 1995 and 2001 Allotments were not in MMSCPL's commercial interest. In particular, MMSCPL was not in any real need of cash during this period so as to warrant an increase in MMSCPL's share capital. There was also no reason why shares were issued to Mustaq only (GD at [232]–[247], [296], [303] and [305]).

(e) Finally, these allotments served no genuine purpose other than to benefit Mustaq by diluting Mustafa's and Samsuddin's shareholdings while increasing Mustaq's, both in terms of percentage and value (GD at [248]–[252] and [311]–[312]).

34 The Judge further found that the Mustaq Group's procurement of the 1995 and 2001 Allotments amounted to breaches of Mustaq's, Ishret's and Iqbal's duties to MMSCPL, as directors in the case of Mustaq and Ishret and as company secretary in Iqbal's case. The Judge was satisfied that these allotments

Version No 1: 15 May 2024 (12:48 hrs)

caused Mustafa and Samsuddin (and subsequently, their estates) to suffer real injury which was distinct from the injury suffered by the company, namely the dilution of their respective shareholding in the company and the erosion of their voting power. The Judge thus held that the breaches of duties by Mustaq, Ishret and Iqbal constituted oppressive behaviour (GD at [320]–[328]).

The 1991 and 1993 Allotments

35 The Judge found that a *prima facie* case of oppression was also established in respect of the share allotments on 27 June 1991, 16 January 1993 and 19 May 1993 (the "1991 and 1993 Allotments") for reasons similar to the 1995 and 2001 Allotments. The 1991 and 1993 Allotments were carried out without notice being given to Samsuddin as required by MMSCPL's Constitution (GD at [352]–[354] and [371]). The shares were also issued at a significant undervalue relative to their fair value at the time and were not offered to MMSCPL's shareholders in proportion to their respective shareholdings (GD at [355] and [373]).

36 Further, with respect to the allotments in 1993, it was not shown that MMSCPL required funding by way of equity financing at that time. On the contrary, the declaration of dividends in 1993 suggested that MMSCPL had excess funds available for distribution to its shareholders (GD at [372]).

37 The Judge also found that Mustaq and Ishret breached their fiduciary and other duties they owed as directors to MMSCPL in procuring the 1991 and 1993 Allotments (GD at [376]).

Version No 1: 15 May 2024 (12:48 hrs)

The 1996 and 1997 Allotments

38 The Judge found that the allotment of shares on 9 April 1996 and 24 February 1997 (the "1996 and 1997 Allotments") were not oppressive. Although these allotments were carried out in breach of MMSCPL's Constitution, they were allotted in proportion to each shareholder's respective shareholding at the relevant dates. Further, these allotments did not dilute the Samsuddin Estate's shareholding in the company (GD at [394]).

Misappropriation of MMSCPL's funds

39 The Judge found that a *prima facie* case of oppression was established on account of various instances of misappropriation of MMSCPL's funds by the Mustaq Group, which the Claimant Beneficiaries relied on as evidence of the oppressive manner in which the Mustaq Group, Shama and Osama had conducted MMSCPL's affairs for their own benefit and in disregard of the minority shareholders (GD at [399]–[400]).

40 First, the Judge found that the Mustaq Group had breached their fiduciary duties as directors of MMSCPL by taking unsecured and interest-free loans from MMSCPL (the "Directors' Loans"). The Judge was also satisfied that these breaches constituted evidence of the Mustaq Group conducting MMSCPL's affairs oppressively. It was not disputed that the Directors' Loans were taken out for the Mustaq Group's personal use. There was neither evidence of a general practice of directors of MMSCPL taking such loans, nor of any discussion or agreement amongst the directors on the conditions for such loans. There was also no evidence that the Claimant Beneficiaries knew of and/or agreed to the Mustaq Group taking the Directors' Loans. Neither was there any evidence that these loans benefitted MMSCPL in any way. On the contrary,

Version No 1: 15 May 2024 (12:48 hrs)

these loans were detrimental to MMSCPL, which had other financial obligations at the time (GD at [402], [416], [419], [425] and [427]–[429]).

41 Second, the Judge accepted that there was a *prima facie* case that Mustaq had caused MMSCPL to falsely overstate the salaries of its employees in work pass applications to the Ministry of Manpower ("MOM"), and the difference between the declared salaries and the actual salaries paid to the workers was then collected and passed to Mustaq for his personal benefit (the "Cashback Scheme"). The evidence, including the testimonies of six former employees of MMSCPL and recordings of meetings where the salaries of the employees were collected, supported the existence of the Cashback Scheme. The evidence also allowed an inference that the Cashback Scheme was carried out with Mustaq's knowledge or acquiescence, and that the money collected was taken by Mustaq for his own benefit (GD at [484], [496] and [503]–[506]).

42 Third, the Judge found that a *prima facie* case was established that Mustaq and Ishret had acted oppressively by causing MMSCPL to pay no dividends to its shareholders for over a dozen years, whilst paying themselves substantial directors' fees. In this connection, the Judge noted that dividend payments only resumed after Ayaz and Fayyaz began asking questions about the way in which MMSCPL was being run and the entitlements of the Mustafa-Samsuddin Estates in 2014. The Judge rejected the Mustaq Group's defences that: (a) none of the Claimant Beneficiaries had raised any issue as to Mustaq's or Ishret's directors fees or the non-declaration of dividends due to the Common Understandings; and (b) the non-declaration of dividends was commercially justified (GD at [521]–[524] and [528]–[532]).

43 However, the Judge found that the Claimant Beneficiaries failed to establish a *prima facie* case in respect of their allegation that Mustaq had created

Version No 1: 15 May 2024 (12:48 hrs)

sham invoices to cause the appearance that MMSCPL was indebted to B.I. Distributors Pte Ltd ("BID"), a company wholly owned and controlled by Mustaq and Ishret (GD at [548]).

Payment of consultancy fees to Zero and One

44 The Judge found that the Samsuddin Estate Beneficiaries could not establish a *prima facie* case that Mustaq had wrongfully caused MMSCPL to pay substantial consultancy fees to Zero and One ("Z&O"), a sole proprietorship set up by Mustaq on 1 February 2006, and that Z&O did not in fact have employees performing consultancy services. The Judge considered that Fayyaz's evidence in this regard amounted to bare assertions. There was also no objective evidence indicating that the consultancy fees paid to Z&O actually went to Mustaq or that the employees of Z&O were in fact employees of MMSCPL (GD at [606]–[610]).

Unpaid credit sales from MMSCPL to related parties

45 The Judge found that the Samsuddin Estate Beneficiaries were unable to make out a *prima facie* case that the Mustaq Group had caused MMSCPL to enter into transactions with related companies, whereby MMSCPL would provide goods to these companies on credit terms but not receive payment. The evidence relied upon by the Samsuddin Estate Beneficiaries was unreliable and insufficient to substantiate their allegations (GD at [571]–[572]).

Unjustified issuance of bonds

46 The Judge held that the Samsuddin Estate Beneficiaries failed to establish a *prima facie* case that Mustaq had caused MMSCPL to issue three-year bearer bonds for approximately $75m in order to purchase the shares of the Samsuddin Estate in MMSCPL. The Judge thus dismissed this claim which was

Version No 1: 15 May 2024 (12:48 hrs)

based on the allegation that MMSCPL had placed the money received from these bonds into fixed deposit accounts generating a maximum of 1.3% interest per annum, while paying higher interest of 4.75% per annum on the bonds. This allegedly caused MMSCPL to lose approximately $7.76m (being the difference between the interest paid on the bonds and the interest earned on the fixed deposit account). In particular, the only evidence of the purpose of the bonds was Fayyaz's testimony, which was uncorroborated and inconsistent (GD at [556]–[561]).

The Samsuddin Estate Beneficiaries' claim of an express trust

47 The Samsuddin Estate Beneficiaries claimed that Mustaq held one-third of the following assets on an express trust for the Samsuddin Estate: (i) MMSCPL; (ii) all of Mustaq's assets; and (iii) companies related to MMSCPL (collectively, the "Family Assets"). Mustaq had made repeated statements and promises to Samsuddin, Fayyaz and other beneficiaries of the Samsuddin Estate that they were entitled to a one-third share in the Family Assets (see GD at [670]–[672]). The Mustaq Group, on the other hand, contended that the Samsuddin Estate Beneficiaries had not established any of the three certainties of intention, object or subject matter required for an express trust to exist.

48 The Judge found that the Samsuddin Estate Beneficiaries were unable to make out a *prima facie* case in respect of the three certainties required for the creation of an express trust, and thus rejected the Samsuddin Estate Beneficiaries' claim of an express trust of one-third of the Family Assets (GD at [682], [713] and [717]). The requisite certainty of intention was not established as the Samsuddin Estate Beneficiaries had put forth multiple, inconsistent versions of the oral representations made by Mustaq, the occasions

Version No 1: 15 May 2024 (12:48 hrs)

when these representations were made, and the persons to whom they were made (GD at [683] and [698]).

49 The requisite certainty of subject matter was also not established as there were numerous inconsistencies with respect to what the "Family Assets" encompassed within the pleadings of the Samsuddin Estate Beneficiaries and the evidence advanced in their affidavits and at the trial (GD at [708]). In any event, it was not possible in law for a settlor to create a trust over property that the settlor did not own at the point of creating the trust (GD at [714]).

50 Finally, the requisite certainty of object was not established as the Samsuddin Estate Beneficiaries' evidence in relation to the alleged beneficiaries of the trust was wholly inadequate (GD at [711]).

Mustaq's breaches of his duties as executor and trustee of the Samsuddin Estate and as administrator and trustee of the Mustafa Estate

51 The Judge considered that insofar as Mustaq had oppressed the Samsuddin-Mustafa Estates prior to becoming the executor and trustee of the Samsuddin Estate and the administrator and trustee of the Mustafa Estate, Mustaq did not inform the Claimant Beneficiaries of the wrongdoing, nor did he take any steps to rectify such wrongdoing. The Judge was also satisfied that, insofar as such conduct occurred after Mustaq's appointments, Mustaq was clearly party to such wrongdoing and likewise did not alert the Claimant Beneficiaries to, or take any steps to rectify, the wrongdoing (GD at [722]–[723] and [778]–[779]).

52 The evidence also showed that when the Mustafa Estate Beneficiaries sought information from Mustaq regarding the Mustafa Estate and its shares in MMSCPL, Mustaq withheld the truth from them by stonewalling and lying. The

Version No 1: 15 May 2024 (12:48 hrs)

Judge thus found that the claim against Mustaq for breach of his duties as administrator and trustee of the Mustafa Estate was made out (GD at [780] and [782]).

53 In this connection, the Judge also rejected the Mustaq Group's defence that the Mustafa Estate Beneficiaries' claim was time-barred by s 23(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), (the "Limitation Act"). The Judge noted that s 23 of the Limitation Act was expressed to be subject to s 22(1), which provided that no period of limitation shall apply to an action by a beneficiary under a trust (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy or (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use. Moreover, the Trustees Act (Cap 337, 2005 Rev Ed) defined "trustees" as encompassing personal representatives which included administrators such as Mustaq. The Judge thus concluded that s 23(*a*) of the Limitation Act did not apply to the Mustafa Estate Beneficiaries' claims in Suit 9 against Mustaq for wrongdoing relating to the Mustafa Estate's shares in MMSCPL (GD at [781]–[782]). The Mustaq Group has not appealed against the Judge's decision on this point.

54 Accordingly, the Judge found that Mustaq was in breach of his duties as: (a) executor and trustee of the Samsuddin Estate; and (b) administrator and trustee of the Mustafa Estate.

The Mustaq Group's defences

55 The Judge found that the elements of the defences of laches raised by the Mustaq Group were not established as they could not show that there was

Version No 1: 15 May 2024 (12:48 hrs)

inordinate delay on the part of the Claimant Beneficiaries in bringing proceedings (GD at [735]), for the following reasons:

(a) The documents relied upon by the Mustaq Group to prove Mustaq's and Samsuddin's awareness of the 5 January 1995 Allotment and the 11 December 2001 Allotment were neither shown to be authentic, nor that they were signed by Mustafa and/or Samsuddin (GD at [748]).

(b) The Judge rejected the argument that Samsuddin would have known that directors' fees were paid to Mustaq and Ishret from 2002 to 2011 because Samsuddin himself had received yearly directors' fees between 1990 and 2002 and had signed AGM minutes approving the payment of those fees. The authenticity of the minutes relied upon by the Mustaq Group was not admitted by the Claimant Beneficiaries, and Mustafa and Samsuddin's signatures did not appear on subsequent AGM minutes (GD at [526] and [749]).

(c) The Judge accepted that the Claimant Beneficiaries did not rush to take action after hearing about the Cashback Scheme in 2013 because they needed time to make further enquiries and to find out more about the respective estates' shares in MMSCPL and their rights. They also met with no substantive answers from Mustaq, who instead diverted or deflected their enquiries by advancing various proposals. Mustaq had also subjected the Claimant Beneficiaries to financial pressure through monthly dividend payments which started after their enquiries commenced, which were halved when Mustaq could not get a draft settlement deed signed, and which ceased shortly after the commencement of Suit 1158 and Suit 9. Further, Ayaz's and Fayyaz's

Version No 1: 15 May 2024 (12:48 hrs)

lack of familiarity with corporate matters meant that they only found out in 2016 and 2018 respectively about the Mustaq Groups' wrongdoing after one Rajesh Bafna ("Rajesh") was engaged to investigate the affairs of the Mustafa Estate and MMSCPL (GD at [37], [434] and [754]–[755]).

(d) Although Samsuddin signed Samsuddin's Will reflecting his MMSCPL shareholding to be 15.12%, the Judge accepted that Samsuddin felt helpless to challenge Mustaq openly about the value of his shareholding reflected in Samsuddin's Will in light of Samsuddin's illiteracy in English and very basic education (GD at [757]).

56 In addition, the Judge found that the Mustaq Group failed to establish their assertion that they were prejudiced by the loss of power, custody and/or possession of contemporaneous records due to the passage of time, as they did not explain exactly what records were lost and how the loss of those alleged records adversely impacted their case (GD at [758]).

57 As for the defence of acquiescence, there was no evidence of any representation being made by the Claimant Beneficiaries to the Mustaq Group in circumstances that could found an estoppel, waiver or abandonment of their rights, nor was there evidence of prejudice to the Mustaq Group (GD at [759]).

58 Finally, the Judge rejected the Mustaq Group's allegations that the Claimant Beneficiaries had commenced the High Court Suits for an "improper collateral purpose" and "in bad faith". The Mustaq Group was unable to substantiate their allegations that the High Court Suits were commenced to retaliate against Mustaq for refusing their "unreasonable and excessive demands for more gratuitous property, assets and financial benefits" (GD at [762]–[763]).

Version No 1: 15 May 2024 (12:48 hrs)

Reliefs granted and costs

Suit 1158 and Suit 780

59 Consequent to the Judge's findings that the 1995 and 2001 Allotments were oppressive (see [33]–[34] above), the Judge granted the declarations and orders sought by the Claimant Beneficiaries in respect of those allotments, *ie*, that they were null and void and of no effect, and ordered that they be set aside (GD at [334]).

60 Although the Judge found that there was a *prima facie* case that the 1991 and 1993 Allotments were oppressive *vis-à-vis* Samsuddin (see [35]–[37] above), the Judge declined to set aside the allotment on 27 June 1991 as doing so would adversely affect the rights of the Mustafa Estate Beneficiaries who were not joined as parties in Suit 780. As for the allotments in 1993, the Judge declined to set those aside as doing so would produce an anomalous and untenable result whereby in Suit 780, the rightful shareholding positions of Mustafa and Samsuddin before the 5 January 1995 Allotment differed from what they were in Suit 1158 (GD at [381] and [386]–[388]).

61 The Judge found it appropriate to order that Mustaq and Ishret buy out the shares of the Mustafa-Samsuddin Estates, taking into account the setting aside of the 1995 and 2001 Allotments, and in accordance with the terms set out in Annex A of the GD. The price at which the shares were to be bought out was to be determined by an independent valuer (the "Valuer"), after taking into account all moneys of MMSCPL that had been misappropriated according to the Judge's findings and making adjustments to offset the effects of the oppressive and/or unjust conduct of the Mustaq Group (GD at [788]–[790]).

Version No 1: 15 May 2024 (12:48 hrs)

62 The Judge also granted a declaration that Mustaq had breached his duties as executor and trustee of the Samsuddin Estate. However, the Judge did not make a separate order for assessment of damages as regards the Samsuddin Estate Beneficiaries as the losses suffered by the Samsuddin Estate were found to be sufficiently addressed *via* the remedy of the share buy-out (GD at [793]).

63 Further, the Judge declined to:

(a) wind up MMSCPL as the company was a viable going concern based on its audited financial statements and the expert reports adduced (GD at [784]–[786]);

(b) grant the declaration sought by the Samsuddin Estate Beneficiaries that Ishret was not the beneficial owner of the shares registered in her name and that all allotments of shares to her were null and void, as there was no evidence or legal basis to support the declaration sought (GD at [791]); and

(c) grant an order that MOM investigate the Cashback Scheme as MOM was not a party to the proceedings and the proper avenue for seeking such a prayer lay in applying for a mandatory order and not a civil action (GD at [792]).

Suit 9

64 In respect of Suit 9, the Judge granted (GD at [796]–[798]):

(a) a declaration that Mustaq had breached his duties as administrator and trustee of the Mustafa Estate, the revocation of Mustaq's LAs and an order that a professional third-party administrator be appointed to take over from Mustaq as executor (meaning "as administrator") and trustee of the Mustafa Estate;

Version No 1: 15 May 2024 (12:48 hrs)

(b) an order that Mustaq give an account of his administration of the Mustafa Estate, and a declaration that Mustaq was liable to account to the Mustafa Estate for the losses caused to the estate by his breaches of duty on a wilful default basis; and

(c) liberty for the Mustafa Estate Beneficiaries to apply for further orders in respect of any losses suffered by the estate, as determined by the account and at that stage necessary adjustments could be made to prevent double recovery in view of the remedy granted in Suit 1158 for the buy-out of the estate's shares.

Costs

65 As to costs, the Judge ordered that (GD at [804]–[806]):

(a) Mustaq and Ishret were jointly and severally liable to pay costs to the Mustafa Estate Beneficiaries amounting to $400,000 (excluding disbursements) in respect of Suit 1158 and a further $400,000 (excluding disbursements) in respect of Suit 9; and

(b) the Mustaq Group was liable to pay costs to the Samsuddin Estate Beneficiaries fixed at $450,000 (excluding disbursements) in respect of Suit 780.

The parties' cases on appeal

66 As we have noted above, multiple appeals were filed by members of the Mustaq Group and the Samsuddin Estate Beneficiaries against different aspects of the Judge's findings in each of the High Court Suits. In the interest of coherence and conciseness, we think it appropriate to address the appeals raised

Version No 1: 15 May 2024 (12:48 hrs)

under the broad categories of appeals filed by the Mustaq Group and those filed by the Samsuddin Estate Beneficiaries.

67 We set out a broad overview of each of the parties' cases on appeal and will elaborate on their submissions in greater detail at the appropriate junctures below.

The appeals filed by the Mustaq Group

68 The Mustaq Group's arguments in these appeals can be divided into the following categories.

69 First, the Judge erred in finding that the Mustafa Estate Beneficiaries had *locus standi* to bring the minority oppression claim as the *Wong Moy* exception only applied to proprietary claims and not minority oppression claims.

70 Second, the Judge erred in her findings regarding the Claimant Beneficiaries' allegations of the various instances of minority oppression:

(a) At the outset, the Mustaq Group contended that the alleged acts of misappropriation by Mustaq and/or the Mustaq Group were corporate wrongs committed against MMSCPL, and not wrongs suffered by the Mustafa-Samsuddin Estates in their capacities as MMSCPL's shareholders. Therefore, the Claimant Beneficiaries were not the proper plaintiffs and their minority oppression claims, which attempted to circumvent the reflective loss principle, were an abuse of process and should be dismissed.

Version No 1: 15 May 2024 (12:48 hrs)

(b) The Mustaq Group further submitted that the Judge erred in failing to consider that the legitimate expectations of Mustafa and Samsuddin had not been departed from in a commercially unfair manner.

(c) The Mustaq Group argued that in any case, the Judge erred in finding that the following acts complained of were oppressive:

(i) the 1995 and 2001 Allotments and the 1991 and 1993 Allotments;

(ii) the taking of the Directors' Loans;

(iii) the Cashback Scheme; and

(iv) the non-payment of dividends to the Claimant Beneficiaries and the simultaneous payment of directors' fees to Mustaq and Ishret.

71 We note that the Mustaq Group also raised contentions regarding the Judge's treatment of evidence relevant to various aspects of the Claimant Beneficiaries' allegations of oppression. These include:

(a) the weight ascribed by the Judge to allegedly hearsay evidence given by the Claimant Beneficiaries, including what Mustafa and/or Samsuddin had mentioned in relation to their participation in MMSCPL's management; and

(b) the authenticity and admissibility of the minutes of the extraordinary general meetings ("EOGMs") convened on 5 January 1995 and 11 December 2001 (respectively, the "5 January 1995 EOGM Minutes" and the "11 December 2001 EOGM Minutes" and

Version No 1: 15 May 2024 (12:48 hrs)

collectively, the "EOGM Minutes") and MMSCPL's general ledgers, despite these documents being authentic.

72 We will consider these evidentiary contentions when dealing with the relevant and related aspects of the Mustaq Group's appeals.

73 Third, the Judge erred in dismissing their defences premised on the doctrines of laches and acquiescence.

74 Fourth, the Judge erred in finding that Mustaq breached his duties as administrator and trustee of the Mustafa Estate and as executor and trustee of the Samsuddin Estate. Further, the Judge erred in granting the remedy of an account on a wilful default basis as it was not pleaded or sought by the Mustafa Estate Beneficiaries.

75 Finally, if their case on the Common Understandings was accepted, the following counterclaims raised by the Mustaq Group should be allowed, namely: (a) a declaration that Mustaq was the legal and beneficial owner of all MMSCPL shares held in the names of the Mustafa-Samsuddin Estates; and (b) that Fayyaz was in breach of his duties owed to the Samsuddin Estate as its executor and trustee.

The appeals filed by the Samsuddin Estate Beneficiaries

76 Despite having raised numerous allegations of oppressive conduct before the Judge, we note that the Samsuddin Estate Beneficiaries have only appealed against the Judge's findings that the following did not constitute oppressive conduct:

Version No 1: 15 May 2024 (12:48 hrs)

(a) Mustaq's procurement of MMSCPL to pay consultancy fees to Z&O;

(b) the Mustaq Group's procurement of unpaid credit sales from MMSCPL to related parties; and

(c) Mustaq's conduct of procuring MMSCPL to issue the Bonds.

77 Moreover, the Samsuddin Estate Beneficiaries argued that the Judge also erred in the following respects:

(a) First, the Judge erred in failing to make an order that the Mustaq Group's oppressive conduct in respect of the 1991 and 1993 Allotments be taken into account when valuing the buy-out price of the Samsuddin Estate's shares in MMSCPL or, alternatively, that damages be paid by the Mustaq Group in respect of the 1991 and 1993 Allotments.

(b) Second, the Judge erred in failing to make an order for a special audit and appointing the Valuer to look into the affairs and accounting records of MMSCPL to assist the Samsuddin Estate Beneficiaries uncover further potential wrongdoings.

(c) Third, the Judge erred in failing to award the Samsuddin Estate Beneficiaries costs on an indemnity basis.

Issues in the appeals

78 We propose to deal with the arguments raised in these appeals as canvassed above in the following manner.

79 We deal first with the preliminary matters raised by the Mustafa Estate Beneficiaries:

Version No 1: 15 May 2024 (12:48 hrs)

(a) As a preliminary issue, do the Mustafa Estate Beneficiaries have *locus standi* to bring the claims brought in Suit 1158 (which should otherwise be made by the Mustafa Estate itself) (the "*Locus Standi* Issue")?

(b) Was Mustaq the beneficial owner of all the shares in MMSCPL as the Mustaq Group claims, and if not, what were the legitimate expectations that Mustafa and Samsuddin were entitled to as shareholders (the "Ownership and Legitimate Expectations Issue")?

80 Second, we consider whether the following acts of the Mustaq Group complained of by the Claimant Beneficiaries have been established and/or are oppressive:

(a) the 1995 and 2001 Allotments;

(b) the 1991 and 1993 Allotments;

(c) the non-payment of dividends from 2000 to 2013, in the face of payment of substantial directors' fees to Mustaq and Ishret (the "Dividend-Fees Issue");

(d) the taking of the Directors' Loans (the "Directors' Loans Issue");

(e) the Cashback Scheme (the "Cashback Scheme Issue");

(f) the payment of consultancy fees from MMSCPL to Z&O (the "Consultancy Fees Issue");

(g) the credit sales from MMSCPL to related parties (the "Related-Parties Transaction Issue"); and

(h) MMSCPL's issuance of three-year bearer bonds for $75m in around February 2014 at 4.75% (the "Bonds Issue").

Version No 1: 15 May 2024 (12:48 hrs)

81 Third, we consider whether the Mustaq Group's defences of laches, acquiescence and time-bar have been made out (the "Defences Issue").

82 Fourth, we consider whether Mustaq has breached his duties as: (a) executor and trustee of the Samsuddin Estate; and (b) administrator and trustee of the Mustafa Estate (the "Estate Duties Issue").

83 Fifth, we consider Mustaq's counterclaims for beneficial ownership of all the shares in MMSCPL and for damages against Fayyaz in wrongfully suing him (the "Counterclaims Issue").

84 Finally, we will determine the reliefs that ought to be granted to each party in view of our findings on the issues listed above (the "Reliefs Issues").

Applicable principles for minority oppression claims

85 The following salient principles governing a claim for relief under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") for minority oppression merit noting. Commercial fairness is the touchstone by which the court determines whether to grant relief under s 216: see *Over & Over Ltd v Bonvest Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [81].

86 In assessing commercial fairness, it must be borne in mind that the essence of a claim for relief under s 216 of the Companies Act lies in upholding the commercial agreement between the shareholders of the company: see *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [29]. The court must take into account both the legal rights and the legitimate expectations of members in determining the commercial agreement between them. While these are usually enshrined in the company's constitution, in exceptional cases involving quasi-partnerships, the court may

Version No 1: 15 May 2024 (12:48 hrs)

take into account informal and undocumented understandings and assumptions: see *Over & Over* at [78] and [84]; *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 ("*Lim Kok Wah*") at [108].

87 In the present case, however, as the Mustafa Estate Beneficiaries highlight, it was not the Mustaq Group's pleaded case that MMSCPL was a quasi-partnership. Accordingly, the Mustaq Group cannot now rely on any informal or undocumented understandings and assumptions to assert the existence of any agreement between Mustaq, Samsuddin and Mustafa regarding the management and/or the beneficial ownership of MMSCPL.

The Mustaq Group's submission of no case to answer

88 Before we turn to our analysis of the appeals proper, we think it crucial to emphasise the significance of the Mustaq Group's submission of no case to answer, not least because this has a bearing on the requisite threshold of fact-finding that the Judge was required to apply as well as the threshold of appellate intervention that we are required to apply. To better understand this point, it is essential for us to first consider the effect of a defendant's submission of no case to answer.

89 Where such a submission has been made by the defendant, the claimant need only satisfy the court that there is *a prima facie case* on each of the essential elements of the claim in order to defeat the defendant's submission of no case to answer and secure judgment in its favour: see *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*") at [25] and [31].

90 As the Court of Appeal noted in *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [84], the burden to establish a *prima facie* case "is not difficult to discharge". In determining whether the

Version No 1: 15 May 2024 (12:48 hrs)

claimant has established a *prima facie* case, the court will assume that any evidence led was true, unless it was inherently incredible or offends common sense. Further, any reliance on circumstantial evidence need not give rise to an irresistible inference as long as the desired inference is one of the possible inferences: see *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 at [24]. Another significant consequence of a submission of no case to answer is that the affidavit of evidence-in-chief ("AEIC") adduced by the defendant would be expunged from the record of evidence before the trial judge (*TWG Tea Co Pte Ltd v Murjani Manoj Mohan* [2019] 5 SLR 366 ("*TWG Tea*") at [3]), and the defendant must give an undertaking not to call evidence: see *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae (CA)*") at [70].

91 Therefore, when considering the contentions raised by the Mustaq Group in the appeals before us, the issue is whether the Judge correctly found the Claimant Beneficiaries to have established a *prima facie* case: (a) of oppression in respect of the various instances of oppression relied on; and (b) that Mustaq had breached his duties as executor/administrator and trustee of the Mustafa-Samsuddin Estates. The Judge's focus would have been on evaluating the documentary evidence and witness testimonies advanced at trial to determine whether there was some *prima facie* evidence (*ie*, evidence which is not unsatisfactory and not unreliable) that supported the essential elements of the claims. If the Judge correctly identified the relevant evidence and did not take into account unsatisfactory and unreliable evidence, those findings ought not to be disturbed on appeal.

92 This brings us to the next important point on the evidential implications of a defendant's submission of no case to answer, *ie*, the expunging of the defendant's AEIC from the record of evidence before the trial judge: see *TWG*

Version No 1: 15 May 2024 (12:48 hrs)

Tea at [3]. This is also the consequence flowing from the defendant's failure to attend trial for cross-examination as prescribed under O 38 r 2(1) of the Rules of Court (2014 Rev Ed) ("2014 ROC"), which was applicable at the time of the trial. This provision states:

> **Evidence by affidavit (O. 38, r. 2)**
>
> **2.**—(1) Without prejudice to the generality of Rule 1, and unless otherwise provided by any written law or by these Rules, at the trial of an action commenced by writ, evidence-in-chief of a witness shall be given by way of affidavit and, unless the Court otherwise orders or the parties to the action otherwise agree, *such a witness shall attend trial for cross-examination and, in default of his attendance, his affidavit shall not be received in evidence except with the leave of the Court.*
>
> [emphasis added]

93 More importantly, a defendant who makes a submission of no case to answer has an obligation to give an undertaking not to call evidence. As the Court of Appeal explained in *Sakae (CA)* (at [70]):

> … [t]he rationale underlying the requirement that a defendant who makes a 'no case to answer' submission must undertake not to call evidence is that it is inappropriate for a judge to make any ruling on the evidence until it has been completely presented. Further, the imposition of such an undertaking avoids the prospect of the evidence being supplemented depending on the outcome of the court's evaluation of the plaintiff's case, as well as the expense and inconvenience that would arise from possibly having to recall witnesses in such circumstances …

Where a submission of no case to answer is advanced, therefore, the court is essentially left with the plaintiff's version of the story: see *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 1 SLR 847 at [34].

Version No 1: 15 May 2024 (12:48 hrs)

94 The principles discussed above may be summarised as such:

(a) The claimant bears the legal burden of adducing evidence to satisfy the court that a *prima facie* case on each of the essential elements of its claim has been established.

(b) Crucially, the defendant's obligation not to call evidence means that the defendant would be unable to adduce evidence to either disprove the claimant's position or weaken it. It follows that the defendant may only rebut the claimant's evidence by demonstrating that the evidence is inherently unreliable or unsatisfactory, such that the court ought not to rely on it.

(c) The court is thus left with evaluating the claimant's evidence and if, on a *prima facie* basis, the evidence satisfies all the ingredients or essential elements of the cause of action, judgment will be entered against the defendant: see *Ma Hongjin* at [32].

95 Therefore, in the present case, the Mustaq Group's submission of no case to answer meant that the Judge would be entitled to consider only the documents adduced and the testimonies of the witnesses called by the Claimant Beneficiaries at trial. The Mustaq Group is only entitled to challenge the evidence adduced by the Claimant Beneficiaries but is not entitled to adduce its own evidence to rebut the Claimant Beneficiaries' evidence. This follows from their obligation to provide an undertaking not to adduce evidence (and it is not disputed that such an undertaking was indeed provided), as well as the expunging of the relevant affidavits of evidence-in-chief of the various witnesses for the Mustaq Group.

