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

[2022] SGHC 161

Suit No 1158 of 2017

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*

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

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

GROUNDS OF DECISION

[Companies — Oppression — Minority shareholders]

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v
Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and others and other suits

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General Division of the High Court (Family Division) — Suit 9 of 2017
Mavis Chionh Sze Chyi J
12–16 October, 19–23 October, 26–30 October, 2–6 and 9 November 2020, 14 June, 16 August, 6 September, 9 November 2021, 14 January, 28 March, 14 April 2022

8 July 2022

Mavis Chionh Sze Chyi J:

1 There were three suits heard together before me in the present case: HC/S 1158/2017 ("Suit 1158"), HC/S 780/2018 ("Suit 780") and HCF/S 9/2017 ("Suit 9"). The six plaintiffs in Suit 1158 are the beneficiaries of the estate of Mustafa s/o Majid Khan ("the Mustafa estate"). The first plaintiff in Suit 780 is one of the two trustees and executors of the estate of Samsuddin s/o Mokhtar Ahmad ("the Samsuddin estate") and also a beneficiary of the estate, while the second plaintiff is another beneficiary of the estate. Both the Mustafa estate and the Samsuddin estate are registered owners of shares in a company known as Mohamed Mustafa & Samsuddin Co Pte Ltd ("MMSCPL", the sixth defendant

in Suit 1158 and Suit 780). Suit 1158 and Suit 780 concerned claims of minority oppression against the directors of MMSCPL.

2 In addition, the plaintiffs in Suit 780 made other claims; in particular, that the Samsuddin estate was entitled to certain assets held for it by the first defendant Mustaq Ahmad @ Mushtaq Ahmad s/o Mustafa ("Mustaq") on an express trust; and that Mustaq had breached his duties as executor and trustee of the Samsuddin estate.

3 Suit 9 was a claim brought by the beneficiaries of the Mustafa estate against Mustaq in his capacity as the sole administrator and trustee of the Mustafa estate, for breach of his duties as administrator and trustee.

4 Following a 20-day trial, I gave judgment for the plaintiffs in Suit 1158 and Suit 780. In brief, in Suit 1158 and Suit 780, I found in favour of the plaintiffs in respect of a number of (though not all) their allegations of minority oppression. I held, however, that winding-up of MMSCPL was not an appropriate remedy in this case, and ordered instead that the first defendant Mustaq and the second defendant Ishret Jahan ("Ishret") buy out the estates' shares in MMSCPL. In respect of Suit 780, I also held that Mustaq had breached his duties as executor and trustee of the Samsuddin estate, but I rejected the claim of an express trust.

5 In Suit 9, I held that the plaintiffs were entitled to a declaration that the defendant Mustaq had breached his duties as administrator 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 the breaches found. I also ordered that Mustaq give an account of his administration of the Mustafa Estate. The Suit 9

plaintiffs were given liberty to apply for further orders in respect of any losses suffered by the estate as determined by the account.

6 These are the written grounds for my decision in all three suits.

Background

The parties

7 Mustafa was born on 1 February 1918[1] while Samsuddin was born on 25 July 1925.[2]

8 Samsuddin's cousin, Momina, married Mustafa in 1945 and they had a son, Mustaq.[3] After Momina's death, Mustafa married one Mdm Asia ("Asia") in 1957 and had five children with her – Ayaz Ahmed ("Ayaz"), Khalida Bano ("Khalida"), Ishtiaq Ahmad ("Ishtiaq"), Maaz Ahmad Khan ("Maaz"), and Wasela Tasneem ("Wasela"). These five children, now adults, are the plaintiffs in Suit 1158 together with Asia (the "Suit 1158 plaintiffs").[4]

9 Samsuddin had five children with his wife, Sitarun Nisha ("Sitarun"): Nausaba Khatoon, Mohamed Zakaria, Mohammad Asrar Ahmad, and the two plaintiffs in Suit 780, Fayyaz Ahmad ("Fayyaz") and Ansar Ahmad ("Ansar").[5]

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1 Statement of Claim (Amendment No. 1) for Suit 1158 dated 8 August 2018 ("SOC 1158") at para 12; Defence of the 1st to 5th Defendants & Counterclaim of the 1st Defendant (Amendment No. 2) for Suit 1158 dated 17 August 2018 ("Defence 1158") at para 10; Joint Core Bundle ("JCB") Vol 4 at pp 3404–3405.