Version No 1: 15 May 2024 (12:48 hrs)

96 With these principles in mind, we turn to consider the issues raised in the appeals, beginning first with the *Locus Standi* Issue.

The *Locus Standi* Issue

97 We deal first with the Mustaq Group's contention that the Mustafa Estate Beneficiaries have no *locus standi* to bring their minority oppression claims. Interestingly, the Mustaq Group did not make a similar contention that the Samsuddin Estate Beneficiaries had no *locus standi* to bring their minority oppression claims.

98 The general principles relating to a beneficiary's standing to bring an action on behalf of and for an estate are largely undisputed: generally, the proper party to obtain a remedy on behalf of and for an estate is the executor or administrator of the estate: see *Fong Wai Lyn Carolyn v Kao Chai-Chau Linda and others* [2017] 4 SLR 1018 ("*Fong Wai Lyn*") at [7]. In the present case, the Mustafa Estate Beneficiaries are neither the executor nor the administrator of the Mustafa Estate.

99 To overcome this, the Mustafa Estate Beneficiaries relied on the *Wong Moy* exception. In *Wong Moy*, the Court of Appeal held that a beneficiary would have the standing to commence an action on behalf of the estate to protect the estate's assets; crucially, there is no restriction as to the kinds of action that a beneficiary may institute to protect the estate's assets, save that the beneficiary cannot be in a better position than a trustee carrying out his duties in a proper manner: see *Wong Moy* at [12], [14], [24] and [28].

100 In response, the Mustaq Group contended that the *Wong Moy* exception is limited to proprietary claims that beneficiaries of an estate intend to bring. In support, the Mustaq Group referred to the High Court's decision in *Sia Chin*

Version No 1: 15 May 2024 (12:48 hrs)

Sun v Yong Wai Poh (Sia Tze Ming, non-party) [2019] 3 SLR 1168 ("*Sia Chin Sun*"), and in particular the following statement (at [27]):

> [A] beneficiary would not have *locus standi* to pursue a personal claim with pecuniary reliefs on behalf of the estate. Any proceedings must be grounded in the need to protect and preserve the assets of the estate.

101 They further argued that since the Claimant Beneficiaries' claim for minority oppression was essentially a "personal claim with pecuniary reliefs", the Claimant Beneficiaries were not entitled to rely on the *Wong Moy* exception to bring their minority oppression claim. We note that the Mustaq Group maintained this same argument in these appeals.

102 In holding that the Mustafa Estate Beneficiaries had *locus standi,* the Judge considered that the court in *Sia Chin Sun* intended, by its use of the term "proprietary claim", to refer to any claim which had as its object the protection and preservation of the assets of the estate, and found that the Mustafa Estate Beneficiaries' action for minority oppression under s 216 of the Companies Act had as its object the protection and preservation of the estate's shares in MMSCPL and the rights attached to those shares. The Judge further found that the claims of the Mustafa Estate Beneficiaries fell within the *Wong Moy* exception (see GD at [94]–[104]).

103 We agree with the Judge's holding that the Mustafa Estate Beneficiaries do have *locus standi* to advance their oppression claims against the Mustaq Group, although we differ slightly in our reasons for concluding as such.

104 At the outset, we do not think the passage in *Sia Chin Sun* cited above and relied on by the Mustaq Group stands for any legal proposition regarding the limits as to the type of claims that a beneficiary may bring on behalf of the

Version No 1: 15 May 2024 (12:48 hrs)

estate. Rather, the court there was considering whether a beneficiary has *locus standi* to bring a personal claim on behalf of and for an estate: see *Fong Wai Lyn* at [7]. It was in this context that the court referred to the general proposition that a beneficiary has no *locus standi* to bring such a claim.

105 That, however, does not mean a beneficiary cannot bring claims against a defendant where the claim has as its object the protection or preservation of the estate's assets. This proposition is not disputed, and we note that it is consistent with the principles established in *Wong Moy*, including the *Wong Moy* exception. Accordingly, we think it was unnecessary for the Judge to determine whether the Mustafa Estate Beneficiaries' claims were "proprietary claim[s]". Indeed, as mentioned at [29] of *Sia Chin Sun*, the applicability of the *Wong Moy* exception was not restricted to the protection of certain classes of assets, excluding money.

106 The sole question that arises on the *Locus Standi* Issue, therefore, is whether the circumstances surrounding the Mustafa Estate Beneficiaries' claims in Suit 1158 fall within the *Wong Moy* exception. In *Wong Moy*, the Court of Appeal held at [12] that a beneficiary may in certain circumstances institute action to recover assets of the estate. Such special circumstances are not confined solely to cases where the personal representative has defaulted in acting to recover the property, and all the circumstances of the case should be considered, including the nature of the assets, the position of the personal representative and the reason for the default of the personal representative. It would also be pertinent to consider whether the circumstances made it impossible or seriously inconvenient for the representative to take proceedings: see *Wong Moy* at [24] and [28].

Version No 1: 15 May 2024 (12:48 hrs)

107 In our view, it is quite obvious that the special circumstance in the present case is that the Mustafa Estate Beneficiaries are suing Mustaq, who is also the sole administrator and trustee of the Mustafa Estate. It is quite clear that Mustaq would not commence proceedings on behalf of the Mustafa Estate against himself. The claims of the Mustafa Estate Beneficiaries fall within the classic example where the personal representative is the person against whom the claims are being made.

108 We are therefore of the view that the Mustafa Estate Beneficiaries have the requisite *locus standi* to make the claims which they did in the present case against Mustaq (and the Mustaq Group) in Suit 1158.

The Ownership and Legitimate Expectations Issue

109 The next issue we consider is whether the Mustaq Group has established its contention that Mustaq is the beneficial owner of all the shares in MMSCPL, and that the Claimant Beneficiaries are thus not entitled to complain of their interests being oppressed.

110 In the proceedings below, the Mustaq Group argued that Mustafa and Samsuddin held their shares in MMSCPL on a resulting trust for Mustaq as Mustaq had paid for those shares (GD at [128]). This argument has not been seriously pursued in these appeals. Alternatively, the Mustaq Group argued that Mustafa and Samsuddin held their shares on a common intention constructive trust for Mustaq pursuant to the 1973 Common Understanding, which was subsequently confirmed pursuant to the 2001 Common Understanding (see [28] above).

111 In these appeals, the Mustaq Group argued that the minority oppression claims by the Claimant Beneficiaries had no merit because the legitimate

Version No 1: 15 May 2024 (12:48 hrs)

expectations of Mustafa and Samsuddin had not been departed from in a manner unfair to them. In gist, they argued that: (a) the evidence showed that Mustaq was the only person responsible for managing the business and that Mustafa and Samsuddin never saw themselves as the true owners of, or persons responsible for managing, the business; (b) there was no evidence that Mustafa and Samsuddin ever objected to the decisions made in respect of the business; and (c) the evidence did not support the Judge's findings in relation to the Common Understandings and Mustafa's and Samsuddin's ownership of MMSC and subsequently, MMSCPL. These arguments were contested by both the Mustafa Estate Beneficiaries and the Samsuddin Estate Beneficiaries.

112 We agree with the Judge's conclusion that the evidence available in the present case does not support the Mustaq Group's contention that Mustaq was the beneficial owner of all the shares in MMSCPL. In particular, the following factors, which we elaborate on in turn, militate against any suggestion that Mustaq was the beneficial owner of all the shares in the company:

(a) Mustafa and Samsuddin were allotted shares over the years, and the Mustaq Group's contention that Mustafa had paid for those shares is not borne out by the evidence.

(b) Mustafa and Samsuddin received partnership income from MMSC and dividends from MMSCPL.

(c) The alleged Common Understandings are undermined by the evidence.

(d) The Mustaq Group's attempt to introduce the narrative that the shares in MMSCPL held by the Mustafa-Samsuddin Estates were given by Mustaq (the "Gift Allegation") also undermines the Common

Version No 1: 15 May 2024 (12:48 hrs)

Understandings which were that these shares were held on trust for Mustaq.

113 Our conclusion makes it unnecessary for us to examine whether Mustaq was the only person responsible for managing the business and/or whether the oral evidence of the Claimant Beneficiaries as to the involvement of Mustafa and Samsuddin in the management of MMSCPL was credible. There is also no need to consider the evidence as to whether Mustafa and Samsuddin saw themselves as owners or controllers of MMSCPL.

Allotment of shares to Mustafa and Samsuddin and payment for those shares

114 In the first place, the fact that Mustafa and Samsuddin remained as shareholders in MMSCPL and were allotted shares over the years is indicative that Mustaq was not the beneficial owner of all the shares in MMSCPL, and Mustafa and Samsuddin were also shareholders of the company. If, as the Mustaq Group claims, MMSC was formed purely as a formality to facilitate the move of Mustaq's business to the New Premises, there would have been no reason for Mustafa and Samsuddin to be shareholders when MMSCPL was incorporated. Similarly, if MMSC and subsequently, MMSCPL, belonged solely to Mustaq, there would have been no reason for Mustaq to allot shares to Mustafa and Samsuddin between 1989 and 2001 (see [15] above).

115 In this regard, the Mustaq Group contended that Mustafa and Samsuddin held their shares in MMSCPL on a resulting trust for Mustaq as he had paid for them. In our view, this contention is not borne out by the documentary evidence, namely the correspondence between the Commissioner of Estate Duties (the "CED") and Mallal & Namazie ("M&N") who represented the Mustafa Estate and were taking instructions from Mustaq.

Version No 1: 15 May 2024 (12:48 hrs)

116 By a letter dated 29 November 2002, the CED wrote to the Mustafa Estate seeking particulars regarding the names of those in the Mustafa Estate who held shares in MMSCPL, whether Mustafa had provided the funds for the purchase of those shares and "if not, [to] state their source of funds". By a letter dated 11 December 2002, M&N responded stating that Mustaq, Mustafa, Samsuddin and Ishret each held various amounts of shares in the company, and more significantly, that M&N was "ascertaining whether [Mustafa] advanced any funds for the purchase of shares by the other shareholders". If Mustaq had in fact paid for Mustafa's shares as the Mustaq Group claims, he would have instructed M&N to inform the CED of that fact. In fact, by a further letter dated 16 June 2003, M&N informed the CED that "[Mustafa] did not provide the funds for the shares allocated to the 3 persons therein mentioned".

117 The Mustaq Group's only explanation in this regard was that the CED's question was whether Mustafa had paid for other people's shares in MMSCPL, and not whether Mustaq had paid for Mustafa's shares. This submission is untenable. As mentioned, the query initially posed by the CED in his letter of 29 November 2022 was whether Mustafa had provided the funds for the purchase of the shares held by Mustafa's Estate, and "if not, [to] state their source of funds". It was for Mustaq to instruct M&N to inform the CED that he paid for the shares of Mustafa and Samsuddin, if that were true. In our view, the Judge was entitled to take into account this correspondence to determine whether Mustaq had paid for such shares and to conclude that he had not proved this.

Payment of partnership income and dividends to Mustafa and Samsuddin

118 In concluding that Mustaq was not the beneficial owner of all the shares in MMSCPL, the Judge also had regard to the fact that Mustafa and Samsuddin

Version No 1: 15 May 2024 (12:48 hrs)

received income as partners of MMSC, which was declared as trade income in their NOAs for income tax. The Judge further noted that following MMSCPL's incorporation, when MMSCPL declared dividends between 1992 and 1996, Mustafa and Samsuddin received dividends from the company which were declared in their NOAs for the years 1994 to 1998. Furthermore, between 2014 and 2017, the dividend payments to the Mustafa Estate were distributed to the Mustafa Estate Beneficiaries in the proportion of their respective shareholdings as stated in the Syariah Court Inheritance Certificate. The Judge also rejected the Mustaq Group's assertion that these were merely "goodwill payments" from Mustaq as, if that were the case, there would have been no reason for Mustafa and Samsuddin to pay income tax on those payments (GD at [157]–[162]).

119 On appeal, the Mustaq Group argued that the Judge erred in assuming that the income declared by Mustafa and Samsuddin in their NOAs was paid by MMSC, as there was no evidence to support this. Furthermore, as MMSC was deregistered on 30 September 1989, the "Partnership Income" declared in Mustafa's and Samsuddin's NOAs for 1990, 1991 and 1993 could not have been paid in relation to MMSC. Finally, the Mustaq Group submitted that any payment of partnership income and/or dividends, whether as goodwill payments or not, would be taxable and the Judge erred in concluding that these were not goodwill payments because income tax had been paid thereon. We do not agree with these submissions.

120 We agree with the Judge that the payment of remuneration by MMSC to Mustafa and Samsuddin militates against any finding that Mustaq was the beneficial owner of all the shares in MMSCPL, or any common understanding to that effect. The NOAs filed by Mustafa and Samsuddin from 1988 to 1993 reflect that they had received various amounts as "Trade" and "Interest" income. In this regard, the Mustaq Group submitted that the income declared in

Version No 1: 15 May 2024 (12:48 hrs)

Mustafa's and Samsuddin's NOAs for 1990, 1991 and 1993 could not have been paid in relation to MMSC as MMSC was deregistered on 30 September 1989. However, this argument fails to account for the income received by Mustafa and Samsuddin in 1988, as evidenced in their NOAs for that year. Even in the case of the NOAs filed for 1989, income might have been collected from MMSC after MMSC had been deregistered, if the income arose from business conducted before deregistration.

121 Furthermore, while the Mustaq Group suggested that the income received by Mustafa and Samsuddin in the other years could have come from other sources, they did not identify those other alleged sources, nor was it alleged that Mustafa and Samsuddin were engaged in any other employment or business activity. Moreover, given that Mustafa and Samsuddin were both illiterate, it would not be surprising if Mustaq had assisted them with filing their NOAs. In any event, if Mustafa and Samsuddin had in fact been engaged in some other employment or business activity, it is likely that Mustaq would have known of the same and elaborated on it. But he did not as he elected not to testify.

122 We also agree with the Judge's finding that the payment of dividends to Mustafa and Samsuddin between 1994 and 1998, and the Mustafa Estate Beneficiaries between 2014 and 2017 following the incorporation of MMSCPL, undermines the Mustaq Group's assertion that Mustaq was the beneficial owner of all the shares in the company. The Mustaq Group contended with respect to the dividend payments between 2014 and 2017 that by then, Mustaq had already given shares to the Mustafa-Samsuddin Estates. Even if we accept the Mustaq Group's assertion that Mustaq had in fact given shares to the Mustafa-Samsuddin Estates by 2014 (which we do not for the reasons set out at [134]–[139] below), this does not explain why the dividends declared by MMSCPL

Version No 1: 15 May 2024 (12:48 hrs)

between 1992 and 1996 (which was before Mustafa or Samsuddin passed away in 2001 and 2011 respectively) were paid roughly in proportion to Mustafa's and Samsuddin's registered shareholdings if Mustaq was the beneficial owner of all the shares in MMSCPL (GD at [158]–[159]).

123 We also reject the Mustaq Group's contention that the Judge erred in finding that there would have been no need for Mustafa and Samsuddin to declare the partnership income and dividend payments in their NOAs if they were indeed goodwill payments from Mustaq. The Mustaq Group had not referred to any authority in support of its argument that any payment from MMSC would have been taxable and had to be declared, regardless of whether they were goodwill payments or not.

124 In addition, as the Judge observed at [161] of the GD, the transcript of a conversation that had occurred on 4 September 2016 (the "4 September 2016 Transcript") reflects that when Ayaz expressed unhappiness with the quantum of monthly dividends received by the Mustafa Estate, Mustaq did not allege that those payments were gratuitous payments from Mustaq, and not dividends as asserted by Ayaz.

The Common Understandings

125 As we mentioned at [110] above, the Mustaq Group's assertion that the shares in MMSCPL were held on a common intention constructive trust for Mustaq is based on the Common Understandings. However, in our view, the alleged Common Understandings are undermined by the available evidence.

126 We have rejected the Mustaq Group's case that Mustaq was the beneficial owner of all the shares in MMSCPL on the basis of: (a) the allotment of shares to Mustafa and Samsuddin and the Mustaq Group's failure to prove

Version No 1: 15 May 2024 (12:48 hrs)

that Mustaq had paid for the shares; and (b) the continued payment of partnership income and dividends to Mustafa and Samsuddin. It follows that the Common Understandings, which are premised on Mustaq's sole ownership of MMSC and subsequently, the shares in MMSCPL (see [28] above), must necessarily be rejected.

127 Further, and in any event, the following evidence undermines the alleged Common Understandings and reinforces our rejection of the understandings. First, the pre-action correspondence between the lawyers of the Mustafa Estate Beneficiaries and Mustaq between 13 July 2016 and 27 December 2016 (the "Pre-action Correspondence") suggests that Mustaq never regarded himself as the beneficial owner of all the shares in MMSCPL. The Pre-action Correspondence is summarised by the Judge at [168] of the GD, and we only set out the pertinent portions:

> (a) On 13 July 2016, the Mustafa Estate Beneficiaries' lawyers, Darshan & Teo LLP ("D&T"), wrote to Mustaq requesting, among others, the latest financial statements of all companies held under the Mustafa Estate. The letter also requested that Mustaq refrain from pursuing any reduction or dilution of any shareholding in any entity in which the Mustafa Estate had an interest unless written confirmation was procured from Ayaz. In Mustaq's reply on 4 August 2016, Mustaq did not make any mention of the Common Understandings or his beneficial ownership of all the shares in MMSCPL, much less allege that the Mustafa Estate was not entitled to make such requests since it did not own any shares in MMSCPL.
>
> (b) On 3 October 2016, D&T reiterated to Mustaq that the latter was not to pursue any reduction or dilution of any shareholding in any entity

Version No 1: 15 May 2024 (12:48 hrs)

in which the Mustafa Estate had an interest without written confirmation from Ayaz. On 12 October 2016, Osama, Shams, Shama and Bushra replied, stating that there was no basis for D&T's demands given that Mustaq had single-handedly steered the company since its inception. Yet again, no mention was made of the Common Understandings.

(c) On 7 November 2016, Mustaq's then lawyers, Rajah and Tann Singapore LLP ("R&T") wrote to D&T stating that Mustaq intended to take steps to transfer the Mustafa Estate's shares in MMSCPL to the Mustafa Estate Beneficiaries, in accordance with the Certificate of Inheritance issued by the Syariah Court. Again, if Mustaq in fact owned the entirety of the shares in MMSCPL, it is curious that he would agree to transfer the Mustafa Estate's shares to the Mustafa Estate Beneficiaries.

(d) On 27 December 2016, in a letter to D&T, R&T stated that there was no legal basis for the request for financial statements for 2001, given that the Mustafa Estate Beneficiaries' interest had not even arisen prior to July 2001. It is significant that R&T's basis for denying the request for financial statements was not, as the Mustaq Group now asserts, that the shares in MMSCPL belonged solely to Mustaq and so the Mustafa Estate Beneficiaries had no entitlement to such information. R&T also stated that the Mustafa Estate's interest was limited to the shares in MMSCPL and Mustafa Air Travel Pte Ltd ("MAT") as stated in the schedule attached to the grant of probate in relation to the Mustafa Estate, which directly contradicts the Mustaq Group's assertion that Mustaq beneficially owned all the shares in MMSCPL.

Version No 1: 15 May 2024 (12:48 hrs)

128 Second, Mustaq had indicated, or signed documents indicating, that Mustafa and Samsuddin owned shares in MMSCPL without any reservation that the shares were held on trust for him according to the Common Understandings. On 26 October 2002, Mustaq's then lawyers (M&N, who acted for him in his capacity as administrator of the Mustafa Estate) submitted an estate duty form, signed by Mustaq, to the CED which stated that the Mustafa Estate owned 1,986,170 shares in MMSCPL worth $16,157,492.95. The form also stated that the property in respect of which the grant of probate in relation to the Mustafa Estate was to be made "devolves to and vests in the personal representative of [Mustafa] by law". On 15 July 2003, the CED issued a Schedule of Assets listing Mustafa's shares in MMSCPL and MAT. On 16 September 2003, in his petition to the High Court for the grant of letters of administration for the Mustafa Estate, Mustaq stated that Mustafa's assets – excluding what Mustafa did not own beneficially – were worth over $3m, and he affirmed on oath the truth of the petition's contents. The Mustafa Estate Grant of LAs was eventually issued on 28 January 2004. Importantly, Mustaq did not mention in any of these court filings and official correspondences that the MMSCPL shares under Mustafa's name were held on trust for Mustaq.

129 As for the MMSCPL shares held by the Samsuddin Estate, Samsuddin's Will described Samsuddin as a shareholder of MMSCPL, beneficially holding 2,016,993 ordinary shares in MMSCPL. As the Judge observed at [173] of the GD, this description could not have escaped Mustaq's notice, since he was the joint executor of Samsuddin's Will with Fayyaz, and one would have expected Mustaq to express consternation, if not indignation, if the Common Understandings were true. We add that Mustaq made the arrangement for Samsuddin to execute Samsuddin's Will before a lawyer (see [179] below). Similarly, in an affidavit filed jointly by Mustaq and Fayyaz dated 31 October

Version No 1: 15 May 2024 (12:48 hrs)

2012, reference was made in the schedule of assets to Samsuddin's shares in MMSCPL without any mention of Mustaq's alleged beneficial ownership of the shares.

130 The Mustaq Group contended that the Judge had placed undue weight on the Pre-action Correspondence, proffering several reasons for Mustaq's failure to mention the Common Understandings or his beneficial ownership of all the shares in MMSCPL.

(a) First, Mustaq was pressured into preparing a Deed of Settlement dated 29 March 2016 (the "29 March 2016 Deed") which provided that the Mustafa-Samsuddin Estates were each to be given 15% in MMSCPL, BID, MAT, Mustafa Foreign Exchange Pte Ltd and Mustafa Development Pte Ltd. Although the Deed was not eventually signed by the Mustafa Estate Beneficiaries, Mustaq's actions were influenced by the 29 March 2016 Deed.

(b) In any event, the Pre-action Correspondence was irrelevant because Mustaq's position was always that he was the beneficial owner of all the shares in MMSCPL, as reflected in the 4 September 2016 Transcript.

(c) The fact that the Common Understandings were not mentioned in the Pre-action Correspondence was consistent with the narrative that Mustaq had given his shares in MMSCPL to Mustafa and Samsuddin. This was also the basis on which Mustaq submitted the Estate Duty Return to the CED on 26 October 2002.

Version No 1: 15 May 2024 (12:48 hrs)

131 Dealing first with the last-mentioned point, this submission was again contingent on the court allowing the Mustaq Group to recast their pleadings which, for the reasons set out at [134]–[139] below, we do not.

132 We are also not convinced that Mustaq's instructions to R&T and consequently, R&T's communications with D&T, would have been influenced by the 29 March 2016 Deed. Even if Mustaq in fact had intended to give shares in MMSCPL and several related companies to the Claimant Beneficiaries in settlement of the dispute between the parties, we cannot see how that would somehow cause him to omit making reference to the Common Understandings in the Pre-action Correspondence and making clear that as a result, until the 29 March 2016 Deed was signed, the shares in MMSCPL belonged beneficially to him.

133 The 4 September 2016 Transcript which the Mustaq Group relied on also contained concessions by Mustaq that he was not the beneficial owner of all the shares in MMSCPL. For instance, Mustaq stated that the Mustafa Estate's shares in MMSCPL "can never be zero". Mustaq also stated that he had "given it … from [his] side, as much as possible", presumably referring to the MMSCPL shares in Mustafa's and Samsuddin's names.

The Gift Allegation

134 Finally, we deal with the Mustaq Group's attempt to introduce the Gift Allegation. In the trial below, the Mustaq Group applied on the 13th day of the trial to amend their defences in Suit 1158 and Suit 9, purportedly to regularise the pleadings. The amendments sought to introduce a new narrative which posited that while MMSCPL belonged entirely to Mustaq, Mustaq had given 14.89% of the shares in MMSCPL to the Mustafa Estate sometime in 2002, and

Version No 1: 15 May 2024 (12:48 hrs)

15.12% of the shares to the Samsuddin Estate sometime in 2004, but later decided to revoke the gifts when the Mustafa-Samsuddin Estates commenced claims against Mustaq (*ie*, the Gift Allegation). According to the Mustaq Group, the Gift Allegation explained why: (a) dividends were declared and paid to the Mustafa-Samsuddin Estates (see [122] above); and (b) Mustaq had not mentioned the Common Understandings in the Pre-action Correspondence or in his communications with the CED (see [130(c)] above).

135 The Judge dismissed the Mustaq Group's application to amend their defence in order to introduce the Gift Allegation. There is no permission for them to appeal against this decision. In any event, there is no merit in the Gift Allegation.

136 As the Judge noted, the Gift Allegation is contrary to the Mustaq Group's pleaded defence that pursuant to the Common Understandings, Mustaq had always enjoyed uninterrupted beneficial ownership of all the shares in MMSCPL. Further, the Mustaq Group proffered no explanation as to why such an important aspect of their defence only surfaced mid-trial (GD at [178]). We further note that there was no mention as to when exactly Mustaq revoked the gift of the shares to the Mustafa-Samsuddin Estates, and there was no reference to any letter or e-mail by which Mustaq purportedly revoked the gift.

137 On appeal, the Mustaq Group argued that the Gift Allegation had been set out in Mustaq's 19th affidavit in Suit 1158 dated 26 October 2020 and his 22nd affidavit in Suit 780 dated 26 October 2020, which he had affirmed before a commissioner of oaths on 21 August 2020, two months before the trial started on 12 October 2020. The Mustaq Group contended that this explained the belated introduction of the Gift Allegation.

Version No 1: 15 May 2024 (12:48 hrs)

138 We find this submission to be unmeritorious. This does not explain why the Mustaq Group had waited until the trial had proceeded for 13 days before making an application to amend their pleaded defence, especially given that the Gift Allegation is completely at odds with the 1973 Common Understanding. Moreover, as contended by the Mustafa Estate Beneficiaries, the Mustaq Group's reference to paragraphs in Mustaq's affidavits of evidence-in-chief in the High Court Suits ("Mustaq's AEICs") which they claim had set forth the Gift Allegation is improper, as Mustaq's AEICs have been expunged from the record since the Mustaq Group elected to submit no case to answer (see [92]–[93] and [95] above).

139 In the premises, we agree with the Judge's conclusion that the Mustaq Group's belated attempt to rely on the Gift Allegation exposed their claim concerning the Common Understandings as a sham.

Conclusion on the ownership of the shares in MMSCPL

140 For the reasons stated above, we reject the Mustaq Group's contention that Mustaq was the beneficial owner of all the shares in MMSCPL, whether on the basis of a resulting trust or a common intention constructive trust, pursuant to the Common Understandings. It follows that Mustaq is not entitled to rely on his purported ownership of MMSCPL as a defence against the various acts of oppression alleged by the Claimant Beneficiaries. We therefore proceed to examine whether each of the alleged acts of oppression is established.

141 At this juncture, it merits noting that the Mustaq Group's pleaded defence in respect of the Claimant Beneficiaries' claims that various share allotments were oppressive is premised *entirely* on the Common Understandings. In particular, the Mustafa Estate Beneficiaries pleaded in the

Version No 1: 15 May 2024 (12:48 hrs)

Statement of Claims filed in Suit 1158 and Suit 9 that the 5 January 1995 Allotment and the 11 December 2001 Allotment were, among others, conducted in breach of MMSCPL's Constitution and diluted Mustafa's and the Mustafa Estate's shareholding in MMSCPL. The Samsuddin Estate Beneficiaries also pleaded in the Statement of Claim filed in Suit 780 that the 5 January 1995 Allotment, the 1991 and 1993 Allotments (*ie*, the allotments on 27 June 1991, 16 January 1993 and 19 May 1993) and the 11 December 2001 Allotment were, among others, carried out in breach of MMSCPL's Constitution and in a manner oppressive to the interests of Samsuddin and the Samsuddin Estate.

142 In response, the Mustaq Group's pleaded defence was essentially that these allotments were carried out in accordance with the Common Understandings and were therefore not oppressive to the interests of Mustafa, Samsuddin and/or their respective estates. Significantly, the Mustaq Group did not plead, as an *alternative* case, that Mustafa and/or Samsuddin had consented to these share allotments for any other reason or pursuant to any other agreement. It therefore follows from our rejection of the Common Understandings that the Mustaq Group have effectively no pleaded defence in respect of these share allotments.

143 Nevertheless, for completeness, we will examine the arguments raised by the Mustaq Group on appeal in relation to the allegedly oppressive share allotments, on the assumption that the Mustaq Group are not bound by their pleaded position that these share allotments were not oppressive by reason of the Common Understandings. For the reasons set out below, we are of the view that leaving aside the Common Understandings, the Mustaq Group have not established their case that Mustafa, Samsuddin or the Claimant Beneficiaries had consented to the various share allotments alleged to be oppressive.

Version No 1: 15 May 2024 (12:48 hrs)

The 1995 and 2001 Allotments

144 Before we set out our analysis on whether the Judge correctly found that the 1995 and 2001 Allotments were oppressive, we briefly recapitulate the relevant facts underlying this ground of oppressive conduct. As indicated in the table at [15] above, the 5 January 1995 Allotment involved the issuance of 700,000 MMSCPL shares to Mustaq at $1 each, whereas the 11 December 2001 Allotment involved the issuance of 4,340,000 MMSCPL shares at $1 each to Mustaq. In both instances, no shares were allotted to Mustafa and Samsuddin.

145 Before the Judge, the Claimant Beneficiaries argued that the 1995 and 2001 Allotments were oppressive because they were carried out in breach of MMSCPL's Constitution and were also carried out for an improper purpose. In respect of the latter, the Claimant Beneficiaries argued that those allotments were at an undervalue and without any genuine commercial purpose, with the effect of diluting Mustafa's and Samsuddin's shareholding in MMSCPL while increasing Mustaq's shareholding.

146 The Mustaq Group's response was four-fold. First, the Mustaq Group relied on the 1973 Common Understanding, which meant that: (a) there was no need for any strict adherence to the procedural requirements under MMSCPL's Constitution; and (b) there was an understanding amongst the parties that Mustaq could run MMSCPL as he saw fit, including the allotment of new shares without considering the Mustafa-Samsuddin Estates' interests. Since we agree with the Judge's rejection of the 1973 Common Understanding argument as there was simply no evidential basis for finding otherwise (see [140] above), this line of the Mustaq Group's argument is untenable and we accordingly do not consider it any further.

Version No 1: 15 May 2024 (12:48 hrs)

147 Second, and more relevant for present purposes, was the Mustaq Group's "alternative" argument that both Mustafa and Samsuddin knew of these allotments and had consented to them. In particular, the Mustaq Group alleged that both Mustafa and Samsuddin had agreed to the 5 January 1995 Allotment and Samsuddin had agreed to the 11 December 2001 Allotment (as Mustafa had passed away by then). To establish this, the Mustaq Group relied on several corporate documents including the EOGM Minutes purportedly signed by MMSCPL's shareholders at the relevant points in time. According to the Mustaq Group, the presence of Mustafa's and Samsuddin's signatures, amongst others, in the EOGM Minutes showed that they were aware of the allotments and consented to them.

148 The Mustaq Group submitted that the Judge erred in failing to consider the EOGM Minutes, which they argued were authentic and admissible, and supported their case that the 1995 and 2001 Allotments were carried out with the knowledge of all the shareholders of MMSCPL at the relevant time. Had the Judge considered the EOGM Minutes, the Mustaq Group submitted that she would have concluded that Mustafa and Samsuddin were aware of the 1995 and 2001 Allotments, and thus would have rejected the complaints that: (a) the manner in which the allotments were carried out breached MMSCPL's Constitution; and (b) the allotments were oppressive.

149 Third and related to their submission on the authenticity of the EOGM Minutes was the Mustaq Group's argument that the Judge erred in declining to exercise her power to compare signatures under s 75 of the Evidence Act. Had the Judge done so, that would have strengthened their position that the signatures on the 5 January 1995 EOGM Minutes were those of Mustafa's and Samsuddin's, which would constitute the "indirect or circumstantial evidence" necessary for establishing the authenticity of the document.

Version No 1: 15 May 2024 (12:48 hrs)

150 Finally, the Mustaq Group relied on Samsuddin's Will reflecting that Samsuddin had a 15.12% shareholding in MMSCPL. According to the Mustaq Group, that Samsuddin acknowledged his 15.12% shareholding in MMSCPL (after the 11 December 2001 Allotment) in Samsuddin's Will showed that he had consented to the share allotments in question.

151 Given the above, the Mustaq Group argued that the Claimant Beneficiaries simply could not allege that the 1995 and 2001 Allotments were oppressive. To the extent the Judge failed to consider these documents, the Mustaq Group asserted the Judge had erred in her findings that the 1995 and 2001 Allotments were *prima facie* oppressive.

152 We pause to observe that the Mustaq Group did not dispute, both before the Judge and in these appeals, that the MMSCPL shares issued in the 1995 and 2001 Allotments were allotted at a significantly undervalued price and without any clear commercial purpose. Indeed, this appears to be common ground in the evidence furnished by the Claimant Beneficiaries' experts, and we do not understand the Mustaq Group to be contending otherwise. We further think that whether the requisite procedural requirements for the share allotments as stipulated in MMSCPL's Constitution were adhered to is not important unless they are considered in the context of Mustafa's and/or Samsuddin's awareness of and consent to the allotments.

153 Accordingly, the key issue before us in respect of the 1995 and 2001 Allotments is whether Mustafa and/or Samsuddin knew of and consented to the allotments and whether the Judge erred in finding otherwise.

Version No 1: 15 May 2024 (12:48 hrs)

The EOGM Minutes

Authenticity and admissibility

154 We turn first to deal with the authenticity and admissibility of the EOGM Minutes.

155 The Mustaq Group submitted that the Judge erred in finding that they failed to discharge their burden of proving the authenticity of the EOGM Minutes. The crux of their submission was that the Judge failed to appreciate that the original copies of the EOGM Minutes were placed before her, and the Claimant Beneficiaries' witnesses, including Ayaz, Asia, Ishtiaq and Fayyaz, were given the opportunity to compare the original 5 January 1995 EOGM Minutes alongside Mustafa's passport issued on 17 January 1994 which Ayaz admitted contained Mustafa's signature. Moreover, when Fayyaz was shown both the original 5 January 1995 EOGM Minutes and the 11 December 2001 EOGM Minutes and questioned about Samsuddin's signature, he candidly said the signature "looks like it".

156 The Mustaq Group further argued that the Judge erred in law by drawing an adverse inference against the Mustaq Group for electing not to give direct evidence on the authenticity of the signatures appended to the EOGM Minutes through Mustaq and Ishret. The Mustaq Group submitted that both Mustaq and Ishret were not the correct persons to give direct evidence; instead, only Mustafa and Samsuddin could do that but since they were deceased, the next best persons were those familiar with their signatures, namely the Claimant Beneficiaries.

157 In our view, the Mustaq Group's submissions are misconceived. While it is true that the alleged originals of the EOGM Minutes were produced, the burden remains on the Mustaq Group to prove their authenticity.

Version No 1: 15 May 2024 (12:48 hrs)

158 We begin with the applicable legal principles on proving the authenticity of a document. In this regard, ss 63 to 75 of the Evidence Act contain the relevant provisions dealing with the proof of documents. The general position is stated in s 63 of the Evidence Act, namely that the contents of documents may be proved by primary or by secondary evidence. Section 66 of the Evidence Act then states that the contents of documents must be proved by primary evidence (*ie*, originals of the documents which, pursuant to s 64 of the Evidence Act, are produced for the inspection of the court). These provisions read as follows:

> **Proof of contents of documents**
>
> 63. The contents of documents may be proved by primary or by secondary evidence.
>
> **Primary evidence**
>
> 64. Primary evidence means the document itself produced for the inspection of the court.
>
> …
>
> **Proof of documents by primary evidence**
>
> 66. Documents must be proved by primary evidence except in the cases mentioned in section 67.

159 Section 67 of the Evidence Act then prescribes the situations in which secondary evidence relating to such documents may be given:

> **Cases in which secondary evidence relating to documents may be given**
>
> **67.**—(1) Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:
>
> (*a*) when the original is shown or appears to be in the possession or power of —
>
> (i) the person against whom the document is sought to be proved;
>
> (ii) any person out of reach of or not subject to the process of the court; or

Version No 1: 15 May 2024 (12:48 hrs)

> (iii) any person legally bound to produce it,
>
> and when, after the notice mentioned in section 68, such person does not produce it;
>
> (*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his or her representative in interest;
>
> (*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any other reason not arising from his or her own default or neglect produce it in reasonable time;
>
> (*d*) when the original is of such a nature as not to be easily movable;
>
> (*e*) when the original is a public document within the meaning of section 76;
>
> (*f*) when the original is a document of which a certified copy is permitted by this Act or by any other law in force for the time being in Singapore to be given in evidence;
>
> (*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.
>
> (2) In cases (*a*), (*c*) and (*d*) in subsection (1), any secondary evidence of the contents of the document is admissible.
>
> (3) In case (*b*) in subsection (1), the written admission is admissible.
>
> (4) In case (*e*) or (*f*) in subsection (1), a certified copy of the document but no other kind of secondary evidence is admissible.
>
> (5) In case (*g*) in subsection (1), evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

160 We emphasise that a distinction must be drawn between the production of a document and its authenticity. Thus, the production of a document is not in itself sufficient to establish the document's authenticity. The latter inquiry is

Version No 1: 15 May 2024 (12:48 hrs)

governed by ss 69 to 75 of the Evidence Act. This distinction was recognised by the Court of Appeal in *CIMB Bank Berhad v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 ("*CIMB*") and the principles relating to proof of a document's authenticity were set out by the Court of Appeal as follows (at [49], [51] and [54], citing *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 at [146]):

> (a) Proof as to the contents of the documents is distinct from the truthfulness or accuracy of the contents of documents, and also distinct from the authenticity of the documents themselves.
>
> (b) Where the authenticity of a document is disputed, the burden of proof is on the party seeking to rely on that document to prove that the document is authentic.
>
> (c) The burden of proving authenticity is not discharged by simply producing the original document in court. Documents are not ordinarily taken to prove themselves or accepted as what they purport to be. There must be an evidentiary basis for finding that a document is what it purports to be. Thus, the party has to prove that the document is what it purports to be.
>
> (d) Accordingly, authenticity may be proved by the evidence of the person who made it or one of the persons who made it, or a person who was present when it was made.

161 The above principles apply equally where the authenticity of a signature and hence of the document is challenged. The Court of Appeal in *CIMB* held that the authenticity of the signature in a document may be established either by

Version No 1: 15 May 2024 (12:48 hrs)

direct evidence (*eg*, by the signatories themselves or by a person who has witnessed the affixing of the signatures) or by indirect evidence (*eg*, evidence from a person who is acquainted with the handwriting of the signatory or from a handwriting expert): see *CIMB* at [57], [59] and [61]. Importantly (see *CIMB* at [57]):

> (a) Although it is not necessary for direct evidence of a signature to be adduced to establish authenticity, such evidence would usually be the strongest evidence available to a party. Thus, the maker of a document should generally be called as a witness to prove its authenticity.
>
> (b) The failure to adduce direct evidence where it is available is not necessarily fatal to proving a document's authenticity, although it may result in an adverse inference being drawn against that party under Illustration (*g*) of s 116 of the Evidence Act.
>
> (c) The impact of not adducing direct evidence is dependent on the facts of each case. Relevant but non-exhaustive factors include the strength of the indirect or circumstantial evidence adduced, the reasons given by the relevant party for not adducing direct evidence, and the probative value of the direct evidence if it had been adduced.

162 In the present case, the Mustaq Group had not called any witness to give evidence as to the authenticity of the EOGM Minutes. We note, in this regard, that Mustaq and Ishret were signatories to the EOGM Minutes. That they were allegedly *directly involved* in the execution of the EOGM Minutes means that they were best placed to give evidence on that process. This would include evidence on the process of procuring the signatures of the shareholders and, as the Mustafa Estate Beneficiaries suggested, "evidence on whether they signed the minutes at an EOGM on 5 January 1995 and whether they saw Mustafa and

Version No 1: 15 May 2024 (12:48 hrs)

Samsuddin sign it at that meeting". We agree also with the Mustafa Estate Beneficiaries that Mustaq's and Ishret's evidence "would have been the most direct evidence of the authenticity of the 5 January 1995 EOGM Minutes". In our view, such direct evidence, if adduced at trial, would be strong evidence as to the authenticity of the EOGM Minutes. Even if the EOGMs were only a paper meeting, Mustaq would be the best person to give evidence as to how the signatures of Mustafa and Samsuddin were procured and whether there was any discussion or explanation about the allotments.

163 To this end, we consider that the Judge correctly drew an adverse inference following Mustaq's and Ishret's refusal to testify as to the authenticity of the signature in the EOGM Minutes. Insofar as the Mustaq Group relied on the High Court's decision in *Lim Eng Hock Peter v Lin Jian Wei and another* [2009] 2 SLR(R) 1004 ("*Peter Lim*") in arguing that an adverse inference should not be drawn by a defendant's making of a submission of no case to answer, we disagree with their submission. The relevant portion of *Peter Lim* on which they relied states (at [209]):

> I agree with the defendants that the test of whether there is no case to answer is whether the plaintiff's evidence at face value establishes no case in law or whether the evidence led by the plaintiff is so unsatisfactory or unreliable that its burden of proof has not been discharged … However, this does not mean that an adverse inference *will be drawn immediately* against the defendants simply because they chose to submit on a 'no case to answer'.
>
> [emphasis added]

164 Clearly, the court in *Peter Lim* did not hold that an adverse inference *can never be drawn* against a defendant who submits no case to answer. We agree with the Samsuddin Estate Beneficiaries' submission that the court was simply stating that an adverse inference will not be necessarily drawn in the event of a

Version No 1: 15 May 2024 (12:48 hrs)

submission of no case to answer. This is consistent with Illustration (*g*) of s 116 of the Evidence Act, which states:

> **Court may presume existence of certain fact**
>
> **116.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> Illustrations
>
> The court may presume —
>
> …
>
> (*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

This is also consistent with the Court of Appeal's holding in *CIMB* that the failure to adduce direct evidence *where it is available* may result in an adverse inference being drawn against the relevant party.

165 The Mustaq Group attempted to circumvent the absence of direct evidence by arguing that the Judge ought to have given more weight to Ayaz's and Fayyaz's purported concessions as to the authenticity of the EOGM Minutes through their statements in cross-examination that the signatures on the EOGM Minutes were similar to Samsuddin's and Mustafa's signatures. We do not agree.

166 Such indirect evidence, in our view, lacks probative value. That the signatures on the EOGM Minutes resemble Samsuddin's and Mustafa's signatures does not discount the possibility that they could have been forged, a suggestion which Ayaz advanced in his testimony. More importantly, Fayyaz and Ayaz had consistently maintained throughout cross-examination that the signatures on the EOGM did not belong to Mustafa and Samsuddin.

Version No 1: 15 May 2024 (12:48 hrs)

167 Apart from the evidence relied on by the Mustaq Group, we note that Mustaq has avoided an argument in respect of the 5 January 1995 EOGM Minutes. In particular, Form 11 on the Notice of Resolution convening the 5 January 1995 EOGM states that the requisite resolution was signed by only Mustaq. That document also states that the actual resolution approving the share allotment, which was annexed to the aforementioned Form 11, was signed by Mustaq only. Yet the Mustaq Group relied on the 5 January 1995 EOGM Minutes which was purportedly signed by four persons: Mustaq, Ishret, Mustafa and Samsuddin. No explanation was forthcoming from the Mustaq Group regarding this discrepancy.

168 This unexplained discrepancy similarly arises when we turn to consider the 11 December 2001 EOGM Minutes. The respective Form 11 states that the resolution for the 11 December 2001 share allotment was signed by only Mustaq and Ishret. Yet the Mustaq Group relied on the 11 December 2001 EOGM Minutes purportedly signed by three persons: Mustaq, Ishret and Samsuddin. Moreover, we note that the contents of the meeting minutes appear to be incorrect because they suggest that a meeting was actually held when that was not the case. The resolution did not purport to be one passed at a paper meeting.

169 For these reasons, therefore, we agree that the authenticity of the EOGM Minutes was put in doubt, and the Mustaq Group had not adduced sufficient evidence to establish the authenticity of these documents. It is undisputed that authenticity is a necessary condition of admissibility: see *Super Group Ltd v Mysore Nagaraja Kartik* [2018] SGHC 192 at [53]. We therefore agree with the Judge that the EOGM Minutes ought not to be admitted into evidence. Given our conclusion on the issue of authenticity, it is not necessary for us to consider the Mustaq Group's submission that the Judge erred in holding that the EOGM

Version No 1: 15 May 2024 (12:48 hrs)

Minutes could not be admitted into evidence under s 32 of the Evidence Act which contains the exceptions to the hearsay rule.

Comparison of signatures

170 We also do not think the Judge erred in declining to exercise her power to compare signatures under s 75 of the Evidence Act. The provision reads:

> **Comparison of signature, writing or seal with others admitted or proved**
>
> **75.**—(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the court to have been written or made by that person, may be compared by a witness or by the court with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.
>
> (2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.
>
> (3) This section applies also, with any necessary modifications, to finger impressions.

171 Although s 75 empowers the court to undertake a comparison of signatures on a disputed document with other signatures of the signatory, the court "is not obliged to do so": see *CIMB* at [68].

172 In support of their argument that the Judge ought to have exercised her powers to order a comparison of signatures, the Mustaq Group relied on the High Court's decision in *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and others* [2006] 4 SLR(R) 95 ("*UMCI*") that (at [47]):

> … s 75 may be resorted to even where the maker of the handwriting is present and available to give evidence, especially where that evidence is being challenged.

Version No 1: 15 May 2024 (12:48 hrs)

173 In our view, *UMCI* does not assist the Mustaq Group. The High Court's statement in *UMCI* does not provide guidance on when the power should be exercised and, even when the power is exercised, should not be taken to mean that evidence distilled from the comparison should necessarily carry much weight. We also do not think that Fayyaz's purported concession that the signature purporting to be Samsuddin's looks like Samsuddin's signature takes the Mustaq Group's case very far.

174 Ultimately, we consider that the Judge correctly chose not to exercise her powers under s 75 of the Evidence Act when Mustaq, whose evidence would have been material, chose not to give evidence. To this end, we note the High Court's observations in *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd* [2020] SGHC 117 (at [35] and [39]):

> Though, there has been no legal bar to the Judge using his own eyes to compare the disputed writings with the admitted writings; as a matter of prudence, *extreme caution, and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signatures with that of the admitted signatures or handwritings and hesitate to base its findings with regard to the identity of the handwritings solely on such comparison made by itself.*
>
> …
>
> The court should not compare signatures under s 75(1) of the EA especially when more direct evidence is available …
>
> [emphasis in original]

175 Furthermore, in the words of the Court of Appeal in *CIMB* at [69], the Mustaq Group "[have only themselves] to blame for not adducing expert evidence on the signatures in question".

Version No 1: 15 May 2024 (12:48 hrs)

Samsuddin's Will

176 We turn to consider the next piece of evidence that the Mustaq Group relies on, namely Samsuddin's Will. As seen in the table at [15] above, while Samsuddin's initial shareholding in MMSCPL was 50%, this was reduced to 30%, then 26.09% and then further reduced to 25.82%, 25.75% and 22.41% before a final reduction to 15.12% following the 11 December 2001 Allotment. When Samsuddin executed Samsuddin's Will on 5 November 2004, it reflected his 15.12% shareholding in MMSCPL. According to the Mustaq Group, the fact that Samsuddin executed Samsuddin's Will despite purportedly being upset about the dilution of his shareholding, suggests that "at the latest by 2000 or 2004, Samsuddin must have known of the various share allotments". Accordingly, they argued that Samsuddin's signing of Samsuddin's Will showed that he had consented to all the share allotments in question, *ie*, not only the 1995 and 2001 Allotments, but also the 1991 and 1993 Allotments (which the Samsuddin Estate Beneficiaries, and not the Mustafa Estate Beneficiaries, are challenging).

177 At the outset, we appreciate that there is some force in this argument. After all, Samsuddin's Will was executed by Samsuddin in the presence of two lawyers, and there is no suggestion that Samsuddin did not understand it. Indeed, it was Fayyaz's evidence that Samsuddin was extremely upset with Mustaq that his shareholding had been reduced and had even cried because he "felt cheated" by Mustaq but could not do anything. That Samsuddin did not take any action despite finding out that his shareholding was 15.12% in 2004 when executing Samsuddin's Will does raise questions as to whether he had consented to the dilution of his shareholding.

Version No 1: 15 May 2024 (12:48 hrs)

178 On this issue, the Judge was satisfied that Samsuddin's lack of action was attributable to his illiteracy (such that he could not have been the one giving the lawyers instructions directly), his lack of education and his trust in Mustaq. These circumstances, in turn, led the Judge to find that "it was unsurprising that [Samsuddin] should have felt helpless to challenge Mustaq openly after learning of the 15.12% shareholding figure reflected in the will" (see GD at [757]). In our view, there is nothing to suggest that this finding of fact made by the Judge was "plainly wrong or against the weight of the evidence" such as to warrant appellate intervention on our part: see *Gomez, Kevin Bennett v Bird & Bird ATMD LLP* [2023] 1 SLR 450 at [61]. Indeed, as against these facts, the Mustaq Group were not able to adduce any evidence to the contrary in light of their submission of no case to answer. We are also of the view that the Mustaq Group had not shown that the Judge erred in relying on Fayyaz's evidence to explain the lack of action initially.

179 Fayyaz's evidence was that Samsuddin told him that sometime in 2004, Mustaq had asked Samsuddin to go to M&N's offices and produced a will for Samsuddin to execute (*ie*, Samsuddin's Will). Mustaq and Fayyaz were stated as the executors and trustees. Samsuddin was purportedly very upset to learn that Samsuddin's Will reflected that only 15.12% of the shares in MMSCPL were registered in his name and cried while telling Fayyaz that he felt that Mustaq had treated him unfairly and "cheated" him. As Samsuddin did not wish to speak directly to Mustaq, Fayyaz confronted Mustaq about Samsuddin's Will. Mustaq's explanation was that he could not state in Samsuddin's Will that Samsuddin owned 33.33% of MMSCPL and other family assets as those shares were not registered under Samsuddin's name but under Mustaq's name, and that doing so would "complicate … the "registration" of the [Samsuddin's Will]", which Fayyaz conveyed to Samsuddin.

Version No 1: 15 May 2024 (12:48 hrs)

180 In the trial below, counsel for Mustaq and Ishret, Mr Alvin Yeo SC ("Mr Yeo"), put to Fayyaz that his evidence concerning Samsuddin's execution of Samsuddin's Will and Mustaq's explanation as to why Samsuddin's Will indicated that Samsuddin only had a 15.12% share in MMSCPL was a fabrication. Mr Yeo further suggested that Samsuddin's Will was not revoked by Samsuddin, and Samsuddin did not bring a claim at that point, because Samsuddin's Will reflected the true position in Samsuddin's eyes. In response, Fayyaz denied that his evidence was fabricated, and explained that Samsuddin had decided not to revoke Samsuddin's Will after hearing Mustaq's assurances as he "believed and trusted … Mustaq's word".

181 If Fayyaz's evidence is accepted, it is understandable why Samsuddin did not commence legal proceedings despite finding out that Samsuddin's Will reflected him as owning 15.12% of MMSCPL's shares only. As the Judge noted, Samsuddin was illiterate in English, had received only basic education in India, and had trusted Mustaq as he had "helped to raise" Mustaq. It is thus unsurprising that Samsuddin felt disinclined to challenge Mustaq openly after learning of the 15.12% shareholding figure reflected in Samsuddin's Will. Fayyaz gave evidence that he had signed various affidavits stating that the Samsuddin Estate had 2,016,993 ordinary shares (or 15.12% of the shares) in MMSCPL (in connection with the extraction of the Samsuddin Estate Grant of Probate), after receiving multiple assurances from Mustaq that the 15.12% figure stated in Samsuddin's Will referred to the shares held in the name of Samsuddin only, and that the Samsuddin Estate in fact had a one-third share of the company. Therefore, the fact that Samsuddin and the Samsuddin Estate did not claim a one-third portion share of MMSCPL earlier does not necessarily mean that they accepted that Samsuddin only had a 15.12% share in MMSCPL.

Version No 1: 15 May 2024 (12:48 hrs)

182 We are thus of the view that Samsuddin's failure to take action immediately upon discovering his shareholding in MMSCPL to be 15.12% does not establish that he had consented to the 1995 and 2001 Allotments, or the 1991 and 1993 Allotments (which we examine below).

Conclusion on the 1995 and 2001 Allotments

183 In sum, there is inadequate evidence to suggest that Mustafa or Samsuddin knew of and consented to the 1995 and 2001 Allotments, based on their knowledge and awareness of the EOGM Minutes. Coupled with the absence of any commercial justification for these allotments and the dilution of Mustafa's and Samsuddin's shareholdings as a result (all of which were not challenged in these appeals), we agree with the Judge that the 1995 and 2001 Allotments were oppressive.

The 1991 and 1993 Allotments

Background to the 1991 and 1993 Allotments

184 To recapitulate, there were three other share allotments which only the Samsuddin Estate Beneficiaries have complained were oppressive:

(a) The allotment on 27 June 1991 where Mustaq and Ishret were issued 300,000 shares each, whereas Mustafa and Samsuddin were issued 400,000 and 300,000 shares respectively. This brought their respective shareholdings to 35.22% (for Mustaq), 13.04% (for Ishret), 25.65% (for Mustafa) and 26.09% (for Samsuddin). All the allotments were at $1 per share.

(b) The allotment on 16 January 1993 where Mustaq was issued 340,200 shares, Ishret 160,000 shares, Mustafa 247,800 shares and

Version No 1: 15 May 2024 (12:48 hrs)

Samsuddin 252,000 shares. This brought their respective shareholdings to 34.85% (for Mustaq), 13.94% (for Ishret), 25.39% (for Mustafa) and 25.82% (for Ishret). These allotments were also at $1 per share.

(c) The allotment on 19 May 1993 where Mustaq was issued 448,500 shares, Ishret 239,400 shares, Mustafa 353,900 shares and Samsuddin 358,200 shares. This brought their respective shareholdings to 34.01% (for Mustaq), 14.88% (for Ishret), 25.35% (for Mustafa) and 25.75% (for Samsuddin). These allotments were also at $1 per share.

The Samsuddin Estate Beneficiaries' contentions and the Judge's finding

185 At the trial below, the Samsuddin Estate Beneficiaries argued that the 1991 and 1993 Allotments were oppressive for largely the same reasons as the 1995 and 2001 Allotments, namely that they were carried out in breach of MMSCPL's Constitution and were not carried out for any legitimate commercial purpose, but instead allowed Mustaq and Ishret to acquire more shares at a discount. Moreover, they argued that as a result of the 1991 and 1993 Allotments, Samsuddin's shareholding in MMSCPL was diluted in 1991 from 30% to 26.09% and then twice in 1993 from 26.09% to 25.82% and then to 25.75%.

186 The Judge accepted the Samsuddin Estate Beneficiaries' submissions and held that the evidence presented was enough to make out a *prima facie* case that the 1991 and 1993 Allotments were oppressive. In particular, the Judge found that the 1991 and 1993 Allotments were conducted in breach of MMSCPL's Constitution as no offer notice was sent to Samsuddin prior to these allotments, and no special resolution dispensing with the notice requirement was issued as required under Article 7 of MMSCPL's Constitution (GD at [352]–[354], and [371]–[375]). The Judge further found that these allotments did not

Version No 1: 15 May 2024 (12:48 hrs)

serve any commercial purpose as they were conducted at an undervalue and were not offered to the shareholders in the same proportion as their shareholdings at that time (GD at [355], [372]–[373]).

187 On appeal, the Mustaq Group did not challenge the Judge's findings that the 1991 and 1993 Allotments were commercially unfair. Instead, they argued that the Judge erred in finding that the 1991 and 1993 Allotments were oppressive because the Judge failed to consider evidence that suggests that Samsuddin was aware of and consented to these allotments.

The 1991 and 1993 Allotments were not oppressive

188 In our view, the Judge erred in finding that the 1991 and 1993 Allotments were *prima facie* oppressive. Putting aside the question of whether adequate notice was given to Samsuddin or whether he had knowledge of the allotments, we think there is one important point that the Judge overlooked which, in our view, is important to the entire analysis pertaining to the 1991 and 1993 Allotments: Mustafa was the individual who truly benefitted from these allotments. It was not Mustaq and/or Ishret. This is important because the allegation of oppressive conduct is directed at the Mustaq Group.

189 We illustrate this point by reproducing the portion of the table indicating the changes in the parties' shareholding in MMSCPL during this period:

Version No 1: 15 May 2024 (12:48 hrs)

Date	Mustaq			Ishret			Mustafa			Samsuddin		
	Shares allotted	**Total shares**	**Percentage**	**Shares allotted**	**Total shares**	**Percentage**	**Shares allotted**	**Total shares**	**Percentage**	**Shares allotted**	**Total shares**	**Percentage**
21 February 1989	1	1	50%	0	0	0	0	0	0	1	1	50%
27 April 1989	509,999	510,000	51%	0	0	0	190,000	190,000	19%	299,999	300,000	30%
27 June 1991	300,000	810,000	35.22%	300,000	300,000	13.04%	400,000	590,000	25.65%	300,000	600,000	26.09%
16 January 1993	340,200	1,150,200	34.85%	160,000	460,000	13.94%	247,800	837,800	25.39%	252,000	852,000	25.82%
19 May 1993	448,500	1,598,700	34.01%	239,400	699,400	14.88%	353,900	1,191,700	25.35%	358,200	1,210,200	25.75%

190 We note that the Samsuddin Estate Beneficiaries did not complain about the share allotment earlier in 1989 when Samsuddin's shareholding was diluted from 50% to 30%. At the hearing, counsel for the Samsuddin Estate Beneficiaries, Mr Sarbjit Singh Chopra ("Mr Sarbjit Singh"), accepted that this "dilution" was a result of an understanding between Mustafa, Samsuddin and Mustaq that the parties were each to own one-third of the shares in MMSCPL. On the basis of this understanding, Mr Sarbjit Singh submitted that the dilution of Samsuddin's shares as a result of the 1991 and 1993 Allotments was impermissible because it deviated from the understanding between the parties regarding the one-third shareholding in MMSCPL. In particular, Mr Sarbjit Singh argued that this dilution must be seen in light of the relative increase in

Version No 1: 15 May 2024 (12:48 hrs)

the combined shareholding of the Mustaq Group and Mustafa, which had reached 74.25% following the allotment of 19 May 1993.

191 This aspect of Mr Sarbjit Singh's submission was premised on the assumption that the shareholding of Mustafa and the Mustaq Group ought to be treated collectively. We do not agree with this narrative, which was never advanced at the trial below; nor was it the Samsuddin Estate Beneficiaries' pleaded case that there was an understanding that Samsuddin's shareholding would always remain at one-third and indeed Mr Sarbjit Singh conceded this at the hearing. Rather, the position taken by the parties was always that Mustafa's shareholding ought to be treated separately from that of Mustaq and/or Ishret. Indeed, Mr Sarbjit Singh accepted that Mustafa could not possibly be grouped together with the Mustaq Group for the purposes of determining the parties' relative shareholding because "[Mustafa] had no idea" of the allotments at that point in time.

192 Once this aspect of the Samsuddin Estate Beneficiaries' case falls away, it becomes clear that the true beneficiary of the 1991 and 1993 Allotments is Mustafa himself. Indeed, as observed in the table above, Mustafa's shareholding before 1991 was 19%. Following the 1991 and 1993 Allotments, his shareholding was increased to 25.35%. On the other hand, Mustaq's shareholding had dropped from 51% in 1989 to 34.01% following the allotment of 19 May 1993. While Ishret's shareholding increased, this was due mainly to a reduction in Mustaq's shareholding. Thus, when both their shareholdings are considered, we note that there was still an overall decrease from 51% in 1989 to 48.89% in by 19 May 1993.

193 Even if we accept the Samsuddin Estate Beneficiaries' argument that there was inadequate notice given and Samsuddin had no knowledge of the 1991

Version No 1: 15 May 2024 (12:48 hrs)

and 1993 Allotments, the fact remains that the party that benefitted was Mustafa. It seems to us that the primary purpose of these three share allotments was to align Mustafa's number of shares closer to Samsuddin's to which, in principle, there was no complaint raised by the Samsuddin Estate Beneficiaries. However, they had focused only on the reduction in the percentage of shares owned by Samsuddin, as did the Judge.

194 Finally, we do not accept the Samsuddin Estate Beneficiaries' submission that the oppressive effect of the 1991 and 1993 Allotments was comparable to the 1995 and 2001 Allotments. These two allegations are fundamentally distinct. As can be seen above, the 1995 and 2001 Allotments were clear cases of oppression where the beneficiary of the allotments was Mustaq himself; neither Mustafa nor Samsuddin were allotted shares.

195 Accordingly, we are not satisfied that there was any real or meaningful oppression flowing from the 1991 and 1993 Allotments that was caused by the Mustaq Group. We therefore allow this aspect of the Mustaq Group's appeal.

196 Given our conclusion that the 1991 and 1993 Allotments were not oppressive, it is not necessary to consider the Samsuddin Estate Beneficiaries' cross-appeal against the Judge's decision not to grant certain relief as that was on the basis that she had concluded that these allotments were oppressive.

The Directors' Loans Issue

The quantum of directors' loans taken

197 We turn next to consider the Directors' Loans Issue, which relates to the Claimant Beneficiaries' allegation that the Mustaq Group had taken the Directors' Loans (see [40] above) for their personal use. This occurred between

Version No 1: 15 May 2024 (12:48 hrs)

2000 and 2015. The Mustaq Group have not repaid any of these loans to date. The Directors' Loans were summarised by Mr Chee Yoh Chuang ("Mr Chee") in his expert report, which we reproduce below:

FY	Amount Due From / (To) Directors (S$)
1990	(172,668)
1991	(145,992)
1992	(852,227)
1993	(899,785)
1994	(1,036,404)
1995	(3,445,617)
1996	(1,607,757)
1997	(4,663,143)
1998	(1,244,845)
1999	(819,876)
2000	2,214,019
2001	13,109,925
2002	9,889,377
2003	(471,653)
2004	(5,471,129)

FY	Amount Due From / (To) Directors (S$)
2005	(138,847)
2006	1,502,167
2007	3,206,895
2008	910,065
2009	(2,199,523)
2010	2,174,516
2011	1,525,026
2012	11,935,009
2013	31,410,946
2014	30,010,750
2015	21,338,406
2016	3,716,887
2017	18,897,321
2018	6,666,085

198 At the outset, we point out that the Judge also included in the GD a table setting out the Directors' Loans (see GD at [402]). The figures stated in the GD's table, however, are different from the expert's table. This discrepancy is attributable to the fact that the Judge relied on the full amount of the loans due from the directors as reflected in the balance sheet of the audited financial statements for each financial year, without setting off any amounts due from MMSCPL to the directors as reflected in the relevant financial statements. On the other hand, Mr Chee had derived the figures in his table by deducting the sums due to the directors from MMSCPL in the respective financial year from the quantum of loans taken in each respective financial year. In other words, the amount set out in Mr Chee's table provided in his expert report sets out the net amount owed by the directors to MMSCPL.