2 Agreed Bundle of Documents dated 8 October 2020 ("AB") Vol 14 at pp 11111–11112.

3 SOC 780 at para 7; Defence and Counterclaim of 1st and 2nd Defendants (Amendment No. 1) for Suit 780 dated 25 August 2020 ("Defence 780") at para 7.

4 SOC 1158 at para 14.

5 Statement of Claim (Amendment No. 1) for Suit 780 dated 12 August 2020 ("SOC 780") at paras 4–5.

10 Mustaq and his wife, Ishret Jahan ("Ishret"), are the first and second defendants in both Suit 1158 and Suit 780. They are both shareholders and directors of MMSCPL.[6] One of their three daughters, Shama Bano ("Shama"), and their son, Abu Osama ("Osama") are the third and fourth defendants in both Suit 1158 and Suit 780. Both Shama and Osama are directors of MMSCPL. Mustaq and Ishret have two other daughters, Shams Bano ("Shams") and Bushra Bano ("Bushra"), who are not parties to any of the three suits. Iqbal Ahmad ("Iqbal"), the fifth defendant in both Suit 1158 and Suit 780, is Ishret's brother. Iqbal is a director and company secretary of MMSCPL.[7] MMSCPL, as the sixth defendant in both Suit 1158 and Suit 780, is a nominal defendant.

The origins of MMSCPL

11 The issue of the origins of MMSCPL was relevant to both Suit 1158 and Suit 780 because of the parties' starkly differing positions as to the true ownership of MMSCPL. The two sets of plaintiffs had a very different account from the defendants as to how MMSCPL was started.

The plaintiffs' account

12 According to both sets of plaintiffs, on 11 July 1973, Mustafa and Samsuddin commenced a wholesale business through a partnership known as Mohamed Mustafa & Samsuddin Co ("MMSC").[8] On 23 July 1973, Mustafa and Samsuddin lodged a form with the Registrar of Business ("ROB") to notify the ROB that MMSC had changed its registered address from 19 Campbell Lane

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6 SOC 1158 at paras 4–5; Defence 1158 at para 5.

7 SOC 1158 at paras 6–7; Defence 1158 at para 5.

8 JCB Vol 3 at p 2310; AEIC of Ayaz Ahmad dated 21 August 2020 in Suit 1158 ("Ayaz S 1158 AEIC") at para 18.

to 67 Serangoon Road Singapore, and that MMSC's branch would operate from 19 Campbell Lane.[9]

13 On 12 September 1973, Mustafa and Samsuddin added Mustaq as a partner in MMSC.[10] On 31 July 1975, MMSC submitted its application for the business name "Mohamed Mustafa & Samsuddin Company" to be approved by the ROB.[11]

The defendants' account

14 Mustaq alleged that he used to help Mustafa and Samsuddin at their street stall when he was about 12 years old, but that he went on to set up his own independent stall along Campbell Lane in 1963. Around 1971, Mustaq rented 1 Campbell Lane and conducted his business there under the name "Mustaq Ahmad".[12] Sometime in 1973, when the landlord informed him the 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"). According to Mustaq, he made all these payments with no assistance from Mustafa and Samsuddin.[13]

15 Sometime in May or June 1973, before Mustaq was able to move his goods from 1 Campbell Lane to the New Premises, he made a trip to India to visit his wife. Mustafa offered to help supervise the running of Mustaq's business together with Samsuddin. To facilitate the administrative aspects of the

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9 JCB Vol 3 at pp 2312–2314; Ayaz S 1158 AEIC at para 19.

10 JCB Vol 3 at pp 2316–2318; Transcript, 13 October 2020 at p 35, lines 8–18.

11 JCB Vol 3 at pp 2325–2329.

12 Defence 780 at paras 17–23.

13 Defence 780 at paras 24–25.

move to the New Premises, Mustafa and Samsuddin commenced MMSC on 11 July 1973 on the understanding that the business operating out of the New Premises was Mustaq's business. When Mustaq returned to Singapore in August or September 1973, Mustafa and Samsuddin informed Mustaq of the commencement of MMSC, and Mustaq added his name to MMSC sometime around 12 September 1973.[14]

Events of 1989

16 MMSCPL was incorporated in Singapore on 21 February 1989. At that time, Mustaq and Samsuddin were MMSCPL's sole directors and shareholders, with each subscribing to one share of MMSCPL.[15] The Memorandum of Association and Articles of Association of MMSCPL (the "MMSCPL Constitution") were executed only by Mustaq and Samsuddin.[16] The defendants alleged that MMSCPL was incorporated because Mustaq realised that the partnership structure was not ideal for the business' growth, and Mustaq had incorporated MMSCPL without seeking input, financing or support from Mustafa and Samsuddin.[17]

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14 Defence 780 at paras 27–30.

15 SOC 1158 at para 18; Defence 1158 at para 15; SOC 780 at para 20; Defence 780 at para 14.

16 SOC 1158 at para 19; Defence 1158 at para 16(2); JCB Vol 5 at pp 3586–3618 (the MMSCPL Constitution).

17 Defence 780 at para 38; Defence 1158 at para 41.

17 About two months later, Mustafa was appointed a director of MMSCPL.[18] According to the defendants, this was done out of "goodwill and respect" by Mustaq for Mustafa.[19]

18 On or around 27 April 1989, Mustafa subscribed to 190,000 shares in MMSCPL, while Mustaq and Samsuddin also subscribed to further shares in MMSCPL. As a result, Mustafa held 19%, Samsuddin held 30%, and Mustaq held 51% of the shares in MMSCPL.[20]

19 Around 30 September 1989, the MMSC partnership was terminated.[21]

Appointments of Ishret, Iqbal, Shama and Osama

20 On 19 June 1991, Ishret was appointed as a director of MMSCPL. On 17 January 1994, Iqbal was appointed as company secretary of MMSCPL. He was appointed as a director of MMSCPL on 3 September 2001.[22]

21 On 14 February 2001, Shama and Osama were appointed directors of MMSCPL.[23] Osama resigned as a director of MMSCPL on 10 February 2004, but was reappointed as a director of MMSCPL on 24 December 2014.[24]

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18 SOC 1158 at para 24; Defence 1158 at para 45; SOC 780 at para 24; Defence 780 at para 42.

19 Defence 780 at para 42.

20 SOC 1158 at para 23; Defence 1158 at para; SOC 780 at para 23; Defence 780 at para 16.

21 SOC 780 at para 21; Defence 780 at para 15.

22 SOC 1158 at paras 26, 27 and 30; Defence 1158 at para 57; SOC 780 at paras 28, 29 and 32; Defence 780 at para 54.

23 SOC 1158 at para 28; Defence 1158 at para 57; JCB Vol 1 at p 685; SOC 780 at para 30; Defence 780 at para 54.

24 SOC 1158 at paras 31 and 33; Defence 1158 at paras 57 and 60; SOC 780 at paras 33 and 35; Defence 780 at para 54.

Mustafa and Samsuddin stepped down as directors

22 Mustafa stepped down as a director of MMSCPL on 11 March 1999, while Samsuddin stepped down as a director of MMSCPL on 14 July 2003.[25]

23 For ease of reference, the dates of appointment of the various parties as directors (and in Iqbal's case, as company secretary) and the dates of their resignation or retirement (where applicable) are set out in the table below.

Individual	**Date of Appointment**	**Position**	**Date of resignation/ retirement (where applicable)**
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

[25] Fayyaz 780 AEIC at para 18.