Version No 1: 15 May 2024 (12:48 hrs)

199 We think it appropriate to adopt the figures set out by Mr Chee in his expert report, as the figures stated therein paint a more accurate picture as to the net liabilities owed by the Mustaq Group to MMSCPL each year. We note in this regard that the Claimant Beneficiaries did not dispute the sums owed by MMSCPL to the Mustaq Group, although we add that there was nothing to explain why sums were owed by MMSCPL to the directors. Indeed, when queried on this point at the hearing, counsel for the Mustaq Group, Ms Koh Swee Yen SC ("Ms Koh"), was not able to point us to any evidence explaining the source of these sums owed by MMSCPL to the directors.

The parties' contentions and the Judge's decision

200 It was not disputed at the trial, nor in these appeals, that the Directors' Loans were taken by MMSCPL's directors for their personal use, and that these loans were unsecured and interest-free. The Claimant Beneficiaries argued that these loans were not in MMSCPL's interests as MMSCPL did not receive any benefit from lending the moneys to the Mustaq Group.

201 In response, the Mustaq Group relied on, amongst other things, documents purporting to be MMSCPL's general ledgers for the years 2006 and 2012 to 2019, which they claim was evidence that Mustafa, Samsuddin and the Claimant Beneficiaries knew of, personally participated in and benefitted from the practice of taking such loans from MMSCPL. The Claimant Beneficiaries disputed the authenticity of these general ledgers, and further argued that these documents do not, in and of themselves, demonstrate that Mustafa, Samsuddin and the Claimant Beneficiaries knew of and participated in the practice of taking such loans. Apart from the general ledgers, the Mustaq Group argued also that the loans were used for the benefit of the families of Mustafa and Samsuddin,

Version No 1: 15 May 2024 (12:48 hrs)

and that there were moneys owing by MMSCPL to the Mustaq Group in their capacity as directors of the company.

202 The Judge accepted the Claimant Beneficiaries' arguments and found that the Directors' Loans were oppressive. The Judge was satisfied that the Mustaq Group had not proven the authenticity of the general ledgers relied on, and therefore found that there was no evidence substantiating the Mustaq Group's claim that Mustafa, Samsuddin, and the Claimant Beneficiaries had all known of and accepted a general practice of the directors taking loans (see GD at [416]). Even if MMSCPL did owe money to the Mustaq Group, the Directors' Loans were much larger and appeared oppressive (see GD at [419]). The Judge further found that the Directors' Loans did not benefit MMSCPL as they were taken in the same period when MMSCPL had "significant bank loans and other interest-bearing borrowings" and no steps were taken to ensure prompt or regular repayment of the same (see GD at [427]–[428]).

203 On appeal, the Mustaq Group maintained their submission that the general ledger was authentic and ought to be admitted, and the Judge erred in finding otherwise. They further submitted that the Judge failed to consider Ayaz's and Fayyaz's evidence that the practice of taking such loans existed, and that since Mustafa was involved in MMSCPL's business, Mustafa and his family members must have known about the loans. Finally, the Mustaq Group reiterated the following arguments: (a) the Judge erred in finding that the Directors' Loans were not in MMSCPL's interests as there is no evidence that MMSCPL was unable and/or required funds to meet its financing costs, and/or that the loans had affected MMSCPL's ability to meet its financing costs; (b) the loans were used for the benefit of the families of Mustafa and Samsuddin; and (c) there were moneys owing by MMSCPL to its directors.

Version No 1: 15 May 2024 (12:48 hrs)

The directors' loans were oppressive

204 In our view, there is no merit to this aspect of the Mustaq Group's appeal.

205 First, we agree with the Judge that the Mustaq Group had not established the authenticity of the general ledgers on which they rely to show that there was a regular and sustained practice of MMSCPL's directors taking loans from MMSCPL. As we have noted at [160] above, it is insufficient for a party seeking to prove the authenticity of a document to merely produce the purported original copy. It is also necessary for the person to call a witness, such as the maker of the document, to testify as to the document's authenticity. None of that was done by the Mustaq Group at trial. We are therefore not satisfied that the Judge erred in concluding that the Mustaq Group failed to discharge their burden of proving the general ledger's authenticity. Indeed, apart from the general ledger, the Mustaq Group have put forward no other factual basis to support their allegation that there was an agreed and longstanding practice of such loans being taken by MMSCPL's directors.

206 We also do not agree with the Mustaq Group's reliance on the evidence of Fayyaz and of Ayaz regarding the existence of a longstanding practice of MMSCPL's directors taking loans. The portions of Ayaz's testimony during cross-examination relied on by the Mustaq Group were taken out of context. It was Ayaz's uncontradicted evidence that Mustafa was not informed of matters relating to the wrongdoings, including the Directors' Loans, and that if Mustafa had been so informed, he would surely have objected to it. As for Fayyaz's evidence that Samsuddin and the Samsuddin Estate had taken loans from MMSCPL to pay for their living expenses in Singapore and India, buy land, and pay for the weddings of the children of their family members, it does not follow

Version No 1: 15 May 2024 (12:48 hrs)

from this that Mustafa or the Mustafa Estate had also taken such loans. Furthermore, it is the quantum of the Directors' Loans that is in issue.

207 The evidence showed that the Samsuddin Estate had taken loans from 2013 which amounted to some $1,788,782.52 by 2017. In contrast, it is undisputed that the amount due from the Mustaq Group at that time exceeded $30m. Indeed, we note from Mr Chee's table that for the two years ending 30 June 2013 and 2014, the loans taken by the Mustaq Group amounted to at least $30m for each year. To clarify, the loans taken out by the Samsuddin Estate were likely not in the form of directors' loans since Samsuddin had already stepped down as MMSCPL's director on 14 July 2003. The loans taken out by the relevant members of the Mustaq Group were taken in their capacity as directors.

208 We do not think that the excessively large loans taken by the Mustaq Group can be justified on the basis that part of it was used for the benefit of the families of Mustafa and Samsuddin. Apart from the fact that the families were not aware that such loans were taken, the Mustaq Group had not provided full details of the benefits that were allegedly conferred, or evidence of such benefits. As the Judge found, the point remains that "even if Mustaq claimed to have paid for some of the plaintiffs' personal or household expenses out of the loans he took, there was no evidence that these payments accounted for the bulk, or even a significant portion, of his loan amounts" (GD at [428]).

209 Ultimately, we agree with the Mustafa Estate Beneficiaries' submission that save in exceptional circumstances, an interest free loan with no fixed repayment is not commercially justified. Extending such loans would mean that the company loses the opportunity to use those moneys and is put in a position where it effectively transfers those benefits to those who take the moneys at the

Version No 1: 15 May 2024 (12:48 hrs)

company's expense. In our view, the Judge was correct in concluding that there was no commercial purpose in the Directors' Loans, and that they were oppressive. This is all the more so when, as Mr Chee noted in his expert report and it is undisputed, the total dividends declared between 2000 and 2018 was only $18m, a point which we will come back to later.

210 Before we conclude on the Directors' Loans Issue, we note that in ordering the Valuer to take into account the Directors' Loans when assessing the fair value of the Mustafa-Samsuddin Estates' shareholding in MMSCPL, the Judge did not state whether the final sum assessed would include interest on the loans. In our view, this must be so. The wrongful and oppressive Directors' Loans are sums of money that were put out of MMSCPL's reach. We therefore direct the Valuer to include an appropriate quantum of interest to be imposed on the sums assessed to have been wrongfully taken as Directors' Loans in determining the value of the shares of the Mustafa-Samsuddin Estates. We turn next to consider the Dividend-Fees Issue.

The Dividend-Fees Issue

211 The Dividend-Fees Issue relates to the Claimant Beneficiaries' complaint that the Mustaq Group acted oppressively by causing or allowing MMSCPL not to pay any dividends to the shareholders between 2001 and 2013 while paying Mustaq and Ishret substantial directors' fees in the same period.

The parties' contentions and the Judge's decision

212 The parties did not dispute, both at the trial below and in these appeals, that directors do not have any obligation to declare dividends, and shareholders correspondingly have no right to receive dividends (GD at [509]). The parties also did not dispute that the failure to declare dividends does not in and of itself

Version No 1: 15 May 2024 (12:48 hrs)

amount to commercial unfairness: see *Lim Kok Wah* at [145]. However, as the Judge noted, the courts will generally intervene in cases where the decision not to declare dividends is made in bad faith or for improper purposes: see *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 at [245].

213 The Judge was satisfied that the Mustaq Group's decision not to pay dividends between 2001 and 2013 was made in bad faith, having considered the following matters (see GD at [522] and [532]):

(a) The quantum of directors' fees paid to Mustaq and Ishret was significant, ranging from more than a third of MMSCPL's net profits to nearly two-thirds of MMSCPL's net profits. It was undisputed that in the same period, the Claimant Beneficiaries received no dividends.

(b) The payment of dividends only resumed in or around 2014 after Ayaz and Fayyaz confronted Mustaq about MMSCPL's operations and the entitlements of the Mustafa-Samsuddin Estates as shareholders. Moreover, the dividends declared were paid in monthly instalments. The Judge thought this to be a deliberate and calculated attempt to hold the Claimant Beneficiaries to "ransom".

(c) The Judge did not think that the non-payment of dividends was commercially justified by the need to safeguard MMSCPL's moneys for business expansion. The Judge found that this ran counter to the simultaneous payment of substantial directors' fees and was thus not a genuine reason.

214 In these appeals, the Mustaq Group submitted that the Judge erred in this aspect of her decision because she failed to consider that the quantum of

Version No 1: 15 May 2024 (12:48 hrs)

remuneration of directors is a commercial decision and the failure to recommend the declaration of dividends does not by itself amount to unfair conduct. The Mustaq Group further submitted that the Judge failed to appreciate the following:

(a) Ishret was paid the same quantum of directors' fees as Mustafa and Samsuddin, and this reflected the fact that all of them did not play any substantial role in the business.

(b) There was no evidence of any objection to the payment of directors' fees to Mustaq and Ishret between 2000 and 2013. Coupled with the absence of any dividend payments declared, this suggested that Mustaq was the beneficial owner of all the shares in MMSCPL.

(c) Mustaq had provided for Samsuddin, Mustafa and their family members by paying for their personal, household, and living expenses. All these expenses were charged to Mustaq's director's account in MMSCPL's general ledger and recorded as a loan to Mustaq.

The non-payment of dividends and excessive directors' fees were oppressive

215 We are not persuaded that the Judge erred in finding that the non-payment of dividends coupled with excessive payment of directors' fees was oppressive.

216 We begin with the undisputed proposition stated by the court in *Lim Kok Wah* (at [144]) that:

> … a policy of declaring inadequate dividends coupled with an overly generous policy of remunerating directors may cumulatively result in conduct that is oppressive or commercially unfair: *Re Gee Hoe Chan Trading Co Pte Ltd* [1991] 2 SLR(R) 114 and *Re Sam Weller & Sons Ltd* [1990] Ch 682. An

Version No 1: 15 May 2024 (12:48 hrs)

> example of such a situation is where, through directors' fees and remuneration, the majority shareholders receive sums that far exceed the amounts that the minority shareholders, who do not receive such fees and remuneration, receive as dividends.

217 In our view, the Mustaq Group's submission – that the quantum of remuneration paid to directors was a commercial decision and the failure to recommend the declaration of dividends did not by itself amount to unfair conduct – missed the point. There was no dispute that the non-declaration of dividends was not in itself commercially unfair. What mattered was whether, taken in its entirety, the non-declaration of dividends *coupled* with the simultaneous payment of large sums of directors' fees was commercially unfair and hence oppressive.

218 In the present case, it was not disputed that over the course of about 13 years from 2001 to 2013, Mustaq and Ishret received approximately $73.08m in directors' fees (see GD at [522]). In contrast, and as mentioned above, the total dividends declared between 2000 and 2018 were only $18m. This, in turn, raises the question as to the commercial justification supporting the payment of excessive directors' fees relative to the quantum of dividends declared.

219 In response, Ms Koh argued that the Judge failed to consider that Mustaq had made significant contributions to the growth and expansion of MMSCPL, and that his efforts justified his remuneration. Further, Mustaq was MMSCPL's managing director and played a larger and more active role in MMSCPL than Mustafa and Samsuddin. Mustaq also incurred potential liabilities in the form of giving guarantees, either by himself or through his other companies, for loans taken out by MMSCPL. Such liability had conferred on MMSCPL benefits that justified the remuneration drawn by Mustaq. The total amount of directors' fees paid to the directors of Metro Holdings Limited (which Mr Mark Collard in his expert report considered to be a comparable company to MMSCPL operating in

Version No 1: 15 May 2024 (12:48 hrs)

Singapore) and the amount paid to the directors of MMSCPL are also similar. All of this, according to the Mustaq Group, justified the significant quantum of directors' fees that was paid over the years.

220 We do not agree. While we accept that Mustaq played a main role in building up MMSCPL's business, we agree with the Samsuddin Estate Beneficiaries that the amount of directors' fees that Mustaq received was disproportionate. We note Mr Chee's evidence in this regard:

> … the average directors' fees and remuneration [between 2000 and 2018] represented 34.4% of MMSCPL's adjusted [net profit after tax], and amounted to S$95.7 million over the 19 years. In contrast, the total dividends declared during this period was only S$18.0 million, …
>
> …
>
> Samsuddin was a director of MMSCPL until his resignation on 14 July 2002 and received a directors' fee of S$200,000 each year for the 3 years from FY2000 to FY2002. *This represented only 3.9% of the total directors' fees and remuneration of S$15.3 million for the period from FY2000 to FY2002*, while the rest was paid to Mustaq, Ishret, and members of their family (i.e. the 1st to 5th Defendants).
>
> By paying out *substantial directors' fees in lieu of dividends*, it could benefit certain directors disproportionally at the expense of other shareholders.
>
> …
>
> … directors' fees ranging between S$3.4 million and S$5.4 million continued to be paid each year despite the bank overdrafts and non-declaration of dividends. The directors received a total sum of S$95.7 million (representing 34.4% of MMSCPL's total NPAT) in the form of directors' fees and remuneration over the period of 19 years from FY2000 to FY2018, *which appears disproportionately high compared to the sum of S$18 million paid for dividends*, and could benefit certain directors disproportionally at the expense of other shareholders.
>
> [emphasis added]

Version No 1: 15 May 2024 (12:48 hrs)

221 In contrast, no evidence was forthcoming from the Mustaq Group to explain why this seemingly disproportionate payment of directors' fees was commercially justified.

222 We do not accept the argument that the substantial directors' fees drawn by Mustaq were justified by the value of the guarantees that he had provided for loans taken by MMSCPL. Mr Chee's evidence, which was not meaningfully challenged, was that securities were granted in favour of various banks in respect of the loans that the company had taken. Importantly, Mr Chee's view was that there was only a negligible risk that the guarantees provided or procured by Mustaq would be called to satisfy the loans taken out by MMSCPL.

223 We note also that the Mustaq Group sought to undermine Mr Chee's expert report by posing questions to him regarding, amongst other factors, Mustaq's role and contributions in MMSCPL and whether Mr Chee's conclusions would change if that was considered. In response, Mr Chee remained steadfast in his view that Mustaq's fees were disproportionate. We are satisfied that insofar as the factors relied on by the Mustaq Group to undermine Mr Chee's conclusions in his expert report were concerned, they appeared to be no more than convenient *ex post facto* justifications. Indeed, no evidence was forthcoming from the Mustaq Group as to whether these were indeed factors that Mustaq had in mind when deciding the quantum of directors' remuneration that he felt he deserved to be paid.

224 We turn to deal with the other factors raised by the Mustaq Group which they allege the Judge failed to consider in determining the excessiveness of the directors' fees paid to the Mustaq Group.

Version No 1: 15 May 2024 (12:48 hrs)

225 First, we do not think that the directors' fees paid to Ishret, which the Mustaq Group claimed were similar to that paid to Mustafa and Samsuddin, is a viable answer to the allegation that the Mustaq Group was paid substantial directors fees. It is artificial to divorce Ishret's and Mustaq's directors' fees and to analyse each separately. As the complaint raised by the Claimant Beneficiaries was directed at the directors' fees paid to the Mustaq Group and as Mustaq and Ishret are husband and wife and appeared to act in concert, the totality of the directors' fees should be taken into account and this naturally includes the fees paid to Mustaq. We also accept the Claimant Beneficiaries' argument that Samsuddin and Mustafa had also contributed significantly to MMSCPL's business. Fayyaz's uncontradicted evidence is that Samsuddin was a founding partner and shareholder who was in charge of textiles and garments, and remained in charge even after resigning as a director in 2003 up till 2008. In contrast, Ishret conceded that she had no involvement with MMSCPL's business and she herself did not know that she was a registered director.

226 Second, insofar as the Mustaq Group argued that Mustafa and Samsuddin (and their families) did not raise any issue about the non-payment of dividends in the light of the directors' fees because Mustaq was the beneficial owner of all the shares in MMSCPL, we think this argument is a non-starter. Given our conclusion that Mustaq was not the sole owner (at [140] above), the premise of this argument is undermined. We note Fayyaz's testimony (which remained consistent) that Samsuddin was not aware that there were no dividends being declared. We also note Ayaz's evidence (which was also uncontradicted and consistent with Fayyaz's evidence) that the Claimant Beneficiaries only found out about the excessive directors' fees on or around 18 August 2016 and 27 December 2016. Against these points, the Mustaq Group advanced no evidence to the contrary.

Version No 1: 15 May 2024 (12:48 hrs)

227 Finally, we do not agree with the Mustaq Group's submission that Mustaq's provision of money to pay for various expenses incurred by the Claimant Beneficiaries justified the substantial payment of directors' fees. It is for the Mustaq Group to provide more information about what was provided to the Claimant Beneficiaries to be compared with the directors' fees paid to the Mustaq Group. They have not done so. In our view, therefore, this purported justification is too general and vague, and is unsubstantiated by any evidence. In any case, this too was not raised in the Mustaq Group's case at trial.

228 The Mustaq Group also relied on the decision in *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*"), which it argued supported the position that the non-declaration of dividends is not oppressive where the minority shareholders have received other forms of pecuniary and non-pecuniary benefits. We disagree with the Mustaq Group's submissions which relied on *Lim Chee Twang*. In that case, the minority shareholder plaintiff had alleged that the majority shareholder defendant was conducting the affairs of various companies in an oppressive manner. One of the allegations raised was the failure to pay dividends when there was a huge cash hoard of $10m in the group (see *Lim Chee Twang* at [114]). The court, however, found that there were sound commercial justifications behind the non-payment of dividends. This included the economic downturn which the defendant thought made it critical for the company to preserve cash, and the fact that the defendant could not ascertain precisely how much profit the company had until she had sorted out the accounts (see *Lim Chee Twang* at [115]). Moreover, no allegation was raised by the plaintiff in *Lim Chee Twang* that excessive director's fees were being paid to the defendant. To the contrary, and as the Mustaq Group themselves acknowledged, the plaintiff in *Lim Chee*

Version No 1: 15 May 2024 (12:48 hrs)

Twang had benefitted from generous gifts and expenses paid by the defendant who had also given him a 40% shareholding in the company.

229 For these reasons, therefore, we agree with the Judge that the Mustaq Group's non-payment of dividends coupled with excessive payment of directors' fees is commercially unfair and oppressive. We point out, however, that while the finding of oppression under this ground is made out, a point arose during the course of the hearing as to the appropriate relief that ought to be granted in light of the non-payment of dividends and excessive payment of directors' fees. In particular, the issue is whether Mustaq should be entitled to retain a portion of his directors' fees as acknowledgement for the work he has put in to build up MMSCPL's business. This is a point which we consider in greater detail below when dealing with the Reliefs Issues at [376]–[385].

The Cashback Scheme Issue

230 We turn to deal with the Claimant Beneficiaries' contention of Mustaq's involvement with, or acquiescence to, the Cashback Scheme. In particular, the Claimant Beneficiaries alleged that since April 2009, Mustaq had procured or caused MMSCPL to overstate the salaries of its employees in their work pass applications to the MOM. The differences between the salaries declared to the MOM and the actual salaries paid to the workers were then allegedly collected from the workers each month by one Sultan Mohamed Ghouse ("Ghouse", a Human Resources ("HR") Manager of MMSCPL) and subsequently one Raj Patro ("Patro"), who operated an employment agency named Pat & Hoff Consultants. They were passed on to Mustaq and/or applied as directed by him and/or used by him for his own benefit (GD at [432]–[433]). The employees allegedly subject to the Cashback Scheme were those working in Kebabs N Curries, Mustafa's Café and Handi Restaurant and Catering (restaurants wholly

Version No 1: 15 May 2024 (12:48 hrs)

owned by MMSCPL) and/or MMSCPL itself. On the other hand, the Mustaq Group contended that Mustaq had no knowledge of the Cashback Scheme, and that the allegations concerning the Cashback Scheme were a concerted effort by Rajesh and one Arvind Sharma ("Arvind"), the former general manager of Kebabs N Curries, to manufacture false evidence in aid of the Claimant Beneficiaries' litigation against Mustaq.

231 The Judge concluded that the Claimant Beneficiaries had established a *prima facie* case that the Cashback Scheme had been done with Mustaq's knowledge and/or acquiescence. This conclusion was reached after an examination of the evidence of: (a) Ashish Singh ("Ashish") who worked at Kebabs N Curries; (b) Abdul Raziq ("Raziq") who worked as a restaurant captain at Kebabs N Curries; (c) Tarun Sharma ("Tarun") who worked as a restaurant supervisor at MMSCPL; (d) Anees Ahmad ("Anees") who worked as a sales executive at the watch and electronics department of MMSCPL; (e) Mohit who worked at Kebabs N Curries; (f) Abdul Haq Siddique ("Siddique") who was a Senior Sales Executive in MPL and Ayaz's brother-in-law; (g) Arvind and (h) Rajesh.

232 The central issues that arise in relation to the Cashback Scheme Issue are: (a) whether the Cashback Scheme existed; and (b) if so, whether it was conducted at Mustaq's direction or with his acquiescence.

Existence of the Cashback Scheme

233 We agree with the Judge's conclusion that there was a *prima facie* case that the Cashback Scheme existed. The evidence of the former employees – namely Ashish, Raziq, Tarun, Anees, Mohit, and Siddique – in relation to the

Version No 1: 15 May 2024 (12:48 hrs)

Cashback Scheme and the procedure by which moneys were collected was broadly consistent and may be summarised as follows:

(a) The former employees were informed by Ghouse that they would have to pay a monthly sum to HR. The quantum of the payable sum fluctuated depending on various factors, including whether they had worked on public holidays or any off-days, annual leave and allowances or incentives that they were entitled to.

(b) As to the procedure, employees would be summoned to the HR's office. Ghouse would then ask for their batch / employee number, and then inform them of the amount to be paid.

(c) After Raj started collecting the cashbacks, fines were imposed if employees could not pay the required amount of cashback.

(d) The payments ceased in November 2017.

234 On appeal, the Mustaq Group argued that the Judge erred in concluding that the Cashback Scheme existed based on the evidence of the former employees, as their evidence contained inconsistencies. Further, these inconsistencies were: (a) between the evidence of the former employees in their AEICs filed in Suit 1158 and in Suit 780, which were filed a few days apart; and (b) also between the evidence of the former employees in their AEICs and their oral testimonies as well as the contemporaneous documents. Such inconsistencies could not be explained away by the passage of time.

235 We agree with the Judge that although there were some inconsistencies in the evidence of the former employees, that was not surprising or sinister since the events had occurred some time ago (GD at [485]). The inconsistencies raised

Version No 1: 15 May 2024 (12:48 hrs)

by the Mustaq Group on appeal essentially pertained to the amount of cashback that the former employees claimed was collected from them as reflected in their AEICs, oral testimony and the audio-recordings provided by the Claimant Beneficiaries. However, the existence of such inconsistencies is not surprising as the former employees have explained that the amount of money they had to pay each month fluctuated based on various factors such as the amount of public holidays and off-days on which the employee chose to work. It would be difficult to expect the employees to provide a precise range across their evidence. Moreover, the inconsistencies referred to by the Mustaq Group are relatively small. For instance, the discrepancy in Ashish's evidence in his AEIC was between the ranges of $300–$800 and $700–$900. Similarly, Raziq had variously stated that he had to pay between $800–$1,300, $400–$1,300 and $1,000–$1,300. Although Ashish testified that the amount collected occasionally fell below $700 and sometimes even as low as $4, Ashish did clarify that the amount to be given each month was "completely situational" and that he had provided the court with "the average amount" which varied based on whether he had worked overtime and on holidays. The presence of such inconsistencies does not diminish the reliability of the evidence of the former employees on the existence of the Cashback Scheme. Neither is it sufficient to support any suggestion that the former employees were dishonest as witnesses.

236 Our conclusion makes it unnecessary to examine the audio and closed-circuit television recordings which had been produced by several of the employees in order to determine the existence of the Cashback Scheme. It is therefore also unnecessary to deal with the Mustaq Group's submissions regarding the admissibility of these recordings.

Version No 1: 15 May 2024 (12:48 hrs)

Mustaq's involvement in the Cashback Scheme

237 As the Judge noted, and as the Mustaq Group highlighted, none of the former employees who had given evidence claimed to have spoken directly with Mustaq about the Cashback Scheme or actually heard him discussing it. Also, the former employees had no personal knowledge of Mustaq's involvement in the Cashback Scheme (GD at [497]). However, we agree with the Judge that the following pieces of circumstantial evidence support the conclusion that Mustaq was involved in the Cashback Scheme:

(a) the telephone conversation on 17 April 2017 between Ayaz and Ghouse in which Ghouse did not deny that he had been passing "boss" the collected cashbacks (the "17 April 2017 Call");

(b) the evidence of several former employees concerning the staff briefing on 11 November 2017 (the "Staff Briefing"), where one Mr Chef Ayub ("Ayub") informed the staff that "boss" would stop collecting cashbacks;

(c) the call between Rajesh and Mustaq on 5 February 2018 where Mustaq apparently admitted to collecting cashbacks (the "5 February 2018 Call"); and

(d) Mustaq's lack of response to e-mails containing letters sent to him by former employees concerning the Cashback Scheme.

The 17 April 2017 Call

238 In the 17 April 2017 Call when Ayaz confronted Ghouse regarding salary being collected from employees and given to "boss", the audio-recording of their conversation showed that Ghouse merely denied that he was involved

Version No 1: 15 May 2024 (12:48 hrs)

in the collection of salary from employees at Kebabs N Curries, which he claimed Patro was responsible for. However, Ghouse did not deny that he had been passing the moneys to "boss", and even affirmed that he was "giving directly [to] boss".

239 The Mustaq Group contended that the Judge erred in relying on the 17 April 2017 Call because the Judge failed to consider the evidence of some of the former employees that the word "boss" could refer to others such as one Saleem (Iqbal's son-in-law) or the Mustafa Estate Beneficiaries. Further, there was no express reference to Mustaq during the 17 April 2017 Call or any suggestion that "boss" referred to Mustaq.

240 In the first place, the evidence of the former employees in relation to who "boss" referred to is irrelevant; what is material is who Ghouse was referring to when he mentioned "boss" in the 17 April 2017 Call. In this regard, Ayaz's evidence was that by "boss", Ghouse was referring to Mustaq and that all the employees referred to Mustaq as the "boss". If Ghouse had any doubt as to whether Ayaz was referring to Mustaq or to someone else when Ayaz mentioned "boss", Ghouse would surely have clarified with Ayaz whether Ayaz was referring to Mustaq. Instead, Ghouse simply agreed with Ayaz that he was giving salaries that were returned from employees to "boss". In the absence of any suggestion by the Mustaq Group as to whom Ghouse was referring to, the Judge was entitled to conclude that "boss" in the context of the 17 April 2017 Call referred to Mustaq. We note, for completeness, that Ghouse provided no explanation in respect of the 17 April 2017 Call in his AEICs. In any event, as Ghouse was called as a witness by the Mustaq Group who elected not to give evidence, his AEICs had been expunged.

Version No 1: 15 May 2024 (12:48 hrs)

The Staff Briefing on 11 November 2017

241 Several of MMSCPL's former employees, namely Ashish, Arvind, and Raziq, had given evidence that at the Staff Briefing on 11 November 2017, Ayub had informed the staff that "boss" had said that cashbacks would no longer be collected, and that "boss" referred to Mustaq. While Tarun was not present at the Staff Briefing, his evidence was that Ayub had told him that Mustaq said they no longer had to pay cashbacks.

242 The Mustaq Group contended that the Judge erred in relying on the evidence of the former employees regarding the Staff Briefing because there is no documentary evidence of the alleged briefing and/or what Mustaq allegedly told Ayub the day before, or that the word "boss" referred to Mustaq.

243 In our view, the evidence of the former employees as to what was said during the Staff Briefing is broadly consistent, and for the reasons explained below at [254], we do not see any reason to disturb the Judge's finding that the former employees were truthful witnesses. The former employees had variously testified that they understood "boss" in the context of the Staff Briefing to refer to Mustaq. Moreover, the Mustaq Group had not substantiated their speculative assertion that Ayub's reference to "boss" during the Staff Briefing could refer to someone else other than Mustaq.

244 The Mustaq Group also submitted that an adverse inference should be drawn under s 116 of the Evidence Act to the effect that if Ayub had been called as a witness, his evidence would contradict that of the former employees. It argued that the person best placed to give evidence regarding the staff briefing was Ayub himself, yet Ayub was withdrawn as a witness by the Claimant Beneficiaries without any reason. We see no merit in this submission. As the

Version No 1: 15 May 2024 (12:48 hrs)

Court of Appeal stated in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [20], it is not the case that in every situation where a party fails to call a witness or give evidence, an adverse inference must be drawn against that party. While the court is entitled to draw adverse inferences from the absence or silence of a witness whose evidence might be material to an issue before the court, there must have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference. In other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference. Having chosen to submit no case to answer, the Mustaq Group had not adduced any evidence, nor established a case to answer, that the former employees' evidence concerning the Staff Briefing was erroneous. In the premises, we decline to draw the adverse inference sought by the Mustaq Group based on the withdrawal of Ayub as a witness.

The 5 February 2018 Call

245 In the 5 February 2018 Call between Rajesh and Mustaq, Rajesh testified that in an earlier, unrecorded portion of the conversation, Mustaq had admitted to collecting "cashbacks", which prompted Rajesh to start recording the conversation. Moreover, in the recorded portion of the same telephone conversation, when asked about the "MOM money", Mustaq did not express surprise but instead referred to the "cashbacks" as being "off hand". Rajesh testified that he understood "off hand" as meaning that the "cashbacks" were obtained illegally, and that Mustaq told Rajesh that they "cannot discuss anything about this".

246 On appeal, the Mustaq Group criticised the Judge's reliance on the 5 February 2018 Call on several fronts:

Version No 1: 15 May 2024 (12:48 hrs)

(a) First, the 5 February 2018 Call was part of a series of negotiations between 31 January and 8 February 2018 aimed at reaching a full and final settlement of the disputes in Suit 1158 and Suit 9. Rajesh conceded on the stand that Mustaq was proposing a full and final settlement of Suit 1158 in the call. The contents of the call were therefore protected by "without prejudice" privilege.

(b) Second, Rajesh's testimony that Mustaq had admitted to being involved in the Cashback Scheme, or that Mustaq's reference to "off hand" meant that the alleged cashbacks were obtained illegally, consisted of bare and unsubstantiated assertions. Moreover, when Rajesh brought up "MOM Money", Mustaq's initial reaction was to deny any knowledge of the same. Further, when Rajesh threatened to "submit all MOM evidence" and "all document to MOM", Mustaq did not dissuade Rajesh from approaching MOM.

247 On the first point, as the Mustafa Estate Beneficiaries and the Samsuddin Estate Beneficiaries submitted, the Mustaq Group had earlier applied via HC/SUM 3771/2020 (Amendment 1) ("SUM 3771") in respect of Suit 780 and HC/SUM 3772/2020 ("SUM 3772") in respect of Suit 1158 to strike out portions of the witnesses' AEICs concerning the 5 January 2018 Call from the evidence. However, the Judge had declined to do so during a hearing on 21 September 2020, finding that the Mustaq Group could not establish that the 5 January 2018 Call was part of communications that were privileged and without prejudice. Pursuant to s 29A(1)(*c*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") read with para 3(*l*) of the Fifth Schedule to the SCJA, permission of the appellate court is required to appeal against a decision of the General Division where a judge makes an order at the hearing of any interlocutory application. In our view, the Judge's decision refusing to

Version No 1: 15 May 2024 (12:48 hrs)

expunge the 5 January 2018 Call from the evidence constitutes an order within the meaning of para 3(*l*) of the Fifth Schedule. As the Mustaq Group did not seek permission to appeal, this court is not seised with the requisite jurisdiction to hear and determine what is effectively an appeal against the Judge's decision: see *Grassland Express & Tours Pte Ltd and another v M Priyatharsini and others* [2022] SGHC(A) 28 at [27].

248 As to the second point, it is irrelevant whether "off hand" meant that the money was obtained illegally, or whether Mustaq attempted to dissuade Rajesh from approaching MOM. The crucial point is that when Rajesh alleged that "MOM money" was coming to Mustaq and that Mustaq was spending it, contrary to what the Mustaq Group contended, Mustaq's *immediate* reaction was not to deny knowledge of the "MOM money" or refute Rajesh's allegations. Instead, Mustaq simply stated that the "MOM money" was "off hand". Mustaq only denied knowledge of the "MOM money" upon being pressed again by Rajesh and even then, Mustaq's reaction did not suggest ignorance of the Cashback Scheme. The following extract of the 5 February 2018 Call is telling:

> [Rajesh]: In the same way, MOM money also came to you, which you spent for those expenses you took that decision for expenses.
>
> [Mustaq]: Money, money, that is, when, means MOM's in that I do not know and don't want to discuss at all, like off hand is off hand
>
> [Rajesh]: No no no, how can you say that you don't know, everyone saying that all money is coming to you and you are saying that you don't want to discuss about that money, so take that money out. Where is that money?
>
> [Mustaq]: That is all off hand, This, cannot discuss anything about this.

249 If Mustaq was in fact completely unaware of the Cashback Scheme as the Mustaq Group suggested, one would expect him to have expressed

Version No 1: 15 May 2024 (12:48 hrs)

confusion or bewilderment over Rajesh's allegations that he had taken and spent the "MOM money", as opposed to insisting that he did not wish to talk about it. Indeed, Mustaq would then have wanted to investigate what all this was about, but he did not.

The e-mails of the former employees

250 Several of the former employees who had given evidence had e-mailed Mustaq to complain about the Cashback Scheme. However, Mustaq did not respond to the allegations.

251 On appeal, the Mustaq Group contended that Mustaq would have been keen to refute the allegations in those e-mails if he knew of and was involved in the Cashback Scheme in an effort to exculpate himself. His silence therefore suggests that the allegations in the e-mails were baseless. The Mustaq Group further argued that the e-mails were part of a coordinated attack by the former employees led by Arvind to implicate Mustaq in the Cashback Scheme.

252 In our view, the Mustaq Group's submission is speculative and constitutes evidence from the bar. Indeed, the person best placed to explain the lack of response would have been Mustaq himself, who chose not to take the stand. Furthermore, the submission is illogical. If Mustaq did not know about the scheme, he would have been surprised and would have investigated it. His inaction is telling rather than exculpatory. Moreover, for the reasons stated below at [254], we are of the view that there is no basis to disturb the Judge's conclusion that the former employees were truthful in their evidence and that the Cashback Scheme was not a fabrication.

Version No 1: 15 May 2024 (12:48 hrs)

Conclusion on the Cashback Scheme Issue

253 For the reasons above, we are satisfied that the Cashback Scheme existed and that Mustaq initiated the Cashback Scheme.

254 It follows that there was no coordinated effort by the former employees to manufacture evidence against the Mustaq Group. In any event, having observed the former employees being cross-examined at length, the Judge was satisfied that they were sincere and truthful, and rejected the suggestion that the Cashback Scheme was concocted to manufacture evidence against the Mustaq Group. Among other things, the Judge observed that: (a) there was nothing nefarious about the former employees making statutory declarations recording their accounts of the Cashback Scheme beforehand, which were made both for the employees' own protection and to record the truth; (b) the delay by the former employees in reporting the Cashback Scheme to the authorities was reasonable as they were fearful of antagonising their employer and losing their jobs; and (c) the former employees had no incentive to side with the Claimant Beneficiaries and/or to manufacture the Cashback Scheme as they had nothing to gain and everything to lose in speaking up about the Cashback Scheme. None of these findings have been addressed by the Mustaq Group. Indeed, the Mustaq Group did not explain why these employees would lie. In the circumstances, we see no reason to disturb the Judge's finding that the Cashback Scheme was not a coordinated effort by the former employees to manufacture evidence against the Mustaq Group.

255 For completeness, we add that it is less material whether the money collected from the employees went directly to Mustaq. The oppressiveness of the Cashback Scheme lies in the fact that Mustaq perpetuated the Cashback Scheme despite it being against the interests of the shareholders of the

Version No 1: 15 May 2024 (12:48 hrs)

MMSCPL. In this regard, we note that the Mustaq Group's case was not that the Cashback Scheme was necessary to further the interests of MMSCPL, but simply that the Cashback Scheme did not exist and, if it did, that Mustaq was not aware of it. Given our findings above that the Cashback Scheme existed and that Mustaq initiated it, we are of the view that oppression has been established in respect of the Cashback Scheme.

The Consultancy Fees Issue

256 The Consultancy Fees Issue relates to the Samsuddin Estate Beneficiaries' complaint that Mustaq wrongfully caused MMSCPL to pay substantial consultancy charges to Z&O pursuant to invoices issued by Z&O, when consultancy services were not required and when such fees were unapproved.

The parties' contentions and the Judge's finding

257 At the trial below, the Samsuddin Estate Beneficiaries argued that the Mustaq Group had no evidence of any consultancy work done by Z&O, and that MMSCPL only incurred nominal consultancy charges prior to Z&O's registration. Moreover, the alleged employees of Z&O who purportedly performed consultancy services for MMSCPL were not in fact Z&O employees but were actually employees of MMSCPL. There was therefore no indication that Z&O had done any meaningful work for MMSCPL such as to justify the corresponding charges indicated on the invoices issued by Z&O.

258 In response, the Mustaq Group relied on the alleged 1973 Common Understanding that MMSCPL was run as Mustaq's sole proprietorship with the Samsuddin Estate Beneficiaries' approval. Insofar as we reject the existence of the 1973 Common Understanding (see [140] above), there is simply no basis

Version No 1: 15 May 2024 (12:48 hrs)

for sustaining this argument. That aside, the Mustaq Group argued that even on their own case, the Samsuddin Estate Beneficiaries have not established this allegation on a *prima facie* level. Among other things, the Mustaq Group argued that the Samsuddin Estate Beneficiaries adduced no evidence corroborating Fayyaz's testimony that the Z&O employees were in fact employees of MMSCPL. In particular, Fayyaz neither knew who received the consultancy fees paid by MMSCPL to Z&O, nor had evidence to substantiate the allegation that these consultancy fees were paid to Mustaq personally. The Mustaq Group also relied on contemporaneous documents showing the employer's Central Provident Fund ("CPF") contributions by Z&O to its employees, as well as invoices from Z&O to MMSCPL for the payment of monthly consultancy fees by MMSCPL to refute Fayyaz's evidence.

259 The Judge dismissed this aspect of the Samsuddin Estate Beneficiaries' complaint. The Judge appears to have placed emphasis on the following:

(a) MMSCPL had been paying yearly for consultancy fees (see GD at [606]).

(b) There was no direct evidence to suggest that the consultancy fees actually went to Mustaq.

(c) There was no evidence that Z&O's employees who purportedly performed consultancy services for MMSCPL were in fact MMSCPL's employees. Insofar as Fayyaz's evidence on the last point was concerned, she thought that his account was unbelievable given that it was raised for the first time at trial and was uncorroborated (see GD at [610]). Moreover, the Judge accepted that Fayyaz's evidence was also contradicted by Mr Chee's testimony as the latter indicated that he could not conclude that Mustaq had benefited from the fees paid pursuant to

Version No 1: 15 May 2024 (12:48 hrs)

Z&O's invoices issued, or that MMSCPL had sustained losses as a result thereof (see GD at [610]).

The payment of consultancy fees to Z&O is* prima facie *oppressive

260 We disagree with the Judge's conclusion that a *prima facie* case of oppression was not established in relation to the payments of consultancy fees to Z&O pursuant to the invoices issued by Z&O. With respect, we think that the mere fact that MMSCPL might have required consultancy services in the past does not on its own explain *why the services of Z&O were specifically* required. This approach misses the forest for the trees. Moreover, we think also that the Judge's approach failed to consider that what the Samsuddin Estate Beneficiaries must prove is simply a *prima facie* case of oppression. On the evidence available, we conclude that such a *prima facie* case was established.

261 At the outset, we note that Z&O is indisputably a sole proprietorship belonging to Mustaq. Further, it was not disputed that the payments of consultancy fees to Z&O were significantly higher than those paid to other consultants in prior years. Indeed, save for the years 1997 and 1998, which saw MMSCPL paying consultancy fees of $257,250 and $174,000 respectively, the consultancy fees incurred by MMSCPL between 1995 and 2005 (prior to Z&O's incorporation) never rose above $75,000. As the Samsuddin Estate Beneficiaries pointed out, the payments to Z&O for consultancy fees totalled $10.448m to $10.53m between 2011 and 2019.

262 More importantly, the objective evidence that was before the Judge, namely the invoices from Z&O to MMSCPL, disclosed sums that were paid to Z&O purportedly for consultancy services. However, these invoices did not provide any details on the services provided, other than that they were for

Version No 1: 15 May 2024 (12:48 hrs)

"management and consultancy services provided" for the stated month. We agree with the Samsuddin Estate Beneficiaries that the vagueness of the invoices and the absence of any explanation as to the types of and purpose for which consultancy services were rendered and charged, and the large sums involved, called into question the legitimacy of the payments. We further agree with the Samsuddin Estate Beneficiaries that these circumstances called for an explanation from Mustaq as to why there was a need to pay substantial consultancy fees to Z&O. Since the Mustaq Group had elected to submit no case to answer, no explanation was forthcoming.

263 We do not agree with the Judge that there was insufficient proof, on a *prima facie* standard, that the money paid to Z&O was taken by Mustaq. To begin with, we accept the Samsuddin Estate Beneficiaries' argument that Z&O is Mustaq's sole proprietorship, which meant there was in fact no distinction between Z&O and Mustaq. Thus, where payments were made to Z&O, this meant that payments were made to Mustaq.

264 The Mustaq Group's case that Mustaq did not appropriate the moneys paid by MMSCPL to Z&O turns on their assertion that the moneys were used to pay only the salaries of Z&O's employees and assumes that there was no profit for Z&O. To this end, the Mustaq Group relied on CPF statements showing that Z&O had contributed payments to their employees' CPF accounts. We note in this regard that the authenticity of the CPF statements was challenged by the Samsuddin Estate Beneficiaries, although the Judge seemed to think this did not matter in light of Fayyaz's admission at trial that he did not have personal knowledge as to whether the individuals employed by Z&O were really MMSCPL's employees (GD at [610]). Respectfully, however, we think these are two separate points. The fact that Fayyaz might not have had personal knowledge as to who these individuals' employer was separate from the

Version No 1: 15 May 2024 (12:48 hrs)

Samsuddin Estate Beneficiaries' challenge against the authenticity of the CPF statements, and this ought to have been separately considered by the Judge. The Mustaq Group did not prove the authenticity of the CPF statements.

265 In any case, even if Z&O had made CPF contributions to its employees' accounts, this in and itself does not answer the question whether there was any actual consultancy work performed by Z&O for MMSCPL. The evidential burden lay on the Mustaq Group to show that payments for consultancy services were indeed paid pursuant to legitimate services rendered by Z&O to MMSCPL and that the amount being charged for the services rendered was reasonable. Crucially, none of these points were addressed by the Mustaq Group. Indeed, when queried on this point, Ms Koh conceded that at no point in its written reply on appeal did the Mustaq Group mention that there was in fact evidence of consultancy work done by Z&O for MMSCPL.

266 For these reasons, therefore, we disagree with the Judge's conclusion on the Consultancy Fees Issue. In our view, there is sufficient evidence to establish a *prima facie* case that the payments of the consultancy fees to Z&O pursuant to the invoices issued were not made for genuine consultancy services that were performed and were therefore oppressive. We therefore allow the Samsuddin Estate Beneficiaries' appeal on this claim.

267 Before we conclude the Consultancy Fees Issue, we think it appropriate to also briefly address the arguments made in response to a sub-issue regarding the involvement of one Rajena Begam d/o Sheik Noordin ("Rajena"), with whom Mustaq was alleged to be in a relationship: see GD at [598]. At the trial, Fayyaz alleged that Mustaq had used the money from Z&O to pay Rajena between $20,000 to $50,000 per month, and that Rajena had wrongfully taken goods from MMSCPL without paying for them. Mustaq had also directed

Version No 1: 15 May 2024 (12:48 hrs)

MMSCPL to pay for these goods instead of making a police report: see GD at [602]. The Judge dismissed this argument, having found that there was no evidence at all of how much Rajena was paid. The Judge further found that internal disciplinary action was taken by MMSCPL against Rajena for wrongfully taking goods from MMSCPL without paying for them and she was made to pay $1,800 for the goods wrongfully taken as indicated by an invoice issued by MMSCPL (GD at [612]).

268 In these appeals, the Samsuddin Estate Beneficiaries argued that Mustaq's failure to cause MMSCPL to take further action by making a police report and the absence of evidence suggesting that Rajena had paid $1,800 to MMSCPL, showed that Mustaq had abused his position in order to shelter Rajena and cover up her wrongdoing. We note that there is in this case evidence to show that MMSCPL had taken action against Rajena and had required her to make payment for the goods wrongfully taken. While there is no evidence that Rajena in fact made payment, there could be valid reasons why MMSCPL did not take further steps, one of which is the small sum involved. Bearing that in mind and the lapse of time, we are inclined to give the benefit of the doubt to the Mustaq Group and will not reverse the Judge's conclusion on this.

The Related-Parties Transaction Issue

269 The Related-Parties Transaction Issue relates to the Samsuddin Estate Beneficiaries' claim that the Mustaq Group had caused MMSCPL to enter into transactions with, amongst others, BID, Shams Gems LLP ("Shams Gems"), Ruby Impex LLP ("Ruby Impex"), Mustafa's Pte Ltd ("MPL") and/or Mustaq (collectively, the "Related Parties"), and that the Related Parties have not repaid the sums owed under these transactions. BID is a company of which Mustaq and Ishret are sole registered shareholders, Ruby Impex and Shams Gems were

Version No 1: 15 May 2024 (12:48 hrs)

partnerships jointly registered in the names of Mustaq's daughters, Shams and Bushra, and MPL is a company whose sole registered shareholder is Mustaq.

The Credit Sales Register

270 It was Fayyaz's evidence that sales on credit terms to long-time customers of MMSCPL would be recorded in a handwritten ledger kept in an unlocked drawer in MMSCPL's purchasing office (the "Credit Sales Register").

271 It was also Fayyaz's evidence that once a credit sale is made, it would be recorded in the Credit Sales Register by an employee of MMSCPL working in the purchasing office. When partial or full repayment was made by a customer, MMSCPL's accounts department will notify the purchasing department and obtain information on which customer made payment and against which invoice the payment is to be credited. The purchasing office, in turn, would check their internal recording including the Credit Sales Register, before furnishing such information.

The Credit Sales Transactions

272 According to the Samsuddin Estate Beneficiaries, MMSCPL had supplied goods on credit terms to the Related Parties (collectively, the "Credit Sales Transactions"). The total value of the Credit Sales Transactions is $770,047,859 as recorded in the Credit Sales Register. The Samsuddin Estate Beneficiaries alleged that MMSCPL had not received payment from the Related Parties amounting to $232,935,015 in connection with the Credit Sales Transactions. The Samsuddin Estate Beneficiaries derived this value by subtracting $537,112,844, which was the aggregate amount of the sales reflected under the "related parties" category in the audited financial statements of MMSCPL for the years 2005 to 2018 (the "Audited Financial Statements"),

Version No 1: 15 May 2024 (12:48 hrs)

from the total value of the Credit Sales Transactions, *ie*, $770,047,859. The value of the transaction between MMSCPL and the Related Parties as recorded in the Audited Financial Statements is not disputed between the parties.

273 The Samsuddin Estate Beneficiaries further argued that MMSCPL's practice was to record information of the payment details in the Credit Sales Register based on the process described above. Since no such information was recorded in relation to the Credit Sales Transactions, the Samsuddin Estate Beneficiaries argued that the Related Parties had not repaid MMSCPL.

274 It was therefore the Samsuddin Estate Beneficiaries' case that the figure of $232,935,015, which represented the difference between the value of the Credit Sales Transactions as recorded in the Credit Sales Register and as recorded in the Audited Financial Statements, was *prima facie* evidence of sums that were unpaid by the Related Parties, and which evidenced misappropriation by the Mustaq Group to the detriment of MMSCPL.

275 The Mustaq Group, on the other hand, argued that the Credit Sales Register was unsatisfactory and unreliable evidence in determining whether the Credit Sales Transactions had been paid for by the Related Parties. Instead, the Mustaq Group relied on the accounts receivables ledgers (the "AR Ledger") which, according to them, showed that the Credit Sales Transactions had been paid and accounted for. As an aside, we agree with the Judge that since the Mustaq Group undertook to call no evidence by virtue of their submission of no case to answer, it was impermissible for them to have relied on the AR Ledger. We therefore do not consider this document for the purposes of determining the Related-Parties Transaction Issue.

Version No 1: 15 May 2024 (12:48 hrs)

The Judge's findings and the parties' case on appeal

276 The Judge dismissed this ground of oppression asserted by the Samsuddin Estate Beneficiaries as she was not satisfied that they had established a *prima facie* case that the Mustaq Group had misappropriated sums through the Related Parties by way of the Credit Sales Transactions. The Judge found that the Credit Sales Register was "not a reliable record of whether payment had been made for the Credit Sales Transactions" and thus did not represent a complete record of all payments made in respect of credit sales made by MMSCPL for the following reasons (see GD at [571]–[573]):

(a) Mr Chee's uncontradicted evidence was that the Credit Sales Register was not part of the general ledger system of MMSCPL. Furthermore, Fayyaz's evidence was that the finance department was responsible for keeping records of all transactions.

(b) If the Samsuddin Estate Beneficiaries were right in claiming that $537,112,844 (which should refer to $232,935,015 instead, being the amount which the Samsuddin Estate Beneficiaries claimed had remained unpaid) of sales to the Related Parties had been recorded in the financial statements for 2005 to 2018 and yet never paid for, the statements would have reflected this and the auditors would have flagged this out over the course of 13 years, which the auditors did not do.

(c) Mr Chee's evidence was that he did not have enough information to form an opinion on whether the Credit Sales Transactions were accounted for, based on his review of the Credit Sales Register, the AR Ledger and the Audited Financial Statements. Mr Chee had accepted that the mere fact that a sale might not have been classified as a related

Version No 1: 15 May 2024 (12:48 hrs)

party transaction in the Audited Financial Statements did not mean it had not been accounted for under another category.

277 The Samsuddin Estate Beneficiaries' sole ground of appeal against the Judge's findings under the Related-Parties' Transaction Issue was that the Judge erred in rejecting the Credit Sales Register as a reliable record of the Credit Sales Transactions. They raised the following arguments in support:

(a) The parties did not dispute the authenticity or reliability of the Credit Sales Register. There was thus no reason to doubt the reliability of the Credit Sales Register and the Judge ought to have concluded that the discrepancy in the figures between the Credit Sales Register and the Audited Financial Statements was *prima facie* evidence that sums were misappropriated.

(b) The Judge erred in her findings as to the reliability of the Credit Sales Register. First, the Judge failed to consider that the Credit Sales Register was "assiduously maintained and updated almost every day for 13 years". Thus, although Fayyaz's evidence was that it was MMSCPL's finance department which would keep records of payments, the Judge ought also to have considered Fayyaz's evidence that MMSCPL's purchasing office, which maintained the Credit Sales Register, had worked with the finance department to track such payments.

(c) Apart from Fayyaz's evidence, the Judge also erred in accepting Mr Chee's suggestion that the discrepancy between the Credit Sales Register and the Audited Financial Statements could be explained by a difference in accounting treatments of related party transactions by the auditors and those who handled the Credit Sales Register. This did not

Version No 1: 15 May 2024 (12:48 hrs)

in and of itself prove that the Credit Sales Transactions were accounted for in the Audited Financial Statements. In this connection, the fact that the auditors did not flag discrepancies in the Audited Financial Statements was not conclusive. It did not mean the Credit Sales Register was incomplete and/or otherwise did not reflect the true state of affairs relative to the Audited Financial Statements.

(d) Finally, the Judge placed too much weight on Mr Chee's evidence that he could not express an opinion that the sales had not been accounted for. It was sufficient for the Samsuddin Estate Beneficiaries to show that the discrepancies in the figures between the Credit Sales Register and the Audited Financial Statements called for some explanation; the burden then shifted to the Mustaq Group to prove that the Credit Sales Transactions have been accounted for, *ie*, paid.

278 The Mustaq Group, on the other hand, submitted that the Judge's decision to reject the Samsuddin Estate Beneficiaries' arguments that the Related Parties Transaction Issue was evidence of oppression should be upheld for the following reasons:

(a) First, the Judge correctly found that the Credit Sales Register was not a reliable record because Fayyaz does not have personal knowledge of the Credit Sales Register. Fayyaz is thus not in a position to give direct evidence regarding the Credit Sales Register.

(b) Second, and relatedly, Fayyaz's lack of personal knowledge as to the recording of credit sales in the Credit Sales Register, coupled with his concession that MMSCPL's finance department was responsible for keeping records of all transactions, meant that the Credit Sales Register could not represent the complete record of all such payments.

Version No 1: 15 May 2024 (12:48 hrs)

(c) Third, the Judge correctly rejected the Samsuddin Estate Beneficiaries' claim that Mustaq had misappropriated the sum of $232,935,015, representing the difference between the credit sales to the Related Parties as shown in the Credit Sales Register and in the Audited Financial Statements. In particular, the fact that there was such a difference did not in and of itself amount to *prima facie* evidence of misappropriation. Further, Mr Chee conceded that the fact that a sale might not have been classified as a Related Party Transaction in the Audited Financial Statements did not mean that it had not been accounted for. This was accepted by the Judge and supported the view that the Samsuddin Estate Beneficiaries had not established a *prima facie* case.

Sufficient evidence to establish reliability of Credit Sales Register and oppression

279 In our view, and with respect to the Judge, we disagree that the evidence relied on by the Samsuddin Estate Beneficiaries was not sufficient to establish a *prima facie* case of oppression.

280 The crux of the Judge's decision was her finding that the Credit Sales Register was not a reliable record of the sums of credit sales entered into between MMSCPL and the Related Parties. If it were otherwise, then the difference reflected between the Credit Sales Register and the Audited Financial Statements, *ie*, the sum of $232,935,015, *prima facie* suggests some form of misappropriation on the Mustaq Group's end and calls for an explanation. The misappropriation would either be direct because payments were made but not recorded, or indirect in that no attempt was made to collect the payments.

Version No 1: 15 May 2024 (12:48 hrs)

281 We agree with the Samsuddin Estate Beneficiaries that the Judge erred in finding that the Credit Sales Register was not a reliable record of the credit sales transaction entered into between MMSCPL and its customers (which included the Related Parties). At the outset, we note that the authenticity of the Credit Sales Register was not in issue. Furthermore, the Mustaq Group did not allege that it was a draft document. To the extent that the Mustaq Group suggested that it was incomplete, it was for the Mustaq Group to point to other evidence to establish the complete picture, which they were not able to do.

282 The Mustaq Group argued that this document was nevertheless unreliable because it did not represent a complete record of all credit sales transactions made by MMSCPL for which payment was made. If this were so, however, then one would have expected the Mustaq Group to adduce evidence supporting this assertion. None, however, was forthcoming, as they elected to submit no case to answer. In any event, to say that the Credit Sales Register is not a complete record is quite different from saying that it is an inaccurate and unreliable record of what it contains. To this end, Fayyaz's uncontradicted evidence was that this document contained an accurate depiction of the credit sales that were made by MMSCPL and for which payment was subsequently received, even though Fayyaz was not the person responsible for directly recording every credit sales transaction into the Credit Sales Register and every payment.

283 It follows from our conclusion as to the Credit Sales Register's reliability that the difference between the Credit Sales Transactions recorded in this document (which in our view is an objective piece of evidence) and the sums of money received by MMSCPL as indicated in its Audited Financial Statements, is sufficient *prima facie* evidence of sums of moneys that were unaccounted for, and which called for an explanation from the Mustaq Group.

Version No 1: 15 May 2024 (12:48 hrs)

284 In this regard, the Mustaq Group's case was that the Credit Sales Transactions have been paid or accounted for elsewhere. In support, they relied on the AR Ledger. For the reasons that we have given at [275] above, and in light of the Mustaq Group's election of no case to answer and thus their undertaking not to call evidence, we do not think it appropriate to have regard to this document. This being the case, there is simply no other evidence that the Mustaq Group can rely on to support their assertion that the credit sales made to the Related Parties were accounted for and paid back. Indeed, the mere assertion that the Credit Sales Transactions were paid for also did not explain why the figures in the Audited Financial Statements differ from what was recorded in the Credit Sales Register.

285 Finally, we do not accept the Mustaq Group's submission that the difference between the sums reflected in the Credit Sales Register and the Audited Financial Statements did not *prima facie* show that the difference was misappropriated. This argument on whether Mustaq had misappropriated the difference misses the point. The crucial question was whether the sums of money owed by the Related Parties under the credit sales transactions were paid to MMSCPL. In our view, the difference in the sums indicated in both documents was *prima facie* evidence that MMSCPL had not received payment from the Related Parties. The Mustaq Group did not adduce evidence to the contrary.

286 For these reasons, therefore, we allow the Samsuddin Estate Beneficiaries' appeal in respect of the Related-Parties Transaction Issue and conclude that they have established a *prima facie* case of oppression.

287 Before we conclude, we note that although the Samsuddin Estate Beneficiaries asserted at trial that Handi Restaurant and MAT were involved in

Version No 1: 15 May 2024 (12:48 hrs)

the Related-Parties Transaction Issue, the Judge found that these entities were not pleaded as Related Parties and therefore dismissed the Samsuddin Estate Beneficiaries' claims in relation to them: see GD at [570]. We note further that the Samsuddin Estate Beneficiaries have not contended, in these appeals, that Handi Restaurant and MAT are part of the Related Parties. In this regard, the value of the credit sales to Handi Restaurant and MAT as recorded in the Credit Sales Register amounts to some $432,532.02. That being said, it does not appear clear to us whether this value was subtracted from the final sum of $230,313,087.14 raised by the Samsuddin Estate Beneficiaries under the Related-Parties Transaction Issue. They should make their position clear and, if necessary, it would be for the Valuer to determine if there should be a deduction of $432,532.02 from the $230,313,087.14.

The Bonds Issue

288 The Bonds Issue relates to the Samsuddin Estate Beneficiaries' allegation that, around 2013 and 2014, Mustaq had directed MMSCPL to issue three-year bearer bonds for approximately $75m with a fixed coupon rate of 4.75% per annum (the "Bonds").

The reasons for the Bonds issuance

289 According to the Samsuddin Estate Beneficiaries, the Bonds were issued by MMSCPL to raise funds to pay the Samsuddin Estate sums equivalent to the value of Samsuddin's shareholding in MMSCPL. This was done after Fayyaz had purportedly spoken to Mustaq in 2013 about cashing out the Samsuddin Estate's interest in MMSCPL, and Mustaq had purportedly done this to placate the Samsuddin Estate Beneficiaries and to prevent them from taking action against Mustaq. The Samsuddin Estate, however, later refused the payments. Mustaq then placed the funds raised by the Bonds into fixed deposit accounts

Version No 1: 15 May 2024 (12:48 hrs)

generating a maximum of 1.3% interest per annum, thereby causing MMSCPL to incur losses of approximately $7.76m (being the difference between interest paid on the Bonds and interest earned on the fixed deposit accounts).

290 The Samsuddin Estate Beneficiaries further argued that it was not in the commercial interest of MMSCPL to take on this debt, and that MMSCPL did not require the funds generated by these Bonds. In support, they relied on Mr Chee's evidence that the "net interest expense incurred by MMSCPL in relation to the bonds was as [*sic*] at least $7,069,007", that "[t]he total expenses incurred by MMSCPL in relation to the bonds, net of corresponding interest income, is therefore estimated to be at least $8,296,656", and that:

> The proceeds from the issuance of the bonds were not put to productive use in MMSCPL's business operations and the interest paid on the bonds exceeded the fixed deposit interest income derived from the proceeds. As the expenses incurred in relation to the bonds exceeded the benefits derived by MMSCPL, we conclude that it was not in MMSCPL's interest to issue the bonds.

291 According to the Samsuddin Estate Beneficiaries, therefore, Mustaq's act of causing MMSCPL to issue the Bonds and the placing of the money raised into fixed deposit accounts constitutes oppressive conduct. Indeed, their focus was not quite on the purpose for the issuance of the Bonds but on the fact that the money raised from the Bonds was placed in fixed deposit accounts while MMSCPL was paying higher interest (than the interest earned on those accounts) on the Bonds. However, because Fayyaz gave a purpose for issuance of the Bonds, more time was spent on that than the fact that the money raised was earning less interest in fixed deposit accounts than the interest payable on the Bonds.

292 The Mustaq Group contended that the alleged purpose of the Bonds was unsupported by any documentary evidence. They further argued that the Bonds

Version No 1: 15 May 2024 (12:48 hrs)

were in fact issued to finance MMSCPL's purchase of land in Kuala Lumpur for the development of Mustafa City KL (the "KL Transaction"). In support, the Mustaq Group relied on an Information Memorandum prepared by MMSCPL for the issue of the Bonds dated 21 November 2013 (the "Information Memorandum"), which stated:

> [t]he net proceeds arising from the issue of the [Bonds] … will be used for general corporate purposes including refinancing of existing borrowings and financing capital expenditure, potential acquisition and investment opportunities and general working capital of [MMSCPL] or [MMSCPL's subsidiaries] or such other purpose(s) as may be specified in the relevant Pricing Supplement.

293 We pause to note that although the Information Memorandum did not clearly state that the Bonds issued were three-year bearer bonds for approximately $75m with a fixed coupon rate of 4.75% per annum at face value, our attention was drawn to MMSCPL's financial statements for the financial year ended 30 June 2014 (the "FY2014 Financial Statements"), where it was stated that: (a) bonds amounting to $75m were issued; (b) these were "3 year bearer bonds, with a fixed coupon rate of 4.75% per annum at face value" and (c) "[t]he bonds mature on February 6, 2017". There did not, however, appear to be a clear link between the Information Memorandum and the description of the Bonds as stated in MMSCPL's financial statements. We elaborate more on this below.