	24 December 2014	Director (re-appointed)	N/A

The Share Allotments

24 From the time of MMSCPL's incorporation on 21 February 1989 until 11 December 2001, various share allotments were carried out in MMSCPL. I summarise these below, reproducing the table tendered by the Suit 780 plaintiffs (the accuracy of which was not disputed by the other parties).[26]

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%

[26] Exhibit 780-D2.

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%

25 Both the Suit 1158 and the Suit 780 plaintiffs seek to set aside the 5 January 1995 Allotment and the 11 December 2001 Allotment. The Suit 780 plaintiffs additionally seek to set aside the 27 June 1991 Allotment, the 16 January 1993 Allotment, the 19 May 1993 Allotment, the 9 April 1996 Allotment and the 24 February 1997 Allotment. I will set out their allegations in respect of each allotment in further detail later in these written grounds.

Mustafa's death in 2001

26 Mustafa died intestate on 17 July 2001.[27]

27 On 16 August 2001, the Syariah Court of Singapore issued an Inheritance Certificate stating that the Mustafa Estate was to be divided into 80

[27] SOC 1158 at para 1; Defence 1158 at para 3.

shares, with each of Mustafa's sons (Mustaq, Ishtiaq, Maaz and Ayaz) receiving 14 shares, Asia receiving 10 shares, and each daughter (Khalida and Wasela) receiving 7 shares.[28]

Power of Attorney and Grant of Letters of Administration

28 It was not disputed that on 22 December 2001, Mustaq visited Jaunpur, India, where the Suit 1158 plaintiffs were staying.[29] The Suit 1158 plaintiffs signed a Power of Attorney ("Mustaq POA") on 22 December 2001,[30] which was drafted on Mustaq's instructions.[31] The Mustaq POA provided, *inter alia*, that the Suit 1158 plaintiffs jointly and severally appointed Mustaq to apply for and obtain Grants of Probate or Letters of Administration ("LA") for the Mustafa Estate. The Suit 1158 plaintiffs said that, at the time they signed the Mustaq POA, Mustaq failed to disclose the 5 January 1995 Allotment and the 11 December 2001 Allotment.[32] Mustaq, for his part, denied this – he said that he had never attempted to conceal either allotment.[33]

29 On 30 October 2003, the Mustafa Estate was registered as a shareholder of MMSCPL.[34] On 18 November 2003, Mustaq filed a petition for the Grant of LA in relation to the Mustafa Estate.[35] Mustaq was granted the LA on 24 November 2003, and he extracted the Grant of LA on 28 January 2004.[36]

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28 SOC 1158 at para 47; SOC 780 at para 60; JCB Vol 1 at p 93.

29 SOC 1158 at para 55; Defence 1158 at para 96.

30 JCB Vol 1 at pp 63–77.

31 SOC 1158 at para 56; Defence 1158 at para 97.

32 SOC 1158 at para 57.

33 Defence 1158 at para 100.

34 SOC 1158 at para 58; Defence 1158 at para 101.

35 SOC 1158 at para 59; Defence 1158 at para 102.

36 JCB Vol 1 at p 153.

Samsuddin's death in 2011

30 Samsuddin died in April 2011.[37] Pursuant to his will dated 5 November 2004, Fayyaz and Mustaq were appointed joint and several executrixes and trustees of his estate (the "Samsuddin Estate").[38] On 24 October 2012, Mustaq applied for a grant of probate,[39] which was issued to Mustaq and Fayyaz on 25 June 2013.[40]

31 Based on the Syariah Court Inheritance Certificate, the beneficiaries under the Samsuddin Estate were the five children of Samsuddin and Sitarun (including Fayyaz and Ayaz), and Sitarun herself.[41] For completeness, I note that the defendants have pointed out that Mohd Jakariya Haji Samsuddin (alias Mohamed Zakaria) was not named in the Inheritance Certificate, and that the aliases of Ansar and Naushaba Khatun were not reflected in the Inheritance Certificate.[42]

The plaintiffs' requests for information from Mustaq from 2013

32 In both Suit 1158 and Suit 780, the plaintiffs alleged that from 2013, Mustaq sought to conceal from them the truth about MMSCPL's affairs.

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37 SOC 1158 at para 32; Defence 1158 at para 59.

38 SOC 780 at para 6; Defence 780 at para 6; JCB Vol 1 at pp 155–156 (Samsuddin's will dated 5 November 2004).

39 JCB Vol 1 at pp 160–183.

40 JCB Vol 1 at p 252.

41 JCB Vol 1 at p 158.

42 Defence 780 at paras 6(c)–(d).

The plaintiffs' account

33 According to both sets of plaintiffs, in or around 2013, Ayaz (the first plaintiff in Suit 1158) made repeated requests to Mustaq for information about the Mustafa Estate and Samsuddin Estate, which Mustaq wrongfully refused to provide.[43]

34 Instead, in an attempt to placate the plaintiffs, Mustaq procured MMSCPL to declare a dividend in each year from 2014 onwards. However, he arranged for MMSCPL to pay it over twelve monthly instalments instead of in one lump sum. By doing so, he made sure the plaintiffs understood that the dividend payments would cease if they chose to resort to their legal rights.[44] Additionally, from around February or March 2017, dividends were halved; and in February 2018, the dividend payments stopped completely – which suggested that Mustaq was trying to exert further pressure on the plaintiffs.[45]

35 The Suit 780 plaintiffs also asserted that around 2013 to 2014, in an attempt to placate the Suit 780 plaintiffs and in breach of his duties to the Samsuddin Estate and/or in breach of trust, Mustaq offered to pay the Samsuddin Estate the value of the shares in MMSCPL that Samsuddin had originally held. To finance this payment, Mustaq caused MMSCPL to issue three-year bearer bonds for approximately $75 million in 2014, which was not in the commercial interests of MMSCPL.[46]

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43 SOC 1158 at para 77; SOC 780 at para 109.

44 SOC 1158 at paras 77–81; SOC 780 at para 112.

45 SOC 1158 at para 109; SOC 780 at para 113.

46 SOC 780 at paras 109–111.

36 In mid-2015, in a further attempt to forestall legal action against himself, Mustaq made a verbal proposal ("Mustaq Proposal") to Ayaz to restructure all companies that were directly and/or indirectly owned by Mustaq, Ishret and/or MMSCPL.[47] On or around 29 March 2016, Mustaq produced a Deed which he claimed contained the terms of the Mustaq Proposal and which he asked (among other persons) Ayaz to sign. However, the Deed did not accurately reflect the terms of the Mustaq Proposal; and the Suit 1158 plaintiffs did not sign it.[48]

37 Around April 2016, Ayaz asked Mustaq further questions pertaining to the affairs of the Mustafa Estate. Ayaz then engaged one Rajesh Bafna ("Rajesh"), a consultant, to look into the Mustafa Estate's interest in MMSCPL. From Rajesh, Ayaz learned of the 5 January 1995 Allotment and the 11 December 2001 Allotment.[49]

38 Around the end of June 2016, Ayaz asked Mustaq to account for how he had used the Mustaq POA and also to provide an explanation for the 5 January 1995 Allotment and the 11 December 2001 Allotment. On 1 July 2016, the Suit 1158 plaintiffs revoked the Mustaq POA, and the revocation was registered with the court on 24 April 2017. By a letter dated 13 July 2016 from the plaintiffs' lawyers, the plaintiffs informed Mustaq they had executed a new Power of Attorney in favour of Ayaz, and asked Mustaq to provide information and documents in relation to the Mustaq POA – which he refused to do.[50] On various

47 SOC 1158 at paras 82–83; SOC 780 at para 115.

48 SOC 1158 at paras 84–88; SOC 780 at paras 116–118.

49 SOC 1158 at paras 89–93.

50 SOC 1158 at paras 94–99.

occasions thereafter, including in August 2016 and September 2016, Mustaq repeatedly asked Ayaz to sign the Deed, which Ayaz refused.[51]