294 Returning for the moment to the Mustaq Group's case at trial, we observe that the Mustaq Group referred also to a memorandum of agreement dated 26 June 2013 between one Cheah Theam Kheng ("Mr Cheah") and MMSCPL (the "June 2013 Agreement"). The June 2013 Agreement stated, among others, that MMSCPL had agreed to purchase the land for RM347,600,000 and had paid an earnest deposit of RM6,952,000. The Mustaq

Version No 1: 15 May 2024 (12:48 hrs)

Group thus denied that the Bonds were issued for the purposes of buying out the Samsuddin Estate's shareholding in MMSCPL; instead, they were issued by MMSCPL in connection with the KL Transaction which eventually fell through.

The Judge's findings and the parties' cases on appeal

295 The Judge dismissed this ground of oppression raised by the Samsuddin Estate Beneficiaries. The Judge rejected Fayyaz's evidence that the Bonds Issue had come about because of his request to cash out on the Samsuddin estate's interest. In the Judge's view, Fayyaz's evidence was riddled with gaps. This was especially given that Fayyaz did not explain how Mustaq had arrived at the figure of "$70 million or $80 million" as the amount to be paid to the Samsuddin estate for cashing out its interest and, even then, did not explain how Mustaq came to the precise value of $75m (see GD at [557]). Moreover, Fayyaz's evidence was inconsistent when confronted with the Mustaq Group's assertions that the Bonds were issued to finance the KL Transaction. Fayyaz also did not dispute the existence of the KL Transaction when shown evidence of the same, and admitted to the existence of this transaction (see GD at [558]–[560]). The Judge also found that Mr Chee's evidence did not support the Samsuddin Estate Beneficiaries' case. Crucially, Mr Chee accepted that if it were true that the Bonds were issued to finance the KL Transaction, that might affect his conclusions about the commercial viability of the Bonds (see GD at [561]).

296 On appeal, the Samsuddin Estate Beneficiaries argued that the Judge erred in dismissing their claim for oppression in relation to this point. They argued, in the main, that the Judge erred in permitting the Mustaq Group to rely on the KL Transaction when the evidence relating to this transaction was not put in evidence and was inadmissible owing to the issue of authenticity. Moreover, the Judge failed to recognise that the KL Transaction was not pleaded

Version No 1: 15 May 2024 (12:48 hrs)

by the Mustaq Group. In permitting the Mustaq Group to raise this argument, therefore, the Judge had "displace[d] the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out on its own pleadings", which thus prejudiced their case. Apart from the KL Transaction not being pleaded, the Samsuddin Estate Beneficiaries also argued that the authenticity of the documents relied on by the Mustaq Group in support of the KL Transaction was challenged, and that these documents were in any case inadmissible owing to the Mustaq Group's submission of no case to answer. The Samsuddin Estate Beneficiaries thus submitted that the Judge erred in finding that Fayyaz's evidence on the purpose of the Bonds ought to be disbelieved owing to his responses to the questions put to him on the KL Transaction at trial.

297 In the alternative, the Samsuddin Estate Beneficiaries argued that the Judge failed to recognise an inconsistency in the Mustaq Group's case. In particular, no mention was made of the KL Transaction in the Information Memorandum, despite the June 2013 Agreement being signed on 26 June 2013 and the Information Memorandum being prepared on 21 November 2013.

298 The Mustaq Group, on the other hand, submitted that the Judge correctly concluded that Fayyaz's evidence on the purpose for the issuance of the Bonds was unreliable and ought to be disbelieved for the reasons given by the Judge. They argued also that the Samsuddin Estate Beneficiaries had not pointed to any other objective documentary evidence to support Fayyaz's evidence that the Bonds were issued for the purpose which Fayyaz had claimed. The Mustaq Group submitted that, in contrast, the documents relating to the KL Transaction, including the June 2013 Agreement and the Information Memorandum, supported the Mustaq Group's case that the Bonds were issued to finance the KL Transaction.

Version No 1: 15 May 2024 (12:48 hrs)

No prima facie case of oppression established

299 We agree with the Judge that the Samsuddin Estate Beneficiaries' case on oppression in relation to the Bonds Issue should be dismissed. However, the reasons for our conclusion differ from that of the Judge.

The Samsuddin Estate Beneficiaries were not prejudiced

300 We turn first to address the Samsuddin Estate Beneficiaries' claim that they were prejudiced as Fayyaz was cross-examined on a point that was not raised in the Mustaq Group's pleadings. In *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*"), the Court of Appeal endorsed (at [34]) the following principles stated in Sir Jack Jacob and Iain S Goldrein, *Pleadings: Principles and Practice* (Sweet & Maxwell, 1990) at pp 2–4 as follows:

> **The object of pleadings — in detail**
>
> (a) … To define with clarity and precision the issues or questions which are in dispute between the parties and fall to be determined by the court. …
>
> (b) … To require each party to give fair and proper notice to his opponent of the case he has to meet to enable him to frame and prepare his own case for trial. …
>
> (c) … To inform the court what are the precise matters in issue between the parties which alone the court may determine, since they set the limits of the action which may not be extended without due amendment properly made. …
>
> (d) … To provide a brief summary of the case of each party, which is readily available for reference, and from which the nature of the claim and [the] defence may be easily apprehended, and to constitute a permanent record of the issues and questions raised in the action and decided therein so as to prevent future litigation upon matters already adjudicated upon between the litigants or those privy to them.

Version No 1: 15 May 2024 (12:48 hrs)

301 The Court of Appeal further held that "[p]arties are expected to keep to their pleadings because it is only *fair and just* that they do so – to permit otherwise is to have a trial by ambush" [emphasis in original] and that "the general rule is that parties are bound by their pleadings and *the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue*" [emphasis added]: see *V Nithia* at [37]–[38]. However, the courts may permit a departure from the parties' pleadings "where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so": see *V Nithia* at [40].

302 We emphasise, however, that a distinction must be drawn between an unpleaded claim or issue which that party seeks to advance as part of a reformulated case on appeal, and a point which, although not raised in the pleadings, is nevertheless a point that is relevant and relates to an issue raised in the pleadings and is put in cross-examination. In our view, the present case brings into focus this important distinction on which we elaborate.

303 At the outset, we note that the KL Transaction was not raised in the Mustaq Group's pleadings. A perusal of the Defence filed by the Mustaq Group in Suit 780 shows that this was indeed not pleaded; rather, a bare denial was raised in response to the Samsuddin Estate Beneficiaries' allegation in the Statement of Claim filed in Suit 780 that the Bonds were issued in order to finance the buy-out of the Samsuddin Estate's shareholding in MMSCPL. This, however, does not mean that the Mustaq Group was not entitled to rely on the KL Transaction. We make two points in this connection.

304 First, the Samsuddin Estate Beneficiaries had put into issue the purpose for which the Bonds were issued. Indeed, this was raised both in their Statement of Claim filed in Suit 780 as well as in Fayyaz's AEIC as follows:

Version No 1: 15 May 2024 (12:48 hrs)

> As stated above, I thought about cashing out the interest of the Samsuddin Estate in 2013 and spoke to Mustaq who directed his staff, Ms Indu, to take steps to arrange for payment of $70 million or $80 million. Further, in the middle of 2015 Mustaq made the Mustaq Proposal.
>
> In or around 2013 to 2014 Mustaq caused MMSCPL to issue 3 year bearer bonds as stated in the notes to financial statements for the financial year ended 30 June 2014 … as follows:-
>
> > During the financial year, [MMSCPL] has issued 3 year bearer bonds, with a fixed coupon rate of 4.75% per annum at face value. The interest are payable semi-annually. The bonds mature on February 6 2017 and are redeemable at face value.
>
> As set out at page 30 of the said financial statements, the bonds were for $75 million. In addition to this, page 37 of the said financial statements states that the cost of the said bond issue is $1,205,500.

305 It was thus Fayyaz's evidence that he had spoken to Mustaq in 2013 about cashing out the interest of the Samsuddin Estate. Thereafter, Mustaq had directed his staff – one Indu – to take steps to arrange for payment of $70m or $80m, and this eventually resulted in the issuance of the Bonds. More broadly, the purpose for which the Bonds were issued was a live issue before the Judge.

306 Second, and relatedly, we do not think the manner in which the Mustaq Group raised the KL Transaction resulted in the Samsuddin Estate Beneficiaries being prejudiced. While the KL Transaction was not raised in the Mustaq Group's pleadings, this does not mean that the circumstances surrounding the KL Transaction and the documents relating to that transaction could not be raised with Fayyaz *in cross-examination*. In this regard, s 140(2) of the Evidence Act states:

> **Order of examinations and direction of re-examination**
>
> **140.**—…
>
> (2) The examination and cross-examination must relate to relevant facts, but the *cross-examination need not be confined*

Version No 1: 15 May 2024 (12:48 hrs)

> *to the facts to which the witness testified on his or her examination-in-chief*.
>
> [emphasis added]

307 Accordingly, save that any question asked must relate to relevant facts, the cross-examination of a witness may include putting questions relating to aspects of the circumstances surrounding the disputed issue.

308 In the present case, and as the Judge noted, Fayyaz had volunteered his understanding on the KL Transaction when the question on the purpose of the Bonds was put to him:

Q:	Now, Mr Fayyaz, my instructions are the purpose of the bond issue was to purchase some land in Kuala Lumpur to undertake a new development to be called Mustafa City KL. Have you heard about that before? I'm just asking whether you've heard or not heard of it before.
A:	*I have heard about it.*
…	
MR YEO:	And do you accept, Mr Fayyaz, that there was a deal by MMSCPL and MPL to purchase land in Kuala Lumpur to undertake a new development? Do you accept that?
A:	I do not agree that 75 million was taken to buy this property in Kuala Lumpur. I do not agree on that. *I want to explain a bit.*
Court:	Yes
A:	In the year 2013, June, the agreement of this property takes place and it was supposed to complete in the next three months. Because it was not completed during the three months, it got extended to another three months, after which they had come to know that this deal wouldn't be finalised; and this amount of 75 million was taken in the year of 2014.
…	

Version No 1: 15 May 2024 (12:48 hrs)

A: That's why I'm implying that this loan was not taken for this development. It was taken after 2013; it was taken in the year 2014. I want to explain a bit more. This amount of RM6.952 has come out of MMSCPL funds and on the page 6371, we see that MMSCPL and MPL both are signing the agreement. And to recover this money, there has been a case filed. All the details, my lawyers have.

…

MR YEO: … Now, I don't need to trouble you with the rest of the statement of claim, but essentially, Mr Fayyaz, you accept that this transaction was terminated sometime around March 2014?

A: *I agree, yes, and I want to explain.*

COURT: Yes.

A: In the year 2013, the agreement was signed and towards the end of 2013, it was understood that the deal would not go through. Even after that, the money was taken from one company, not from two, just one, only from MMSCPL and the recovered money was -- he had a consent judgment for this case. There was no account of the money after that and the money was written off -- the money was written off half in the year 2016 and 2017 from MMSCPL's account.

MR YEO: Mr Fayyaz, please do not conflate the facts and switch your case. You have been talking about the earnest deposit of RM6.952 million and who that came from and who had to write it off. Your complaint from paragraphs 183 and 191 is in relation to a bond issue, so please confine your evidence to your allegation in your affidavit.

A: *It's related to the bond issue.*

…

COURT: The reason why I let your client go on is because in view of your notice of objections, a factor I would consider in dealing with this, whether your client and the witness is actually able to address it. Or he's prejudiced because he doesn't know what in the world the defendants are talking about when the point is put to him. But he seems to me to be well able and, in fact, eager

Version No 1: 15 May 2024 (12:48 hrs)

> to address the point, so that's why I let him go on.
>
> [emphasis added]

309 It is clear from the above that Fayyaz had admitted that he was aware of the KL Transaction, and that he had readily volunteered his evidence on that matter. Indeed, the Judge found that Fayyaz was more than capable of addressing questions relating to the KL Transaction. If Fayyaz truly did not know about the KL Transaction, it was open for him to simply refuse to make any comment on that transaction, or to indicate that he did not have any knowledge on the matter. We do not see how the Samsuddin Estate Beneficiaries were prejudiced as a result of the manner in which Fayyaz's cross-examination was conducted. We therefore do not see how the Judge erred in deciding to reject Fayyaz's evidence on account of the unreliability of his testimony.

310 In concluding as such, we are mindful of the Mustaq Group's undertaking not to call evidence given their submission of no case to answer. We emphasise that insofar as the Mustaq Group relies on the KL Transaction and the associated documents to cross-examine Fayyaz to dampen his credibility and the reliability of his evidence, that is not impermissible and is consistent with our holding above on the scope of cross-examination which a witness may be subject to (see [306] above). What the Mustaq Group cannot do is admit evidence of the KL Transaction in breach of their undertaking not to give evidence.

The Judge was correct in finding that there was insufficient evidence to establish a prima facie case of oppression

311 The Judge found Fayyaz's evidence to be illogical as Fayyaz did not explain how Mustaq came up with the $70m to $80m figure and why the Bonds

Version No 1: 15 May 2024 (12:48 hrs)

were valued at $75m. The Judge further found Fayyaz's evidence to be unreliable in light of his apparent vacillation between the purpose of the Bonds, and in particular Fayyaz's testimony that the Bonds was connected with the KL Transaction. However, there was objective evidence that MMSCPL did issue the Bonds, and that the Bonds were placed into fixed deposit accounts. This is clear from: (a) the FY2014 Financial Statements which recorded that the fixed deposit account of MMSCPL increased by some $75.1m; and (b) the Financial Statement for the year ended 2017 ("FY2017 Financial Statements") which recorded MMSCPL's fixed deposits as falling below $75m to $34.2m. In this regard, Mr Chee's evidence (which we note was largely unchallenged at trial) was that the money from the Bonds issuance was kept as idle cash.

312 Taken in the round, the Mustaq Group did not dispute that the moneys raised from the Bonds were placed into fixed deposit accounts generating a maximum interest return of 1.3% per annum against the Bonds' 4.75% per annum coupon rate. The only dispute between the parties pertained to why the Bonds were issued, and whether the act of putting the bond proceeds raised by into the fixed deposit accounts amounted to oppressive conduct.

313 This brings us to the Mustaq Group's reliance on the KL Transaction to justify the issuance of the Bonds. As the Mustaq Group had made a submission of no case to answer, they had to rely on the documents purporting to record the KL Transaction to establish a defence against the Samsuddin Estate Beneficiaries' claim of oppression on this ground (see [310] above). At the hearing before us, Ms Koh was unable to explain both: (a) to whom the Bonds were issued; and (b) the sequence of the events, *ie*, whether the KL Transaction fell through prior to or after the Bonds were issued. We also had doubts as to whether the Information Memorandum was an accurate reflection of the Bonds as described in MMSCPL's financial statements. In particular, we note that the

Version No 1: 15 May 2024 (12:48 hrs)

cover page of the Information Memorandum described the financial product as a "$300,000,000 Multicurrency Medium Term Note Programme". However, nowhere in the Information Memorandum is the duration and interest rate in relation to the product stated.

314 Nevertheless, the burden remained on the Samsuddin Estate Beneficiaries, as the party alleging oppression, to prove that the act of putting the proceeds from the issuance of the Bonds into the fixed deposit accounts amounts to oppressive conduct. We are not satisfied that they have done so. As stated above, the only evidence that the Samsuddin Estate Beneficiaries proffered in support of their case on oppression under the Bonds Issue was Fayyaz's evidence that the proceeds from the issuance of the Bonds were supposedly to buy out the Samsuddin Estate's shareholding in MMSCPL. Fayyaz's evidence, however, was disregarded by the Judge because it was inconsistent with his testimony during cross-examination. We do not see why the Judge's findings regarding Fayyaz's evidence ought to be disturbed.

315 Further, it was not the Samsuddin Estate Beneficiaries' pleaded case, for instance, that Mustaq had deliberately issued the Bonds at a high coupon rate in favour of his family or friends at the expense of MMSCPL. Neither did the Samsuddin Estate Beneficiaries plead that Mustaq was negligent in the handling of the Bonds issuance matter. Such negligent mismanagement can, in appropriate circumstances support a claim for oppression if it is sufficiently serious as to be unfairly prejudicial to the interests of minority shareholders; however, "the court will normally be very reluctant to accept that managerial decisions can amount to unfairly prejudicial conduct": see *Re Elgindata Ltd* [1991] BCLC 959 ("*Elgindata*") at 993, cited with approval in *Sakae (CA)* at [147]. In the present case, there is insufficient evidence to persuade us that Mustaq acted oppressively in respect of the Bonds.

Version No 1: 15 May 2024 (12:48 hrs)

316 Accordingly, we agree with the Judge's conclusion (albeit for different reasons) that the evidence adduced is insufficient for the Samsuddin Estate Beneficiaries to establish a *prima facie* case of oppression with respect to the Bonds Issue, and we dismiss this aspect of their appeal.

Whether the alleged acts of misappropriation constitute a personal wrongdoing

317 Before we move on to consider the remaining issues, we turn briefly to deal with the Mustaq Group's submission that the Judge erred in not recognising that the allegations of misappropriation advanced by the Samsuddin Estate Beneficiaries are wrongs done to MMSCPL and should be addressed by way of a derivative action pursued by the Claimant Beneficiaries under s 216A of the Companies Act.

318 The Mustaq Group argued before the Judge that, even if the alleged acts of misappropriation were made out and constituted oppressive acts, the Claimant Beneficiaries were not the proper plaintiffs to pursue the claims of minority oppression because these acts, even if proven, constituted corporate wrongs. The Claimant Beneficiaries, on the other hand, argued that while the acts of misappropriation constituted a breach of the Mustaq Group's duties as directors or officers of MMSCPL and were thus *prima facie* wrongs suffered by MMSCPL, they were relying on these acts as evidence of the manner in which the Mustaq Group had conducted MMSCPL's affairs in disregard of their interest *qua* minority shareholder.

319 The Judge dismissed this aspect of the Mustaq Group's challenge. She agreed with the Claimant Beneficiaries and held that they were not seeking recovery of MMSCPL's funds alleged to have been misappropriated by the Mustaq Group. Insofar as the Claimant Beneficiaries relied on the acts of

Version No 1: 15 May 2024 (12:48 hrs)

misappropriation of company funds by the Mustaq Group, the Judge accepted that these acts were not relied upon to found a cause of action *per se*; instead, the Claimant Beneficiaries were relying on them as "evidence of the manner in which the [Mustaq Group] had allegedly conducted the company's affairs for their own benefit and in disregard of the minority shareholders" (see GD at [399]).

320 We agree with the Judge. It is clear that the present proceedings were not taken out by the Claimant Beneficiaries against the Mustaq Group to obtain recovery of the said sums. Were this the case, we would agree with the Mustaq Group that the distinction between a corporate wrong and a personal wrong ought to be maintained and the Claimant Beneficiaries would thus be precluded from pursuing such an action. In this regard, we refer to the Court of Appeal's decision in *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 ("*Suying Design*"), and in particular the Court of Appeal's discussion of the situations in which alleged acts of misappropriation constitute an injury to the company and are merely reflections of the loss to the company (at [30] and [32]):

> 30 … The nature of the loss relied on is of vital importance since it would follow as a matter of logical argument that most corporate wrongs would have some ill-effects on the interests of the shareholders of the company and its creditors … . To elaborate, the damage that the wrongdoer inflicts on a company may affect its ability to pay dividends to its members or return their capital in winding up, or its ability to pay its employees and other creditors, and perhaps diminish the price at which members can sell their shares. Ordinarily, these ill-effects are put right *when the company recovers what is due to it from the wrongdoer*. It is *thus not sufficient to simply claim, for example, that the misappropriation of the company's assets has resulted in a decrease in the value of the shares held by a minority shareholder*. Misappropriation of the company's assets is by its very nature unlawful and would reduce the assets of the company. Unless there is evidence to the contrary, the "injury"

Version No 1: 15 May 2024 (12:48 hrs)

> to the minority shareholder in that situation is merely a reflection of the loss to the company.
>
> 32 … there can be cases where what appears to be a corporate wrong can plausibly also be a personal wrong. This court acknowledged in *Ng Kek Wee* at [62] and [66] that there may be grey areas in which the distinction between personal complaints of oppression and complaints of wrongs against a company may be unclear (see also *Sakae Holdings* at [86]). Ultimately, how the wrong is to be categorised depends on the facts of each case. As the nature of the complaint and the appropriate relief are different in the two statutory regimes, the central inquiry for the court hearing a s 216 claim is whether the plaintiff shareholder is relying on unlawful conduct and conduct that constitutes commercial unfairness to found his claim of oppression. Even where the very same facts may found a derivative action or an action from oppression, the evidence will be examined critically to ensure that there is no blurring of the two different statutory regimes. In this regard, the obiter remarks of this court in *Ng Kek Wee* at [69] are a helpful guide:
>
> > … an action for s 216 [of the Companies Act] is appropriately brought where the complainant is relying on the unlawfulness of the wrongdoer's conduct as evidence of the manner in which the wrongdoer had conducted the company's affairs in disregard of the complainant's interest as a minority shareholder and where the complaint cannot be adequately addressed by the remedy provided by law for that wrong. … z
>
> [emphasis in original omitted; emphasis added]

321 The principles set out by the Court of Appeal in *Suying Design* thus make clear that a claim that the value of the shareholder's shares in the company has been devalued as a result of the wrongdoing is insufficient to found an injury that is distinct to the shareholder. The Court of Appeal also recognised, however, that there may be situations where the distinction between allegations that are properly characterised as corporate wrongs or personal wrongs may not be so clear. In such cases, the court must scrutinise the nature of the complaint and the appropriate relief sought to ensure that a party does not seek to circumvent the derivative action regime by disguising injuries and claims that are more appropriately characterised as wrongs done to the company, as wrongs

Version No 1: 15 May 2024 (12:48 hrs)

done to that party *qua* shareholder. Crucially, the Court of Appeal recognised that facts underlying a wrongdoing may found either a derivative action or oppression action, and to this end a shareholder may rely on allegedly unlawful conduct as evidence of the manner in which the wrongdoer had conducted the company's affairs in disregard of the complainant's legitimate interests as a minority shareholder. This is so, provided also that the injury suffered by the complainant cannot be adequately addressed by the remedy provided for in a statutory derivative action.

322 In the present case, as the Judge found, the allegation of injury suffered by the Claimant Beneficiaries is not merely a devaluation of their shareholding. Rather, the Claimant Beneficiaries' position was that they suffered an injury to their *interests as minority shareholders*. Put another way, in running MMSCPL's operations, the Mustaq Group had completely disregarded the Claimant Beneficiaries' expectations that: (a) MMSCPL would be run in a way that did not ignore their interests to, for instance, be included in the sharing of profits (by way of dividend payouts); (b) there be proper corporate governance and accountability; and (c) there be proper treatment of the company's employees. In our view, and as recognised in *Suying Design*, this is precisely the form of injury alleged by a claimant that would attract an action for oppression. Although the various wrongdoings perpetrated by the Mustaq Group above might constitute breaches of their fiduciary duties which they owe to MMSCPL, such conduct also constitutes evidence of their complete disregard of the Claimant Beneficiaries' interests as minority shareholders.

323 We further note that while the Claimant Beneficiaries could have brought a derivative action under s 216A of the Companies Act, that would not have adequately addressed their ultimate complaint and the relief they had sought, which was to have the Mustafa-Samsuddin Estates' shareholdings in

Version No 1: 15 May 2024 (12:48 hrs)

MMSCPL bought out by the Mustaq Group at a fair value and to facilitate their clean exit from the company. In this connection, we do not understand the Claimant Beneficiaries to be seeking relief for the moneys misappropriated by the Mustaq Group to be returned to the company. Rather, the Claimant Beneficiaries had raised evidence of these wrongdoings to ensure that the Mustafa-Samsuddin Estates' shares are properly and fairly valued, taking into account the losses suffered by MMSCPL as a result of the wrongdoing. We agree with the Claimant Beneficiaries that this relief is one that cannot be obtained in an action under s 216A of the Companies Act. However, it is permissible under s 216.

324 For these reasons, we dismiss this aspect of the Mustaq Group's appeal.

The Defences Issue

325 We turn to deal with the defences raised by the Mustaq Group, namely laches and acquiescence.

Laches

326 To recapitulate, the Judge found that the elements of laches were not made out as the Mustaq Group could not show inordinate delay on the part of the Claimant Beneficiaries. The Judge also found that the Mustaq Group had not explained exactly what contemporaneous records were lost due to the passage of time and how the loss of these alleged records adversely impacted their case (see [55] above).

327 In our view, the Mustaq Group is not entitled to rely on the defence of laches as the equitable doctrine of laches does not apply to the Claimant Beneficiaries' claim for statutory relief in the present case. In any event, we

Version No 1: 15 May 2024 (12:48 hrs)

agree with the Judge's conclusion that the Mustaq Group have failed to establish that they had suffered prejudice by reason of any delay on the part of the Claimant Beneficiaries. We elaborate on each point in turn.

The doctrine of laches does not apply

328 The doctrine of laches, being an equitable doctrine, is generally invoked to bar a claim for *equitable relief* and is not applicable to claims under the common law: see *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben Finance*") at [113] and [122]. More recently, in *Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased) and another v Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased) and others and another appeal* [2023] SGHC(A) 40, in the context of a claim for an account of rental pursuant to s 73A of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed), this court held that the equitable doctrine of laches likewise did not apply in respect of statutory claims (at [84]).

329 This is consonant with the High Court's decision in *Ong Heng Chuan v Ong Teck Chuan and others* [2020] SGHC 161, where it was observed at [305], in relation to a claim for relief under s 216 of the Companies Act, that laches is an equitable defence that only operates to bar the grant of equitable relief such as an injunction, but does not extinguish a claimant's legal right, or bar the grant of relief by (for example) an award of common law damages. In rejecting the defence of laches, the court noted that the defendant did not explain how it would operate to bar the claimant from seeking the statutory reliefs provided for in s 216 of the Companies Act.

Version No 1: 15 May 2024 (12:48 hrs)

330 In our view, the equitable doctrine of laches is not a defence to a claim for statutory relief under s 216 of the Companies Act, such as those sought by the Claimant Beneficiaries in the present case.

No Prejudice to the Mustaq Group

331 In any event, we are not satisfied that the Mustaq Group have shown that they had suffered prejudice thereby entitling them to rely on the doctrine of laches. The doctrine of laches is generally invoked where there has been a substantial lapse of time coupled with the existence of circumstances that make it inequitable to enforce the claim. In this regard, it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, and any element of unconscionability in allowing the claim to be enforced: see *Esben Finance* at [113] and *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44].

332 In relation to the issue of prejudice, the Mustaq Group made the following submissions against the Judge's findings:

(a) The Mustaq Group should not be faulted for failing to explain what contemporaneous records had been lost due to the passage of time and how the loss of these records impacted their case. As Mustaq shared a close familial relationship with Mustafa and Samsuddin and dealt with them informally, the Judge should not have placed too great an emphasis on the state of documentary evidence. Moreover, the Mustaq Group cannot be faulted for being unable to recall specifically matters which occurred over 30 years ago.

(b) The Mustaq Group had in fact explained what contemporaneous documents they had lost due to the passage of time in their affidavits

Version No 1: 15 May 2024 (12:48 hrs)

filed in response to specific discovery orders, which included documents and correspondence concerning: (i) the financial contributions by Mustaq and Ishret to MMSCPL; (ii) the remuneration paid by MMSCPL to Mustafa, Samsuddin and Mustaq; (iii) the use of the $700,000 raised from the 5 January 1995 Allotment; (iv) the taking of personal loans from MMSCPL by its directors; (v) the loans given by MMSCPL to Mustaq and Ishret; (vi) the loans provided by Mustaq to MMSCPL; and (vii) the general ledger activities prior to June 2012. Such prejudice to Mustaq and Ishret was exacerbated by the fact that Mustafa and Samsuddin had passed away and were no longer able to give evidence concerning whether they knew and/or consented to the various alleged acts of oppression.

(c) Moreover, as a result of the delay in bringing Suit 1158 and Suit 780, which concerned the shares in MMSCPL and the conduct of its business, the Mustaq Group been prejudiced as they had in the interim dedicated time, care, attention and skill, and undertaking risk for the growth of MMSCPL.

333 We are of the view that none of the submissions of the Mustaq Group justifies departing from the Judge's conclusion that there was no evidence to support the Mustaq Group's allegation of prejudice.

334 While the Mustaq Group claimed that Mustaq had explained what contemporaneous documents were lost in various affidavits filed in the course of Suit 1158 and Suit 780, they had elected not to give evidence in relation to any of these allegedly lost documents and how such loss prejudiced them. It is also significant that the issue of the prejudice suffered by the Mustaq Group was not explored with or put to any of the Claimant Beneficiaries' witnesses. In sum,

Version No 1: 15 May 2024 (12:48 hrs)

the Mustaq Group simply have no evidence that they are entitled to rely on to demonstrate the existence of any prejudice that they have suffered.

335 Moreover, the Mustaq Group never pleaded such alleged prejudice in their defence, as the Mustafa Estate Beneficiaries contend. Also, they neither explained how the alleged delay by the Claimant Beneficiaries caused the loss of such documents by the Mustaq Group nor how the loss of the stated documents adversely impacted their case, for instance, whether they would have run their case differently if they had access to those documents.

336 Furthermore, as the Samsuddin Estate Beneficiaries pointed out, if there was limited formal documentation as the Mustaq Group submitted, any prejudice surrounding the loss of contemporaneous records due to the passage of time would necessarily be limited. In any event, the fact that there might have been limited formal documentation does not absolve the Mustaq Group of their burden to at least explain what documents were lost and how the loss of those documents adversely affected its case.

337 Finally, the alleged prejudice suffered by Mustaq (and the Mustaq Group) in dedicating time, care, attention and skill, and undertaking risk for MMSCPL's growth was not pleaded. In any event, we cannot see how this constitutes prejudice caused by the alleged delay of the Claimant Beneficiaries since the Mustaq Group would have had to dedicate time and resources towards managing MMSCPL regardless of when, and indeed whether, the Claimant Beneficiaries had commenced these proceedings.

338 For these reasons, we are of the view that the Mustaq Group have failed to establish the element of prejudice and are therefore not entitled to rely on the defence of laches.

Version No 1: 15 May 2024 (12:48 hrs)

Acquiescence

339 The defence of acquiescence applies where a person knows that another person is about to commit, or is in the course of committing, an act infringing a right which he possesses, but behaves in such a manner that induces the person committing the act (and who might otherwise have avoided doing the act) to believe that he consents to the act. In that sense, the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may reasonably be inferred from it and is no more than an instance of the law of estoppel by words or conduct: see *Genelabs Diagnostics Pte Ltd v Institut Pasteur and another* [2000] 3 SLR(R) 530 at [76] citing *Halsbury's Laws of England* vol 16 (4th Ed Reissue) at para 924.

340 With regard to the defence of acquiescence, the Judge found that there was no evidence of any representation having been made by the Claimant Beneficiaries to the Mustaq Group such as to found an estoppel, waiver or abandonment of their rights; nor was there any evidence of prejudice to the Mustaq Group (see [57] above).

341 Although the Mustaq Group stated on appeal that the Claimant Beneficiaries are "precluded by the doctrine of acquiescence" from bringing claims against the Mustaq Group, they did not specify exactly which aspect of the Judge's findings they are appealing against for this issue. The Mustaq Group also did not identify the specific conduct of the Claimant Beneficiaries which they relied on to assert that the Claimant Beneficiaries had acquiesced to the oppressive acts of the Mustaq Group. In the circumstances, we are not satisfied that Mustafa, Samsuddin and/or the Claimant Beneficiaries had conducted themselves in a manner such as to support a reasonable inference that that they

Version No 1: 15 May 2024 (12:48 hrs)

had acquiesced to the oppressive acts of the Mustaq Group. The Mustaq Group's defence of acquiescence therefore fails as well.

The Estate Duties Issue

342 We deal next with whether Mustaq had breached his duties as: (a) administrator and trustee of the Mustafa Estate; and (b) executor and trustee of the Samsuddin Estate.

Breach of duties owed to the Mustafa-Samsuddin Estates

343 We agree with the Judge's conclusion that the following acts constituted oppressive conduct:

(a) the dilution of the Mustafa Estate's shares through the 1995 and 2001 Allotments (see [183] above);

(b) the falsification of MOM applications to allow for the collection of "cashbacks" from MMSCPL employees *ie*, the Cashback Scheme (see [253]–[255] above);

(c) the granting of the Directors' Loans (see [209] above); and

(d) causing MMSCPL to pay no dividends to the shareholders for a period of over a dozen years, while concurrently paying themselves substantial directors' fees (see [229] above).

344 We also agree with the Judge's finding that Mustaq had acted in breach of his duties as administrator and trustee of the Mustafa Estate and as executor and trustee of the Samsuddin Estate. Mustaq was party to these wrongful acts and took no steps to rectify or inform the Claimant Beneficiaries of the wrongful

Version No 1: 15 May 2024 (12:48 hrs)

acts, both before and after becoming the administrator and trustee of the Mustafa Estate (GD at [722]–[723] and [778]–[782]).

345 As Mustaq's appeal against the Judge's decision in this regard rests entirely on its submission that the Judge erred in finding that Mustaq had acted oppressively, and we have decided for the reasons above to uphold the Judge's findings on oppression, it follows that Mustaq has no defence to the claims against him for breach of his duties as administrator and trustee of the Mustafa Estate and executor and trustee of the Samsuddin Estate.

346 For completeness, we note that in these appeals Mustaq challenged the Judge's findings that he had: (a) stonewalled the Mustafa Estate Beneficiaries' requests for information about the Mustafa Estate; (b) applied financial pressure on the Mustafa Estate Beneficiaries through a proposed restructuring of all companies that were directly and/or indirectly owned by Mustaq, Ishret and/or MMSCPL and manipulation of dividend payments; and (c) terminated Ayaz's employment with MMSCPL and turfed his family out of the company's accommodation. Since these matters do not affect the conclusion that Mustaq has acted in breach of his duties as administrator and trustee of the Mustafa Estate, we do not propose to deal with them.

Remedies for Mustaq's breach of duties towards the Mustafa Estate

347 Mustaq submitted on appeal that the Judge erred in finding that Mustaq should be ordered to give an account of his administration of the Mustafa Estate on a wilful default basis as the Mustafa Estate Beneficiaries never pleaded and proved that there was wilful default on Mustaq's part: citing *Ong Jane Rebecca v Lim Lie Hoa and others* [2005] SGCA 4 ("*Ong Jane Rebecca*") at [60]–[61]. Moreover, an account on a wilful default basis was not one of the reliefs pleaded

Version No 1: 15 May 2024 (12:48 hrs)

and/or sought by the Mustafa Estate Beneficiaries in Suit 9. In response, the Mustafa Estate Beneficiaries contended that an account on a wilful default basis should be granted so long as the claimant showed a want of ordinary prudence, *ie*, an omission by a trustee to do something he ought to have done. A court may grant an account on a wilful default basis as long as the claimant pleads that assets might have been received by the estate but for the administrator's default, which amounts to a pleading of wilful default.

348 In our view, Mustaq's reliance on *Ong Jane Rebecca* is misconceived. In that case, the claimant argued on appeal that although the judge below did not specify whether the inquiry he had ordered was to be on the standard basis or wilful default basis, in light of the judge's findings of the defendant's wrongdoing, the judge could not have intended for the inquiry to be restricted to the standard basis. The Court of Appeal, in rejecting the claimant's argument, observed that the argument was unsupported by her own pleadings whereby the claimant did not pray for specific relief in respect of the defendant's purported breaches of trust and made no reference to an account on the basis of wilful default: see *Ong Jane Rebecca* at [54]–[57]. Nevertheless, the court noted that it was open to it to order an account on a wilful default basis at any stage of the proceedings if wilful default was charged and proved. However, the court cautioned that before it can do so, the plaintiff must allege and prove at least one act of wilful neglect or default. The court thus declined to order an inquiry on a wilful default basis in *Ong Jane Rebecca* as the claimant never made any application for an account to be taken on the footing of wilful default; nor was there sufficient evidence to safely make a finding of wilful default: see *Ong Jane Rebecca* at [59]–[61].

349 Similarly, it was observed in *UVH and another v UVJ and others* [2020] 3 SLR 1329 at [24] that the purpose of a taking of accounts on a wilful

Version No 1: 15 May 2024 (12:48 hrs)

default basis is to discover concealed misconduct. Misconduct that was neither pleaded nor mentioned at the hearing at which the accounting was directed might be investigated, and the defendants might be charged accordingly. It stands to reason that a failure to specifically seek the taking of accounts on a wilful default basis does not preclude such a remedy from being granted, since evidence of default may only surface during the taking of the accounts. Indeed, as the Mustafa Estate Beneficiaries pointed out, the courts in *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2015] SGHC 173 (at [2] and [42]) and *Ratan Kumar Rai v Seah Hock Thiam and others* [2021] SGHC 276 (at [52] and [132] (upheld on appeal in *Tan Teck Kee v Ratan Kumar Rai* [2022] 2 SLR 1250 at [127]), had awarded accounts and/or inquiries on a wilful default basis even though that was not specifically sought by the claimants in those cases.

350 In the present case, the Mustafa Estate Beneficiaries had pleaded that: (a) Mustaq had breached his duties and misused MMSCPL's funds and assets; and (b) sought an order that Mustaq give an account of his administration of the Mustafa Estate and a declaration that Mustaq be liable to account to the Mustafa Estate for losses caused to the estate and/or the benefits he obtained. Unlike in *Ong Jane Rebecca*, there was sufficient evidence, and the Judge did find, that there were acts of wilful default on Mustaq's part. Accordingly, we do not see any reason to disturb the Judge's order that Mustaq give an account of his administration of the Mustafa Estate, and a declaration that Mustaq was liable to account to the Mustafa Estate for the losses caused to the estate by reason of Mustaq's breaches, on a wilful default basis.

The Counterclaims Issue

351 We see no reason to disturb the Judge's decision to dismiss the Mustaq Group's counterclaims in Suit 1158 and Suit 780 for a declaration that Mustaq

Version No 1: 15 May 2024 (12:48 hrs)

was the legal and beneficial owner of all the MMSCPL shares registered to the Mustafa Estate and Samsuddin Estate. As we noted above at [140], the Mustaq Group has failed to establish the Common Understandings, or any other basis for its assertion that Mustaq was the sole legal and beneficial owner of all the shares in MMSCPL.

352 We also consider that the Judge correctly dismissed the Mustaq Group's counterclaim in Suit 780 that Fayyaz was in breach of his fiduciary duties and/or other duties owed to the Samsuddin Estate and its beneficiaries by bringing Suit 780 against Mustaq in bad faith. The Mustaq Group's appeal against the Judge's decision in this regard is entirely contingent on the Judge's findings that the Mustaq Group had acted oppressively being overturned. As we have concluded above that Mustaq had acted oppressively towards the Samsuddin Estate Beneficiaries, it follows that Suit 780 was not brought against Mustaq in bad faith.

The Reliefs Issues

353 Having considered the merits of the parties' appeals in respect of the grounds of oppression discussed above, we turn now to consider the parties' appeals in respect of the reliefs granted by the Judge.

354 The starting point is s 216(2) of the Companies Act, which reads:

> (2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —
>
> > (*a*) direct or prohibit any act or cancel or vary any transaction or resolution;
> >
> > (*b*) regulate the conduct of the affairs of the company in future;

Version No 1: 15 May 2024 (12:48 hrs)

> (*c*) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
>
> (*d*) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
>
> (*e*) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
>
> (*f*) provide that the company be wound up.

355 While s 216(2) of the Companies Act vests the court with a wide discretion to craft the appropriate remedies, such remedies must be crafted "with a view to bringing to an end or remedying the matters complained of": see *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 at [71]. Crucially, the court's discretion under s 216(2) of the Companies Act is a broad one and is not constrained by the parties' pleadings when it comes to crafting a remedy under s 216(2): see *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 at [30].

356 In this connection, it is well-established that the court may order other members of the company to buy the shares of the complainant pursuant to s 216(2)(*d*) of the Companies Act where oppressive conduct has been established (otherwise known as a "buy-out order"). In making a buy-out order, the court is accorded extensive discretionary power to effect justice in the particular circumstances of individual cases: see *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 at [71]. As the court noted in *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [27]:

> The valuation exercise is governed by a handful of principles which can be gleaned from the cases. The overriding principle for determining the purchase price for a buy-out order under s 216(2)(*d*) of the Act is that the price should be a 'fair value' for

Version No 1: 15 May 2024 (12:48 hrs)

> the plaintiffs' shareholding. Subject to this, value will ordinarily be a matter of expert evidence. But the court must not defer too readily to expert evidence. First, the court must assess for itself the reasonableness of an expert's opinion against the criteria of fact and logic. This will sometimes require the court to go deeper into the technical basis upon which the expert valuation has been performed and to consider whether that basis for valuation has been applied using assumptions which are reasonable and justified by the facts. Second, the court must bear in mind the statutory purpose behind its powers under s 216(2). That purpose is to remedy or to bring to an end the oppression suffered by a successful plaintiff. The court therefore has the necessary degree of flexibility to adjust an expert's value to arrive at a value which is fair and just in the particular circumstances of the case, even if those adjustments do not accord with strict accounting principles.

357 With these principles in mind, we turn to consider the following matters under the Reliefs Issues arising from these appeals:

(a) The forms of reliefs to be granted given our conclusions above regarding the 1991 and 1993 Allotments and the 1995 and 2001 Allotments (the "Allotments Relief Issue").

(b) The appropriate approach to valuing the shares of the Mustafa-Samsuddin Estates, including:

(i) whether the Valuer should be directed to conduct a special audit to ascertain the fair value of the Mustafa-Samsuddin Estates' shares in MMSCPL (the "Special Audit Relief Issue");

(ii) whether the valuation of the Mustafa-Samsuddin Estates' shares taking into consideration the non-payment of dividends coupled with the excessive payment of directors' fees, ought also to take into account Mustaq's efforts in building up MMSCPL,

Version No 1: 15 May 2024 (12:48 hrs)

and whether due credit ought to be given for Mustaq's work done (the "Efforts Relief Issue");

(iii) whether the valuation of the Mustafa-Samsuddin Estates' shares taking into consideration the Cashback Scheme ought to be limited in scope to the evidence of the six former employees who testified (the "Cashback Scheme Relief Issue");

(iv) whether the valuation of the amount owed by MMSCPL's directors in respect of the Directors' Loans Issue ought to take into account interest on the accrued outstanding sums; and

(v) whether the Mustafa Estate ought to receive the benefit of having their shareholding in MMSCPL valued in accordance with the acts of oppression advanced by the Samsuddin Estate Beneficiaries, *ie*, the Consultancy Fees Issue and the Related-Parties Transactions Issue, even though these grounds of oppression were neither pleaded nor advanced by the Mustafa Estate Beneficiaries at trial or in these appeals (the "Mustafa Estate Shareholding Valuation Issue").

(c) Whether the Judge erred in not making an order for the costs of Suit 780 to be assessed on an indemnity basis (the "Costs Issue").

(d) Whether the Judge ought to have ordered interest on the total value of the Mustafa-Samsuddin Estates' shareholding in MMSCPL as assessed by the Valuer to run from an earlier date as opposed to within three weeks of the Valuer's delivery of the valuation report to the court setting out the purchase price (the "Post-Judgment Interest Issue").

Version No 1: 15 May 2024 (12:48 hrs)

The Allotments Relief Issue

358 Given our conclusion at [188]–[195] above that the 1991 and 1993 Allotments were not oppressive, there is no basis for granting any form of relief on this ground. Accordingly, it is not necessary to consider whether the Judge erred in deciding not to set aside these allotments. It is also not necessary to consider the Samsuddin Estate Beneficiaries' submission that an order should be made for the Valuer to take into account the 1991 to 1993 Allotments in determining the purchase price of the Samsuddin Estate's shares, or their alternative submission that an order should be made for damages to be paid by the Mustaq Group in respect of the 1991 to 1993 Allotments.

359 Turning to the 1995 and 2001 Allotments, our conclusion at [183] above is that the Judge correctly found that these allotments were oppressive. Accordingly, we affirm her decision to declare these allotments as null and void and of no effect, and her order that they be set aside (see GD at [334]).

360 Our conclusion that the 5 January 1995 Allotment ought to be rendered null and void, however, raises a consequential issue regarding the share allotments on 9 April 1996 and 24 February 1997 (the "1996 and 1997 Allotments"), specifically, whether these allotments ought also to be set aside. We elaborate on this.

361 As can be seen from the table at [15] above, all four shareholders of MMSCPL at that time (*ie*, Mustaq, Ishret, Samsuddin and Mustafa) were allotted shares in the 1996 and 1997 Allotments, in proportion to the registered shareholding of each shareholder following the 5 January 1995 Allotment. As a result, the percentage of their shareholding remained the same after the

Version No 1: 15 May 2024 (12:48 hrs)

5 January 1995 Allotment: Mustaq at 42.57%; Ishret at 12.95%; Samsuddin at 22.07%; and Mustafa at 22.41%.

362 Before the Judge, the Samsuddin Estate Beneficiaries challenged the 1996 and 1997 Allotments on the basis that these allotments were carried out improperly without Samsuddin's knowledge and were carried out contrary to the requirements of MMSCPL's Constitution. In the alternative, the Samsuddin Estate Beneficiaries argued that the 1996 and 1997 Allotments were oppressive because they "were issued in proportion to the registered shareholdings of the shareholders following the 5 January 1995 Allotment [such that] Samsuddin would have already been disadvantaged by the earlier share allotments". The Judge dismissed this principally because the shares allotted to each registered shareholder in these two allotments were in proportion to that shareholder's shareholding at that point in time, such that there was no dilutive effect (see GD at [394]). The Judge further reasoned that even if the 1996 and 1997 Allotments were oppressive because they continued or confirmed the shareholding positions created by the oppressive 5 January 1995 Allotment, the harm suffered by the Samsuddin Estate was sufficiently addressed by declaring the 5 January 1995 Allotment null and void and ordering it to be set aside or cancelled. In the Judge's view, nothing more would be achieved by making similar orders in respect of the 1996 and 1997 Allotments (see GD at [395]).

363 We disagree with the Judge's reasoning in part. While we agree that the 1996 and 1997 Allotments were not oppressive as they did not dilute Samsuddin's or Mustafa's shareholding as such, we do not think relief ought to be denied in respect of the 1996 and 1997 Allotments simply on that basis.

364 Before we continue with our analysis, we note that the Claimant Beneficiaries have not appealed against the Judge's decision on the 1996 and

Version No 1: 15 May 2024 (12:48 hrs)

1997 Allotments in these appeals. To this end, Ms Koh submitted that the court does not have the power to consider any relief in respect of the 1996 and 1997 Allotments. We disagree with her submissions because the 1996 and 1997 Allotments were based on the parties' shareholdings after the 5 January 1995 Allotment, which is to be set aside. Therefore, although the 1996 and 1997 Allotments were not in themselves oppressive, they ought not to be allowed to stand because they are based on an earlier invalid allotment, *ie*, the 5 January 1995 Allotment. Since that allotment is not valid, the subsequent allotments based on it should consequentially also be set aside. This is a matter of logic which does not depend on any contention that the 1996 and 1997 Allotments were each oppressive as well.

365 More importantly, we note that while the Judge reasoned in her decision that the parties' respective shareholdings would include the 1996 and 1997 Allotments, a review of the Judge's orders (as stated in the Annexures to the GD) showed that the Judge had directed the Valuer to conduct an assessment of the fair value of the Mustafa-Samsuddin Estates' respective shareholdings based on the proportion of shares which each estate held following the allotment of 19 May 1993 instead. Thus, in respect of the orders made for Suit 1158, the Judge directed that "[Mustaq and Ishret] shall buy out … the Mustafa Estate's *25.4%* shareholding in [MMSCPL] at a price … to be determined by [the Valuer]"; and in respect of the orders made for Suit 780, the Judge directed that "[Mustaq and Ishret] shall buy out … the Samsuddin Estate's *25.7%* shareholding in [MMSCPL] at a price … to be determined by [the Valuer]". The percentage of each estate's respective shareholding as stated in the Judge's order in fact reflects the parties' shareholding after the allotment of 19 May 1993 as shown in the table setting out the parties' shareholding at [15] above. Thus, while we are of the view that the Judge erred in deciding not to set aside

Version No 1: 15 May 2024 (12:48 hrs)

the 1996 and 1997 Allotments and have decided to set them aside, our decision in fact gives effect to the Judge's orders as reflected in the judgment issued in respect of Suit 1158 and Suit 780.

366 Therefore, in summary, the 1995, 1996, 1997 and 2001 Allotments are all set aside. It also follows, accordingly, that the Valuer should consider that any cash or cash-equivalent that was used to pay for these allotments ought to be returned to the respective shareholder. The valuation of the shares is to be based on the shareholding in the company following the allotment of 19 May 1993.

The Special Audit Relief Issue

367 Following the conclusion of the trial, the Judge declined to order that MMSCPL be wound up. Instead, the Judge ordered that a more appropriate remedy was that Mustaq and Ishret were to buy the shares of the Mustafa-Samsuddin Estates (see GD at [787]). In support of the buy-out remedy, the Judge reasoned that the following steps were appropriate to facilitate a fair valuation of the shares:

> I held that the price at which the Mustafa and Samsuddin estates should be bought out was to be determined by an independent valuer. The independent valuer was to fix the purchase price at a fair value without any minority discount after taking into account all moneys of MMSCPL that had been misappropriated according to the findings I made herein and after making appropriate adjustments to offset the effects of the oppressive and/or unjust conduct of the defendants. I add that since I ordered that the valuer was to take into account the misappropriated sums in his valuation of the shares, I did not find it necessary to make a separate order for the defendants to pay back the misappropriated sums to MMSCPL.

Version No 1: 15 May 2024 (12:48 hrs)

368 In respect of the Samsuddin Estate Beneficiaries, the terms of the buy-out order made by the Judge were as follows (see GD at p 368 (Annex B, paras 7–8)):

> [Mustaq] and [Ishret] shall buy out (the "Buyout Order") the Samsuddin Estaet's 25.7% shareholding in [MMSCPL] at a price (the "Purchase Price") to be determined by an independent valuer (the "Valuer") who shall be appointed by agreement between the [Samsuddin Estate Beneficiaries], [the Mustafa Estate Beneficiaries] and [Mustaq and Ishret] within 3 weeks from the date of this Judgement, failing which by the Court;
>
> The Valuer shall fix the Purchase Price in accordance with the terms set out in Annex A which shall be incorporated into and shall be part of the Buyout Order and this Judgment;

369 Annex A of the GD records the precise orders made by the Judge in respect of the valuation of the MMSCPL shares by the Valuer. The salient parts of Annex A read as follows (see GD at pp 371–373 (Annex A, paragraphs 2–4 and 6)):

> In determining the Purchase Price, the Valuer shall act as expert and not otherwise and shall fix the Purchase Price at fair value without any minority discount after taking into account all moneys of [MMSCPL] that have been misappropriated according to the findings made by [the Judge[in Her Honour's Judgment on 16 August 2021 and as set out in the Notes of Evidence dated 6 September 2021 which are set out below and which may be elaborated upon by Her Honour in any written grounds that may be delivered by Her Honour:
>
> i. That the [Mustaq Group] acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of [MMSCPL] in relation to the conduct of the 5 January 1995 and 11 December 2001 Allotments;
>
> ii. The [Mustaq Group] acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of [MMSCPL] in relation to the unsecured and interest free loans from [MMSCPL].
>
> iii. [Mustaq] acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of [MMSCPL] in relation to the

Version No 1: 15 May 2024 (12:48 hrs)

falsification of applications to the Ministry of Manpower for work passes for the employees of [MMSCPL];

iv. [Mustaq and Ishret] acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of [MMSCPL] in relation to the non-payment of dividends while paying substantial directors' fees to [Mustaq and Ishret];

In carrying out the above, the Valuer shall make the appropriate adjustments to offset the effects of the oppressive and/or unjust conduct of the [Mustaq Group], and determine the value of the Samsuddin Estate's 25.7% shareholding in [MMSCPL] as at 16 August 2021.

The Valuer shall have the discretion to determine the appropriate method of valuation. The Valuer shall carry out the Valuation based on all the information and documents provided and made available to him, and also based on his professional judgment, including the drawing of appropriate inferences where the circumstances warrant it.

…

So that he may carry out the Valuation, the following documents and information shall be provided to the Valuer:

i. The Notes of Evidence dated 16 August 2021 and 6 September 2021, and this Order of Court, including the Annex.

ii. All affidavits, documents, and exhibits admitted as evidence in the trial of [the High Court Suits] (the "Admitted Documents").

iii. Any other documents which the Valuer deems necessary for him to carry out the Valuation.

If the Valuer forms the view that the Admitted Documents are inadequate for carrying out the Valuation, the Valuer is at liberty to request from the parties any additional documents or information (the "Requested Documents or Information"). Such Requested Documents must be provided by the parties to the Valuer as soon as possible.

If the Valuer forms the view that any of the Requested Documents or Information produced to him contradicts or casts doubt on the accuracy, correctness, or completeness of the information presented in the Admitted Documents, the Valuer is at liberty to write to the parties to raise queries about the contradictions or doubts identified, and to seek answers and explanations.

Version No 1: 15 May 2024 (12:48 hrs)

> The Valuer, in the exercise of his professional judgment, can draw such inferences as he deems fit from the answers and explanations given by the parties. However, the basis of such inferences must be explained in the Valuer's Report that the Valuer issues.
>
> …
>
> If the Valuer forms the view that the information and documents required by him to carry out the Valuation are being withheld from him, he shall be at liberty to apply to Court for the necessary directions.

370 The Samsuddin Estate Beneficiaries submitted that the Judge's order that the Valuer only take into account "all moneys of MMSCPL that have been misappropriated according to the findings [the Judge] made [t]herein" and to make "appropriate adjustments to offset the effects of the oppressive and/or unjust conduct of the [Mustaq Group]" was too restrictive, as this meant that the Valuer "cannot take into account any other alleged acts of oppression which were not found by the Judge, even if the Valuer subsequently uncovers evidence of the same". They also argued that the Judge should have ordered that the Valuer "be assisted by or regarded as an independent expert to fully investigate the extent of the Defendants' misconduct, and make the appropriate adjustments to the purchase price to be paid under the buy-out order" (the "Special Audit Order").

371 In our view, the Judge did not err in exercising her discretion not to grant the Special Audit Order. At the outset, we disagree with the Samsuddin Estate Beneficiaries' argument that the reliefs granted by the Judge were too narrow and did not allow the Valuer to take into consideration evidence that may disclose other wrongdoings. A closer look at the Judge's orders show that they were crafted broadly enough to account for this situation. In particular, we emphasise the following portions:

Version No 1: 15 May 2024 (12:48 hrs)

> The Valuer has the right to engage lawyers and/or such other professionals and/or consultants as the Valuer may consider necessary to advise him or her in connection with his or her determination of the Purchase Price. The costs of such appointment (if any) and the Valuer's costs, including all disbursements that may be incurred by the Valuer, are to be paid by the [Mustaq Group] in the manner stated in paragraph 1 herein.
>
> …
>
> The Valuer, [the Claimant Beneficiaries] and [the Mustaq Group] have liberty to apply to Court.

372 Read together, the terms of the orders ensured that, should the Valuer come across any evidence disclosing further potential wrongdoings, the Valuer is entitled to seek legal advice and, if necessary, to make an application to court to have that matter determined. The Valuer is also entitled, if the alleged wrongdoing is established, to take that into account in valuing the shares of the Mustafa-Samsuddin Estates. There is therefore no basis for the Samsuddin Estate Beneficiaries' complaint that the Judge's orders were unnecessarily restrictive, such that it would be necessary to grant the Special Audit Order.

373 Second, a special audit should not be ordered where doing so would result in more expense and delay, and where all complaints made had been investigated. Indeed, this was the High Court's view in *Tan Eck Hong v Maxz Universal Development Group Pte Ltd and others* [2019] 3 SLR 161 (at [222]):

> … I do not agree that a special audit should be conducted as that would only involve more *expense and delay*. Further, from the time the plaintiff made his complaints up to the first tranche of the trial, more than six years elapsed during which the plaintiff had many opportunities to ask for discovery and re-formulate his pleadings. *All the complaints he made have been investigated* and it would not correct to allow a special audit now. [emphasis added]

374 Similarly in this case, the Samsuddin Estate Beneficiaries have had the benefit of time to investigate potential wrongdoings. This was assisted by the

Version No 1: 15 May 2024 (12:48 hrs)

various rounds of discovery ordered by the Judge before the trial, and the opportunity to amend their pleadings to include further acts of alleged oppression and/or misappropriation. Since this matter was first commenced in 2017, close to six years have elapsed, during which time the Samsuddin Estate Beneficiaries have had the opportunity to undertake the necessary investigations.

375 We therefore conclude that it would not be appropriate to grant the Special Audit Order, which would only further delay the resolution of these proceedings.

The Efforts Relief Issue

376 The issue arising under the Efforts Relief is whether in determining the exact quantum of sums misappropriated by the Mustaq Group as a result of the Dividends-Fees Issue, the Valuer should take into account the efforts that Mustaq expended in building up MMSCPL, *ie*, to give some credit to Mustaq for his efforts by allowing him to retain some of the directors' fees he has paid to himself. This point was not specifically raised by the Mustaq Group below or on appeal.

377 As we observed at [355]–[356] above, the court is accorded wide discretionary powers in ordering a share buy-out. Buy-out orders may be calibrated by the courts to take into account the equities before them. For that purpose, the court may direct the shares to be valued, for instance, by adjusting the basis or date of the valuation and/or the imposition of a discount for minority shareholding: see Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) ("*Minority Shareholders' Remedies*") at para 4.265. The court may also direct the valuer to take into account oppressive conduct,

Version No 1: 15 May 2024 (12:48 hrs)

for instance, by making the assumption that misappropriated sums are paid back into the company: see *Minority Shareholders' Remedies* at para 4.297.

378 Conversely, the court may also reduce the value of the shares for the purposes of a buy-out order where it would be fair and just. As an example, in *Lim Chee Twang* (at [69] and [150(a)]), the court held that the valuation of the shares was to be discounted to reflect a minority shareholding, having considered, among others, that: (a) many of the claims of the minority shareholder were not successful; and (b) the minority shareholder had acquiesced over the years to the majority's mode of management and did not contribute in any substantial or meaningful way to the growth of the business. Other factors the court may consider include: (a) the fact that the majority shareholders would be taking on the risks of running the business; (b) the entry price of the minority shareholder(s); and (c) the contributions of the minority shareholder towards the company's business (*Minority Shareholders' Remedies* at paras 4.303 (referring to *Re Regional Airports Ltd* [1999] 2 BCLC 30) and 4.306).

379 Bearing these principles in mind, we turn to consider the relief granted by the Judge in respect of the Dividend-Fees Issue. The Judge made the following order:

> In determining the Purchase price, the Valuer shall act as expert and not otherwise and shall fix the Purchase price at fair value without any minority discount after taking into account all moneys of [MMSCPL] that have been misappropriated according to the findings made by [the Judge] in [the GD] and as set out in the Notes of Evidence dated 6 September 2021 which are set out below and which may be elaborated upon by [the Judge] in any written grounds that may be delivered by [the Judge]:
>
> …

Version No 1: 15 May 2024 (12:48 hrs)

> iv. [Mustaq and Ishret] acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of [MMSCPL] in relation to the non-payment of dividends while paying substantial directors' fees to [Mustaq and Ishret].

380 On appeal, Mr Davinder Singh SC ("Mr Davinder Singh"), counsel for the Mustafa Estate Beneficiaries, argued primarily that: (a) the Mustaq Group did not take the Efforts Relief point before the Judge, and the Judge's order as to relief in respect of the valuation of MMSCPL's share price makes clear that no credit ought to be given to Mustaq in respect of the work he has done in building up MMSCPL; and (b) in rendering the relief that she did, the Judge took the view that the entire quantum of directors' fees paid to Mustaq and Ishret was oppressive. Accordingly, it would not be permissible for the court to now make an order to the effect that in the valuation of MMSCPL's share price, the Valuer should take into consideration Mustaq's efforts in building up MMSCPL and make appropriate adjustments to credit Mustaq for his efforts. To do so would, in Mr Davinder Singh's words, be to "[use] the valuer as a third forum" to determine the appropriate quantum of fees that ought to be paid to Mustaq. Mr Davinder Singh argued, in the alternative, that it would be impermissible for credit to be given to Mustaq for his efforts in building up MMSCPL that was reflected in the appropriate directors' fees that he could permissibly declare for himself. This would result in the unfair outcome where Mustaq would be paid directors' fees and yet the Valuer would not take into account the fact that dividends were not paid.

381 We do not agree with Mr Davinder Singh's submission. The main point before the Judge was whether the payments of the directors' fees were oppressive. On the other hand, the Mustaq Group did not raise the alternative point of whether some credit should be given for Mustaq's efforts if the payments were oppressive. While the Mustaq Group should have raised this

Version No 1: 15 May 2024 (12:48 hrs)

point, we are of the view that this is not fatal. Order 56A r 14 of the 2014 ROC grants the Appellate Division of the High Court the power to make orders, despite such orders not being an issue raised in the appeal. That provision reads:

> **General powers of Court (O. 56A, r. 14)**
>
> **14**.—(1) In hearing and deciding an appeal, the Appellate Division has *all* the powers and duties, as to amendment or otherwise, of the General Division.
>
> (2) The powers of the Appellate Division under paragraph (1) and section 41(3) to (6) of the Supreme Court of Judicature Act may be exercised despite that —
>
> (*a*) no notice of appeal has been given in respect of any particular part of the decision of the Court below or by any particular party to the proceedings in that Court; or
>
> (*b*) any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in any of the Cases filed pursuant to Rule 9 or 11,
>
> and the Appellate Division may make any order, on such terms as the Appellate Division thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
>
> [emphasis added]

382 Moreover, in fashioning the appropriate remedy to terminate any acts of oppression, the court need not be bound to what the parties have submitted. As we alluded to at [355]–[356] above, this applies equally in the context of a buy-out order. Indeed, if the entire purpose of making a buy-out order is to ensure that the shares of the company are being sold at a *fair value*, the quantification of that value would have to take into account all the circumstances of the case in ensuring that the minority is not overcompensated.

383 Accordingly, due credit ought to be given to Mustaq for the efforts he put into building up MMSCPL. Indeed, it was not disputed that he did make such efforts. While we accept the Claimant Beneficiaries' position that Mustafa

Version No 1: 15 May 2024 (12:48 hrs)

and Samsuddin had also played their part in running MMSCPL and in ensuring its success, it cannot be denied that a large part of MMSCPL's success is owed to Mustaq's leadership and business acumen. It therefore follows that some credit ought to be given, and that Mustaq should be permitted to retain a portion of the directors' fees paid out to him to recognise his efforts. To this end, we note that the Claimant Beneficiaries did not take the position below, nor did they contend in these appeals, that the mere fact of Mustaq being paid directors' fees was oppressive; rather, their complaint was that Mustaq was paid *excessive* directors' fees. Indeed, this is evident from the Claimant Beneficiaries' Statements of Claim filed in Suit 1158 and Suit 780, as well as their closing submissions. That the Mustaq Group had paid themselves excessive directors' fees is of course a ground for alleging oppression. That, however, did not mean that all the directors' fees that were paid would have to be returned to the company or taken into consideration when valuing the share price of MMSCPL. Implicit in the Claimant Beneficiaries' assertion that the payment of directors' fees was excessive is their acceptance that there was a certain quantum of directors' fees which would have been permissibly and reasonably paid to Mustaq, beyond which it would be oppressive.