The defendants' account

39 Mustaq – as the first defendant in both minority oppression suits and as the chief protagonist according to the plaintiffs' narrative – presented a totally different version of events in his pleaded defence. Mustaq denied having received any request for information from Ayaz or Fayyaz around 2013. Mustaq claimed that he had decided to issue dividends as a way of paying the plaintiffs and other beneficiaries of the Samsuddin Estate. He denied making the Mustaq Proposal. Instead, according to Mustaq, around March 2016, Mustaq, Ayaz and Fayyaz reached a verbal agreement regarding Fayyaz's increasingly unreasonable demands of Mustaq for more "gratuitous property, assets and financial benefits". On 29 March 2016, the Deed was signed by Fayyaz and other beneficiaries of the Samsuddin Estate. A supplemental Deed was subsequently made to amend one of the terms of the verbal agreement, which was signed by Mustaq and Fayyaz. However, Ayaz reneged on the verbal agreement and refused to sign the Deed and the supplemental Deed. This led Mustaq to reverse the steps which had been taken to give effect to the terms of the Deed and the supplemental Deed. Mustaq also alleged in his pleaded defence that since mid-2014, Ayaz had constantly harassed him and demanded from him more benefits.[52]

40 *Per* his pleaded defence, Mustaq claimed that prior to 2016, the Suit 1158 plaintiffs had never requested updates or information concerning the administration of the Mustafa Estate, and that in his correspondence with them

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51 SOC 1158 at paras 100–108.

52 Defence 1158 at paras 131–163; Defence 780 at paras 157–168.

from 2016 onwards, he had acceded to their requests for information when these were reasonable.[53]

Commencement of the present suits

41 On 8 December 2017, the Suit 1158 plaintiffs commenced Suit 1158 and Suit 9. As noted earlier, Suit 1158 is a minority oppression claim by Asia and her five children (including Ayaz), on behalf of the Mustafa Estate. Suit 9 concerns Mustaq's alleged breach of his duties as the sole administrator and trustee of the Mustafa Estate.

42 On 6 August 2018, the Suit 780 plaintiffs filed Suit 780. Suit 780 is a minority oppression claim by Fayyaz and Ansar, on behalf of the Samsuddin Estate.

The present suits

43 As there is some overlap between the issues raised in each suit, I first set out the common aspects of the plaintiffs' cases in Suit 1158 and Suit 780.

Allegations of oppressive conduct common to Suit 1158 and Suit 780

44 In claiming that the defendants had oppressed the rights of the Mustafa and the Samsuddin estates as minority shareholders, the Suit 1158 and the Suit 780 plaintiffs raised some of the same allegations of oppressive conduct in their pleadings. However, they asked for different reliefs in respect of some of these allegations. I set these out as follows.

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53 Defence 1158 at para 103.

The 5 January 1995 Allotment and the 11 December 2001 Allotment

45 Both sets of plaintiffs alleged that the 5 January 1995 Allotment and the 11 December 2001 Allotment were, *inter alia*, carried out in breach of the MMSCPL Constitution. There was nothing to suggest that these allotments were needed in MMSCPL's commercial interests. Instead, the two allotments had been devised by Mustaq and/or Ishret for Mustaq's own benefit as they allowed him to acquire more shares in MMSCPL at an undervalue while diluting the estates' shareholding.[54] Both sets of plaintiffs both sought a declaration that the 5 January 1995 Allotment and the 11 December 2001 Allotment were void and of no effect and should be set aside.[55]

Systematic misappropriation of MMSCPL's funds

46 Both the Suit 1158 and Suit 780 plaintiffs raised the same allegations about the defendants' systematic misappropriation of MMSCPL's funds:

(a) Between 2000 and 2015, the first to fifth defendants utilised for their own benefit sums taken from MMSCPL under the guise of unsecured and interest-free loans, which were not in MMSCPL's interests.[56]

(b) The Suit 1158 plaintiffs also alleged that between 2004 and 2005, Mustaq concocted sham invoices to create the appearance that MMSCPL was indebted to B.I. Distributors Pte Ltd ("BID"), a company

54 SOC 1158 at paras 40–45 (5 January 1995 Allotment) and 46–53 (11 December 2001 Allotment); SOC 780 at paras 50–58 (5 January 1995 Allotment) and 59–69 (11 December 2001 Allotment).

55 SOC 1158 at p 39, paras 1–4; SOC 780 at p 60, paras 3–6.

56 SOC 1158 at paras 62–64; SOC 780 at paras 70–72.

wholly owned and controlled by Mustaq and Ishret.[57] The Suit 780 plaintiffs alleged that this was done between 2000 and 2006.[58]

(c) Over the years, Mustaq procured or caused MMSCPL to falsify its applications to the Ministry of Manpower ("MOM") for work passes for MMSCPL employees who worked for Kebabs N Curries (a restaurant wholly owned by MMSCPL), Mustafa's Café (a restaurant wholly owned by MMSCPL), Handi Restaurant and Catering ("Handi Restaurant") (a restaurant wholly owned by MMSCPL) and/or MMSCPL itself.[59] The Suit 780 plaintiffs sought an order that MOM investigate these allegations.[60] The Suit 1158 plaintiffs did not seek such an order.

(d) After Mustafa's death on 17 July 2001 and until 2014, Mustaq and Ishret adopted a policy of paying themselves substantial directors' fees amounting to an average of 51% of MMSCPL's net profits per year. Further, Mustaq, Ishret, Shama, Osama and/or Iqbal each procured, caused and/or allowed MMSCPL to not pay and/or did not take steps to prevent MMSCPL to pay no dividends at all to the shareholders of MMSCPL until 31 December 2013. This was despite MMSCPL earning substantial profits between 2000 and 2013.[61] The Suit 780 plaintiffs sought a declaration that the various resolutions at the Annual General Meetings of MMSCPL approving Mustaq's and Ishret's directors' fees

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57 SOC 1158 at paras 65–67.

58 SOC 780 at paras 73–75.

59 SOC 1158 at paras 68–73; SOC 780 at paras 76–79.

60 SOC 780 at p 61, para 11.

61 SOC 1158 at paras 74–76; SOC 780 at para 97.

were null and void and had no effect.[62] Though the Suit 1158 plaintiffs pleaded the same dividend-related complaints as one of the instances of oppressive conduct, they did not seek such a declaration.

47 Additionally, the Suit 1158 plaintiffs sought a declaration that Mustaq, Ishret, Shama, Osama and/or Iqbal were jointly and severally liable to account to MMSCPL for the sums wrongfully misappropriated from MMSCPL, and for such sums to be paid by Mustaq, Ishret, Shama, Osama and/or Iqbal to MMSCPL.[63] The Suit 780 plaintiffs did not seek such an order.

Other reliefs sought by the Suit 1158 and Suit 780 plaintiffs

48 Both sets of plaintiffs sought an order for an independent expert to be appointed by the court to look into the affairs and accounting records of MMSCPL and to assess the losses suffered by MMSCPL as a result of the defendants' oppressive conduct.[64]

49 The Suit 780 plaintiffs sought in addition an order that Mustaq buy out the Samsuddin Estate at a price to be assessed by an independent expert, taking into account the losses suffered by MMSCPL as a result of the defendants' oppressive conduct; further or in the alternative, an order that MMSCPL be wound up pursuant to s 216(2)(*f*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"); and further or alternatively, a declaration that Mustaq had fraudulently breached his fiduciary duties and duties as executor and trustee of

62 SOC 780 at p 60, para 10.

63 SOC 1158 at p 39, paras 6–7.

64 SOC 1158 at p 39, para 5; SOC 780 at p 61, para 12.

the Samsuddin Estate, with damages to be assessed and paid to the Samsuddin Estate,[65] and a statement of account of the Trust Assets.[66]