384 Finally, we do not accept Mr Davinder Singh's submission that granting such an allowance to Mustaq would mean that Mustaq would be able to retain a portion of his fees in circumstances where the Claimant Beneficiaries get nothing in the form of dividends. It was not the absence of dividends *per se* that was oppressive but the absence in the face of excessive directors' fees being paid.

385 For these reasons, we direct that the Valuer is to take into account a reasonable amount (whether as directors' fees or otherwise) to be accorded to

Version No 1: 15 May 2024 (12:48 hrs)

Mustaq which is commensurate with the efforts he has expended in building up MMSCPL.

The Cashback Scheme Relief Issue

386 The Cashback Scheme Relief arose in the course of the hearing when we raised with the parties the approach that the Valuer should take in determining the amount of money misappropriated under the Cashback Scheme. The Judge ordered the Valuer to take into account the following finding in respect of the valuation of this wrongdoing (see GD at p 363 (Judgment in Suit 1158, Annex A, paragraph 2(iii))):

> [Mustaq] acted in a manner that was oppressive to the Mustafa Estate's rights as shareholder of [MMSCPL] in relation to the falsification of applications to the Ministry of Manpower for work passes for the foreign employees of [MMSCPL]

387 The Mustafa Estate Beneficiaries submitted that the Judge's order as phrased above does not disclose a quantified value of the amount of money misappropriated under the Cashback Scheme. Accordingly, they submitted that the Valuer should take into account all the sums that were misappropriated and, crucially, that it should not be limited to the evidence of the six former employees of MMSCPL who testified at trial. On the other hand, the Mustaq Group submitted that the quantification of the sums misappropriated under the Cashback Scheme should be limited only to the sums misappropriated in respect of the six former employees who testified at trial. In particular, Ms Koh submitted during the hearing before us that it would be necessary for independent and separate civil proceedings to be commenced to ascertain the extent of the wrongdoing perpetrated under the Cashback Scheme and hence, the exact quantum of sums misappropriated.

Version No 1: 15 May 2024 (12:48 hrs)

388 We do not agree with the Mustaq Group's submission. In our view, the evidence given by the six MMSCPL employees is sufficient to establish the existence of the Cashback Scheme and Mustaq's involvement in it. Once the existence of that wrongdoing has been sufficiently proven on a balance of probabilities, it should be open to the Valuer to determine the full extent of the loss suffered as a result of the Cashback Scheme. Further, the Mustaq Group did not take the position in the proceedings below that the quantum of the sums misappropriated under the Cashback Scheme should be limited only to the sums that were misappropriated in connection with the six former employees who testified at trial. To the contrary, the Mustaq Group submitted below that the Draft Order of the Court should not restrict the manner in which the Valuer determines the purchase price of the shares to be bought out over and above the parameters of the Judge's findings, with no suggestion of there being any limitation in connection with the Cashback Scheme and the losses flowing therefrom.

389 We are therefore of the view that the Cashback Scheme Relief should not be limited to only the six former employees who testified at trial.

Mustafa Estate Shareholding Valuation Issue

390 We turn next to consider an issue regarding the valuation of the Mustafa Estate's shareholding if the Samsuddin Estate Beneficiaries were to succeed on any of their claims which were not made by the Mustafa Estate Beneficiaries.

391 The issue here is whether the Mustafa Estate's shareholding in MMSCPL should be valued on the same terms as that of the Samsuddin Estate, taking into account any successful ground of oppression alleged by the Samsuddin Estate Beneficiaries which was not made by the Mustafa Estate

Version No 1: 15 May 2024 (12:48 hrs)

Beneficiaries, *ie*, the Consultancy Fees Issue and/or the Related Parties Transaction Issue (which we refer to as the "Additional Claims"). This is because the fair value of MMSCPL's shares will differ depending on whether the losses suffered by MMSCPL as a result of these wrongdoings (which are relied on by the Samsuddin Estate Beneficiaries as evidence of oppression) are taken into account by the Valuer in assessing the fair value of the shares. The Mustafa Estate Beneficiaries did not assert the Additional Claims as grounds of oppression both at trial and in these appeals.

392 This was not raised by any of the parties specifically at the hearing of these appeals because the parties had simply focused on whether such claims would succeed without addressing the consequences for the Mustafa Estate Beneficiaries if the claims succeeded. We therefore directed the parties to file further submissions to address us on this issue.

393 In their further submissions, the Mustafa Estate Beneficiaries argued that the court had the power to grant them such benefit pursuant to s 41 of the SCJA and O 56A r 14(1) of the 2014 ROC. The Mustafa Estate Beneficiaries further highlighted that the Mustaq Group would not be prejudiced as a result because they had already advanced their defences to these claims as against the Samsuddin Estate Beneficiaries at first instance and on appeal.

394 The Mustaq Group did not address the court's power under s 41 of the SCJA and O 56A r 14(1) of the 2014 ROC. Instead, the Mustaq Group argued that the court was precluded from giving the Mustafa Estate Beneficiaries the benefit of any ruling on the Additional Claims because they did not plead or advance those claims at first instance and on appeal, and it would be a breach of natural justice to give them the benefit of a finding in a case they were not a party to (that case being Suit 780). In support of the latter proposition, the

Version No 1: 15 May 2024 (12:48 hrs)

Mustaq Group relied on the decision of the High Court in *Aavanti Offshore Pte Ltd (in creditors' voluntary liquidation) v Bab Al Khail General Trading and another* [2020] SGHC 50 ("*Aavanti*"), as well as the decisions of the Malaysian Federal Court in *Kheng Chwee Lian v Wong Tak Thong* [1983] 2 MLJ 320 ("*Kheng Chwee Lian*") and *Lim Choon Seng v Lim Poh Kwee* [2020] 5 MLJ 587 ("*Lim Choon Seng*").

395 There are two parts to the issue before us: the first is whether it is within our power to grant the benefit of our ruling on the Additional Claims to the Mustafa Estate Beneficiaries. If that is answered in the affirmative, the second inquiry is whether the power should be exercised in this case. For the reasons that follow, we are satisfied that we can and should exercise this power in this case.

396 We first address the question as to our power. Section 41 of the SCJA sets out the powers of the Appellate Division of the High Court:

> **Hearing of appeals**
>
> **41.**— …
>
> (2) In hearing and deciding an appeal, the Appellate Division has all the powers and duties, as to amendment *or otherwise*, of the court or tribunal from which the appeal was brought.
>
> …
>
> (7) The powers in this section —
>
> (*a*) may be exercised in relation to any part of the decision appealed against, including any part of the decision appealed against to which the appeal does not relate; and
>
> (*b*) may be exercised in favour of any party to the decision appealed against, including any party to the decision appealed against who has not appealed against the decision.
>
> [emphasis added]

Version No 1: 15 May 2024 (12:48 hrs)

For completeness, these powers are similarly reflected in O 56A r 14 of the 2014 ROC, as referred to above at [381].

397 Before proceeding further, we note that insofar as the question of the court's power is concerned, the Mustaq Group's reliance on the decision of the High Court in *Aavanti*, as well as the decisions of the Malaysian Federal Court in *Kheng Chwee Lian* and *Lim Choon Seng* do not assist it. First, these cases did not consider the Appellate Division's powers under s 41 of the SCJA. Second, these cases did not address the court's power under s 216 of the Companies Act to grant relief.

398 Pursuant to s 41, the Appellate Division has all the powers of the General Division (from which the present appeals have been brought). The first step in the inquiry is therefore to ask whether the Judge, if she had been minded to allow the Additional Claims, could have ordered that the Mustafa Estate's shares be valued with those claims taken into account.

399 It bears reminding that the Mustafa Estate Beneficiaries did not plead the Additional Claims, and that the High Court Suits were not formally consolidated and therefore remained separate. If the suits had been heard separately (for example, with Suit 780 being heard one year before Suit 1158), it would not have been open to the Judge to give the Mustafa Estate Beneficiaries the benefit of a claim which formed no part of the evidential record. However, in this case the suits were heard *together* in a joint trial, and the Judge had directed that evidence led in one suit could and should be treated as evidence in the other suits (see [24]).

400 The upshot was that the Judge would have had the *evidence* of the Additional Claims before her in Suit 780 *and* Suit 1158.

Version No 1: 15 May 2024 (12:48 hrs)

401 Would the fact that the Additional Claims were not pleaded in Suit 1158 make a difference? We do not think so for two reasons. First, the evidential record for Suit 1158 already includes the Additional Claims as Suit 1158 was heard together with Suit 780 and Suit 9. The Additional Claims had already been pursued against the Mustaq Group by the Samsuddin Estate Beneficiaries in Suit 780, and the Mustaq Group had raised their defences against those claims. The Mustaq Group did not contend that they would have run their defence differently had the same claims been brought by the Mustafa Estate Beneficiaries, and we do not see how that could have made a difference. We are satisfied that the Mustaq Group would not have been unduly prejudiced if the Judge had allowed the Additional Claims by the Samsuddin Estate Beneficiaries and had also allowed the Mustafa Estate Beneficiaries to benefit from the Additional Claims.

402 Second, the issue is then the correct valuation of MMSCPL for the purpose of the buy-out orders, which pertains to the remedy and relief under s 216(2) of the Companies Act.

403 In this regard, it is significant that the buy-out orders in Suit 1158 and Suit 780 were for the purchase of the equity of the Mustafa Estate Beneficiaries and the Samsuddin Estate Beneficiaries with reference to the value of the equity in MMSCPL, *after accounting for the oppressive acts that were found in each suit*.

404 Accordingly, if the Judge had found that the Additional Claims were made out and ordered a valuation of MMSCPL for the purpose of the buy-out on the basis of a notional write-back or repayment by Mustaq and Ishret in order to reverse the effects of the acts of oppression, that would be value accretive not just for the Samsuddin Estate Beneficiaries, but for all members of MMSCPL.

Version No 1: 15 May 2024 (12:48 hrs)

This is because the effects of the act of oppression would have been suffered by all members of MMSCPL and not just those members who brought the Additional Claims. These acts collectively impact the value of MMSCPL. The same valuation should therefore apply for the purpose of the buy-out order in Suit 1158 filed by the Mustaffa Estate Beneficiaries.

405 In our view, it would have been unjust for the Judge *not* to allow this. The Additional Claims essentially related to moneys which had been misappropriated from MMSCPL by the Mustaq Group. These acts of oppression, while not pleaded by the Mustafa Estate, nonetheless had an impact on the value of MMSCPL *as a whole*, and consequently on the value of the shares to be bought out by Mustaq and Ishret which included the Mustafa Estate's shareholding. To illustrate, the Judge could, in the exercise of the court's remedial jurisdiction under s 216(2) of the Companies Act, have ordered that the misappropriated moneys be repaid into MMSCPL *before* the buy-out of the Mustafa Estate's and Samsuddin Estate's shareholdings was to be performed. The repayment of such moneys would necessarily have increased the value of MMSCPL and by extension not only the value of the Samsuddin Estate's shares but the value of the Mustafa Estate's shares.

406 In respect of the other established instances of misappropriation which were raised by both the Mustafa Estate Beneficiaries and Samsuddin Estate Beneficiaries, the Judge had in fact skipped the intermediate step of ordering repayment by directing instead the Valuer to make appropriate adjustments to the valuation of MMSCPL to offset the effects of the oppressive conduct of the Mustaq Group (see paragraph 3 of Annex A of the orders for Suit 1158 and Suit 780). In other words, the Judge had directed that MMSCPL be valued on the basis of a *notional* repayment of the misappropriated moneys by the Mustaq Group. This is a common order which is made as a matter of efficiency and

Version No 1: 15 May 2024 (12:48 hrs)

practicality. However, the ordering of a notional rather than actual repayment cannot of itself justify the valuation of the Mustafa Estate's and Samsuddin Estate's shareholdings on *different* bases. To do so would be unjust and incongruous.

407 Therefore, we are satisfied that the Judge would have had the power under s 216(2) of the Companies Act to give the Mustafa Estate Beneficiaries the benefit of a positive ruling on the Additional Claims by ordering that the value thereof be taken into account for the valuation of the shares of the Mustafa Estate as well as those of the Samsuddin Estate. The Judge would not have been precluded from doing so just because the Mustafa Estate Beneficiaries did not plead these claims.

408 Under s 41(7) of the SCJA, the Appellate Division may exercise its powers in relation to any part of the decision appealed against (even if that part has not been appealed), and in favour of any party to the decision appealed against (even if that party has not appealed). Both limbs require that there be an appeal against the relevant decision to begin with – in this case, that is the Judge's decision in Suit 1158. As we noted at [9], the Mustafa Estate Beneficiaries have not appealed against Suit 1158. However, the decision *was appealed against by the Mustaq Group*.

409 The Mustafa Estate Beneficiaries are also parties to the decision appealed against *per* s 41(7)(*b*) of the SCJA. We note a possible objection to the effect that a "party to the decision" in s 41(7)(*b*) should not extend to the Mustafa Estate Beneficiaries as respondents as that would go against the general principle that a party dissatisfied with a decision of the court should lodge his own notice of appeal. That, however, is a consideration which goes towards whether the court *should* exercise this power, rather than to whether the court

Version No 1: 15 May 2024 (12:48 hrs)

can exercise it at all. Our view is affirmed by the legislative history of s 41(7)(*b*). Section 41(7) was introduced by way of the Supreme Court of Judicature (Amendment) Act 2019 (No 40 of 2019), together with the constitution of the Appellate Division. Its predecessor provision was s 37(6) of the SCJA then in force, which made clear that the appellate court's powers could be exercised in favour of a respondent who had not appealed:

> The powers in this section may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and *such powers may also be exercised in favour of all or any of the respondents or parties*, although the respondents or parties have not appealed from or complained of the decision. [emphasis added]

410 There is no indication in the relevant legislative materials that Parliament in enacting s 41(7) had intended to change the prevailing position by excluding reference to "respondents". Indeed, it appears that the reference to "respondents" was superfluous because the reference to "parties" would already include the respondents. The word "parties" should be given its ordinary and natural meaning, and this would include the respondents. This suffices to dispose of the first part of the inquiry: we are satisfied that the Appellate Division *can* exercise its power in favour of the Mustafa Estate Beneficiaries in the manner described above even though the appeals in Suit 1158 were filed by the Mustaq Group and not the Mustafa Estate Beneficiaries.

411 The second part of the inquiry, however, is whether we *should* exercise this power. It is in considering this latter question that the general principle referred to above comes into play. A party who is dissatisfied with the court's decision should file his own appeal. Under ordinary circumstances, the court will not assist a respondent who has not filed an appeal. In our view, an appellate court should only exercise its powers under s 41(7)(*b*) in favour of a respondent who has not appealed under the following conditions:

Version No 1: 15 May 2024 (12:48 hrs)

(a) First, as a threshold requirement, the exercise of this power should not unduly prejudice other parties to the appeal. We mention undue prejudice to mean something more than the usual consequential prejudice if the power is exercised. There will obviously be prejudice to the appellant if some further relief is granted to the respondent, but there must be some other prejudice instead – for example, that the appellant did not have the chance to address the proposed relief at trial.

(b) Second, even if the threshold requirement is met, the court should only exercise this power if it would be clearly unjust not to do so.

412 Notwithstanding this, we are satisfied that the case before us does present an exceptional situation to grant relief. The purpose of exercising our power in this case is to grant to the Mustafa Estate Beneficiaries the benefit of our positive ruling on claims *which had already been made by the Samsuddin Estate Beneficiaries and defended by the Mustaq Group at trial and on appeal*. The question to be asked in the assessment of undue prejudice is whether the Mustaq Group would have run its case differently if the Mustafa Estate Beneficiaries had also made the Additional Claims at first instance in Suit 1158. While the Mustaq Group argue that they had approached the High Court Suits on the basis that the Additional Claims in Suit 780 were separate from the oppression claims brought by the Mustafa Estate Beneficiaries, they did not explain how they would or could have run their case differently. We are satisfied that the Mustaq Group had every opportunity to defend the Additional Claims as against the Samsuddin Estate Beneficiaries. Their defence would have been no different if the Mustafa Estate Beneficiaries had made the exact same claims.

Version No 1: 15 May 2024 (12:48 hrs)

413 Thus, we are satisfied that the exercise of our power in this case to the benefit of the Mustafa Estate Beneficiaries will not unduly prejudice the Mustaq Group.

414 The question that remains is whether it would be clearly unjust if we do not exercise our power to benefit the Mustafa Estate Beneficiaries in this manner. For the reasons given at [403]–[404], we are of the view that this should be answered in the affirmative. It would simply be unjust and incongruous to order that the Additional Claims be ignored in the valuation of the Mustafa Estate's shares but included in the valuation of the Samsuddin Estate's shares.

415 We therefore direct that the Valuer takes into account our conclusions on the Consultancy Fees Issue and the Related-Parties Transaction Issue when assessing the fair value of both the Samsuddin Estate's shares and the Mustafa Estate's shares.

The Costs Issue

416 The next point in relation to the Reliefs Issues turns on the Samsuddin Estate Beneficiaries' submission that the Judge erred in not making an order for the costs of Suit 780 to be assessed on an indemnity basis.

417 The Judge rejected the Samsuddin Estate Beneficiaries' submission for costs to be awarded on an indemnity basis, and instead ordered in Suit 780 that costs be jointly and severally paid (on a standard basis) by Mustaq and Ishret to the Samsuddin Estate Beneficiaries in the sum of $450,000, excluding disbursements. This quantum was because, among other things, there was a high degree of overlap in evidential and legal issues as between the High Court Suits and the Samsuddin Estate Beneficiaries did not succeed on a number of claims raised in Suit 780 (see GD at [801]–[804]).

Version No 1: 15 May 2024 (12:48 hrs)

418 We begin with the principle that an appellate court will not readily interfere with a lower court's exercise of discretion in determining the appropriate costs order, unless the exercise of discretion was manifestly wrong or based on wrong principles: see *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [22] and [24]. In this connection, whether indemnity costs should be ordered depends on the conduct of parties both before and during the trial, including whether the action was clearly without basis and if the party had conducted themselves in a dishonest, abusive or improper fashion: see *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 at [18] and [23]. The consideration of such conduct may include examining whether: (a) there were any last-minute amendments at the trial; (b) plainly unsustainable, unreasonable or unmeritorious issues were put forward and argued at length; and (c) proper disclosure was given: see *Denis Matthew Harte v Tan Hun Hoe and another* [2001] SGHC 19 at [41]. We should add, however, that "[c]osts on an indemnity basis should only be ordered in a special case or where there are exceptional circumstances": see *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582 at [29].

419 All things considered, the Samsuddin Estate Beneficiaries have failed to establish that the Judge exercised her discretion wrongly in declining to grant indemnity costs to them in Suit 780.

420 Moreover, while it is true that the Mustaq Group did not succeed in establishing the 1973 Common Understanding, that does not, by itself, justify an award of indemnity costs. We do not see how their failure to establish the 1973 Common Understanding shows that they have conducted themselves in a dishonest, abusive or improper fashion. This is especially so when the failure of the Mustaq Group to establish their case on the 1973 Common Understanding

Version No 1: 15 May 2024 (12:48 hrs)

is borne out of their failure to discharge their evidential burden of proving the existence of certain alleged facts as a result of their submission of no case to answer.

421 We therefore dismiss this aspect of the Samsuddin Estate Beneficiaries' appeal.

The Post-Judgment Interest Issue

422 The next point under the Reliefs Issues turns on the Judge's order regarding the award of post-judgment interest on the sums to be paid by the Mustaq Group to the Mustafa-Samsuddin Estates in buying out their shares in MMSCPL.

423 The Judge had, in making the orders regarding the valuation process of the Mustafa Estate's shares in MMSCPL, directed the following (see GD at pp 360 and 366):

> [Mustaq and Ishret] shall pay the Mustafa Estate interest at the rate of 5.33% per annum on the Purchase Price from the date on which [Mustaq and Ishret] are to buy out the … Mustafa Estate's Shares in [MMSCPL] …
>
> …
>
> Within 3 weeks from the date on which the Valuer delivers the Valuer's Report to the Court, [the Claimant Beneficiaries] and [Mustaq and Ishret], [Mustaq and Ishret] shall buy out the Mustafa Estate's 25.4% shareholding in [MMSCPL] at the Purchase Price.

424 The Judge also directed the following in respect of the valuation process of the Samsuddin Estate's shares (see GD at pp 368 and 374):

> [Mustaq and Ishret] shall pay the Samsuddin Estate interest at the rate of 5.33% per annum on the Purchase Price from the date on which [Mustaq and Ishret] are to buy out the … Samsuddin Estate's Shares in [MMSCPL] …

Version No 1: 15 May 2024 (12:48 hrs)

> …
>
> Within 3 weeks from the date on which the Valuer delivers the Valuer's Report to the Court, [the Claimant Beneficiaries] and [Mustaq and Ishret], [Mustaq and Ishret] shall buy out the Samsuddin Estate's 25.7% shareholding in [MMSCPL] at the Purchase Price.

The effect of the Judge's orders is essentially that the interest on the purchase price of the shares of the Mustafa-Samsuddin Estates to be paid by the Mustaq Group would only begin to accrue three weeks after the Valuer has completed the valuation.

425 Although this issue was not the subject of an appeal and was not initially raised by any of the Claimant Beneficiaries in these appeals, Mr Davinder Singh submitted at the hearing that there should be clarity on when interest on the price of the shares as valued by the Valuer would start to accrue. Mr Davinder Singh contended that it would be undesirable if interest only began to run from the time that the price of the shares is determined by the Valuer, due to the possibility of delay in the valuation. The Mustaq Group opposed any submission that interest should run from an earlier date such as the date of the Judge's decision. These submissions were made on the premise that a court could grant interest on the price of shares in a buy-out order which was not a judgment debt.

426 We do not agree that there was any lack of clarity in the Judge's order as to when interest on the price of the shares would accrue. It is clear from the decision below that the interest runs three weeks from the date of delivery of the report by the Valuer, if payment has not been effected by then. We agree with the submission of the Mustaq Group that the Mustafa Estate Beneficiaries were really seeking to vary the Judge's order on this point even though their written submissions for the appeals did not raise the point.

Version No 1: 15 May 2024 (12:48 hrs)

427 We have considered whether the Judge should have ordered interest to run from the date of her decision to grant judgment in favour of the plaintiffs as that would take into account the time it would take to value the shares. This was on the assumption that the Judge had the power to order such interest.

428 On the other hand, the date as to when the interest should run would be an obvious issue at the latest when the Judge gave her decision. In other words, the Mustafa Estate Beneficiaries (and the Samsuddin Estate Beneficiaries) should immediately thereafter have sought permission to address the Judge on the date when interest should run. This was not done then. Furthermore, as mentioned, it was not the subject of an appeal nor was it initially raised in any written submission for the appeals.

429 In the circumstances, we will not vary the Judge's decision on the date when interest is to run.

The Valuer's fees and disbursements

430 For completeness, we address a final point relating to the Valuer's fees and disbursements. Paragraph 1 of Annex A of the judgments for Suit 1158 and Suit 780 provided as follows:

> All fees and disbursements to be paid to the Valuer for the entirety of his engagement shall be paid by the 1st and 2nd Defendants in the first instance, and are to be factored into the valuation as a liability for the 6th Defendant that is owed to the 1st and 2nd Defendants jointly and severally. Subject to any other order that may be made by the Court, the 1st and 2nd Defendants will be entitled to recover such fees and disbursements from the 6th Defendant after the completion of the purchase of the Mustafa Estate's 25.4% shareholding.

431 We directed the parties to address us as to whether this paragraph would run foul of s 76 of the Companies Act.

Version No 1: 15 May 2024 (12:48 hrs)

432 Having received the parties' submissions on this, we are satisfied that this order would not put MMSCPL in breach of the prohibition against financial assistance under s 76. While this prohibition had applied in the past to all companies, the Companies Act was amended in 2015 to reduce its scope. Under s 76(1), the prohibition against financial assistance applies only to "a public company or a company whose holding company or ultimate holding company is a public company". Section 4(1) of the Companies Act defines a public company as "a company other than a private company". Pursuant to s 18(1) of the Companies Act, a private company is one which restricts the right to transfer its shares and is limited to no more than 50 members. Under this definition, MMSCPL is a private company to which s 76 does not apply.

433 It was, however, pointed out by the parties that the provision of such financial assistance by MMSCPL *would* be in breach of Art 9 of MMSCPL's Constitution, which provides as follows:

> 9. No part of the funds of the Company shall, directly or indirectly, be employed in the purchase of or subscription for or loans upon the security of any shares in the Company. The Company shall not give any financial assistance for the purpose of or in connection with the purchase of or subscription for any shares in the Company or its holding company, if any. Nothing in this Article shall prohibit transactions mentioned in Section 76(2) of the Act.

434 Notwithstanding this breach, we accept the Samsuddin Estate Beneficiaries' submission that under paragraph 1, Mustaq and Ishret will only recover the relevant fees and disbursements from MMSCPL *after* the completion of the buy-out. By that time, all the shares in MMSCPL would reside with the Mustaq Group, who would be free to amend MMSCPL's Constitution or whitewash such recovery as necessary. This being the case and since there was no objection to such a breach after the Judge granted this relief, we see no need to disturb the Judge's order.

Version No 1: 15 May 2024 (12:48 hrs)

Conclusion

435 Our decision on the various issues raised in these appeals may be summarised as follows:

(a) The Judge correctly held that: (i) in assessing the evidence adduced in the trial of the High Court Suits, the evidence led in one suit can and should be treated as evidence in the other suits; and (ii) the Mustafa Estate Beneficiaries, despite not being shareholders of MMSCPL, may rely on the *Wong Moy* exception to bring Suit 1158. We dismiss this aspect of the Mustaq Group's appeal.

(b) The Judge correctly found that the evidence does not support the Common Understandings that Mustaq was the beneficial owner of all the shares in MMSCPL. We dismiss this aspect of the Mustaq Group's appeal.

(c) The Judge erred in holding that the 1991 and 1993 Allotments were oppressive. We allow this aspect of the Mustaq Group's appeal.

(d) The Judge correctly held that there was no commercial purpose in providing the Directors' Loans, and they were oppressive. We dismiss this aspect of the Mustaq Group's appeal.

(e) The Judge correctly held that the non-payment of dividends coupled with excessive payment of directors' fees was oppressive. We dismiss this aspect of the Mustaq Group's appeal.

(f) The Judge correctly found that the Cashback Scheme existed. Mustaq initiated the Cashback Scheme which was oppressive. We dismiss this aspect of the Mustaq Group's appeal.

Version No 1: 15 May 2024 (12:48 hrs)

(g) The Judge erred in holding that the Samsuddin Estate Beneficiaries' allegations regarding payments of consultancy fees to Z&O did not raise a *prima facie* case of oppression. We allow this aspect of the Samsuddin Estate Beneficiaries' appeal.

(h) The Judge erred in finding that there was insufficient evidence to show that the Related Parties had not paid for any of the items sold by MMSCPL and that there was no *prima facie* case of oppression. We allow this aspect of the Samsuddin Estate Beneficiaries' appeal.

(i) The Judge correctly found that the Samsuddin Estate Beneficiaries have not established a *prima facie* case that the purported issuance of the Bonds by MMSCPL was oppressive. We dismiss this aspect of the Samsuddin Estate Beneficiaries' appeal.

(j) The Judge correctly rejected the Mustaq Group's argument that the Claimant Beneficiaries are not the proper plaintiffs with respect to the Mustaq Group's acts of misappropriation, as the Claimant Beneficiaries were not relying on these acts to found a cause of action *per se*, and were instead relying on them as evidence of the oppressive manner in which the Mustaq Group had conducted MMSCPL's affairs. We dismiss this aspect of the Mustaq Group's appeal.

(k) The Judge correctly rejected the defences raised by the Mustaq Group, namely those of laches and acquiescence. We dismiss this aspect of the Mustaq Group's appeal.

(l) The Judge correctly found that Mustaq had breached his duties as: (i) administrator and trustee of the Mustafa Estate; and (ii) executor

Version No 1: 15 May 2024 (12:48 hrs)

and trustee of the Samsuddin Estate. We dismiss this aspect of the Mustaq Group's appeal.

(m) The Judge correctly dismissed the Mustaq Group's counterclaims in Suit 1158 and Suit 780 for a declaration that Mustaq was the beneficial owner of all the MMSCPL shares registered in the names of the Mustafa Estate and Samsuddin Estate and to dismiss the claim against Fayyaz. We dismiss this aspect of the Mustaq Group's appeal.

(n) In respect of the Reliefs Issues:

(i) The Judge erred in failing to set aside the 1996 and 1997 Allotments. These share allotments should be set aside for the reason we have given, even though they were not themselves oppressive.

(ii) The Judge correctly exercised her discretion not to grant the Special Audit Order. We dismiss this aspect of the Samsuddin Estate Beneficiaries' appeal.

(iii) The Valuer should take into account a reasonable amount of directors' fees to be accorded to Mustaq which is commensurate with the efforts he had expended in building up MMSCPL.

(iv) In determining the sums misappropriated under the Cashback Scheme for the purpose of adjusting the fair value of the price of the shares in MMSCPL, the Valuer should not be restricted to the evidence of the six former employees who testified at trial.

Version No 1: 15 May 2024 (12:48 hrs)

(v) Like the Samsuddin Estate Beneficiaries, the Mustafa Estate Beneficiaries are entitled to a higher valuation of that estate's shares to take into account the success of the Additional Claims.

(vi) The Judge correctly exercised her discretion not to award the Samsuddin Estate Beneficiaries costs on an indemnity basis. We dismiss this aspect of the Samsuddin Estate Beneficiaries' appeal.

(vii) The Judge's decision on post-judgment interest is to stand.

436 We will hear the parties on costs if they are not able to reach agreement. They are to tender written submissions on costs within 14 days of the date of this decision, limited to seven pages each, excluding any cover page and contents page.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Version No 1: 15 May 2024 (12:48 hrs)

Koh Swee Yen SC, Tiong Teck Wee, Quek Yi Zhi Joel (Guo Yizhi), Hannah Lee Ming Shan, Wong Yan Yee, Claire Lim, Axl Rizqy and Shawn Ang De Xian (WongPartnership LLP) for Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa and Ishret Jahan;
Chia Ming Yee Doreen (Xie Minyi) (Rajah & Tann Singapore LLP) for Iqbal Ahmad;
Sarbjit Singh Chopra, Loh Weijie Leonard, Roshan Singh Chopra and Yuen Zi Gui (Selvam LLC) for Fayyaz Ahmad and Ansar Ahmad;
Davinder Singh SC, Jaikanth Shankar, Sngeeta Rai, Tan Ruo Yu, Bryan Wong and Irina Golovkovskaya (Davinder Singh Chambers LLC) (instructed), Singh Purain Darshan, Avtar Ranee Kaur Purain and Vanisha Ishwar Chandiramani (Darshan & Teo LLP) for Ayaz Ahmed, Khalida Bano, Ishtiaq Ahmad, Maaz Ahmad Khan, Wasela Tasneem and Asia;
Mohamad Mustafa & Samsuddin Co Pte Ltd's attendance dispensed with.

Version No 1: 15 May 2024 (12:48 hrs)