50 The Suit 1158 plaintiffs sought an order that MMSCPL be wound up pursuant to s 216(2)(*f*) of the Companies Act.[67]

Additional allegations in Suit 780

51 The additional allegations by the Suit 780 plaintiffs may be summarized as follows.

Share allotments

52 First, *in addition to* the 5 January 1995 Allotment and the 11 December 2001 Allotment, the Suit 780 plaintiffs alleged that the 27 June 1991 Allotment, the 16 January 1993 Allotment, the 19 May 1993 Allotment, the 9 April 1996 Allotment, the 24 February 1997 Allotment and the 11 December 2001 Allotment were carried out (*inter alia*) in breach of the MMSCPL Constitution.[68]

53 The Suit 780 plaintiffs sought a declaration that the 27 June 1991 Allotment, the 16 January 1993 Allotment, the 19 May 1993 Allotment, the 9 April 1996 Allotment and the 24 February 1997 Allotment, were void and of no effect, and an order that each of these allotments be set aside.[69] They also sought

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65 SOC 780 at p 61, paras 12–14.

66 SOC 780 at paras 104–108.

67 SOC 1158 at p 40, para 8.

68 SOC 780 at paras 39A–69.

69 SOC 780 at p 60, paras 1–8.

a declaration that Ishret was not the beneficial owner of shares registered in her name and that all allotments of shares to her were null and void.[70]

Authorised Capital Increases

54 The Suit 780 plaintiffs also alleged that Mustaq had, on two instances, wrongfully caused MMSCPL to increase its authorised share capital.[71]

55 First, on 17 January 1994, Mustaq wrongfully caused MMSCPL to increase its authorised share capital from $5,000,000 to $10,000,000, divided into 10,000,000 ordinary shares of $1 each ("First Authorised Capital Increase"). This was done in breach of provisions of the MMSCPL Constitution and for the benefit of Mustaq and his family.[72]

56 Second, around 26 September 1997, Mustaq wrongfully caused MMSCPL to increase its authorised share capital from $10,000,000 to $15,000,000, divided into 15,000,000 ordinary shares of $1 each ("Second Authorised Capital Increase"). This allowed Mustaq to wrongfully procure the 11 December 2001 Allotment so as to acquire further shares in MMSCPL at a significant discount and dilute Samsuddin's shareholding in MMSCPL.[73] It was also done in breach of the MMSCPL Constitution.[74]

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70 SOC 780 at p 60, para 9.

71 SOC 780 at paras 46–49 (First Authorised Capital Increase) and paras 58C–58E (Second Authorised Capital Increase).

72 SOC 780 at paras 46–48.

73 SOC 780 at para 58C(b).

74 SOC 780 at para 58C(c).

Additional allegations concerning the systematic misappropriation of MMSCPL's funds

57 In addition to the common allegations of oppressive conduct, the Suit 780 plaintiffs also pleaded the following:

(a) Mustaq directed MMSCPL to pay salaries and Central Provident Fund ("CPF") contributions to some of his children (Shams, Shama and Bushra), prior to their being employed by MMSCPL or any of its related companies.[75]

(b) Mustaq wrongfully caused MMSCPL to pay substantial consultancy fees to Zero and One, a sole proprietorship which he had set up on 1 February 2006. These payments had been made since the inception of the sole proprietorship and were against MMSCPL's commercial interests. Mustaq also used Zero and One as a vehicle to pay one Rajena Begam d/o Sheik Noordin ("Rajena") monthly consultancy fees of between $20,000 to $50,000, without any basis. The Suit 780 plaintiffs claimed that Rajena "was and is in a relationship with Mustaq".[76] Mustaq did not cooperate with the police when Rajena was reported for wrongfully taking goods from MMSCPL, and even caused MMSCPL to pay the rent for her accommodation.[77]

(c) Between 8 January 2004 and 26 May 2017, Mustaq contracted on behalf of MMSCPL to sell gold to Ruby Impex LLP ("Ruby Impex") and Shams Gems LLP ("Shams Gems"), being partnership firms jointly owned by his daughters, Shams and Bushra, by adding only a 0.5%

75 SOC 780 at para 80.

76 SOC 780 at paras 81 and 81(d).

77 SOC 780 at paras 81–84.

margin without reference to market value, thereby causing MMSCPL to enter into contracts at a significant undervalue.[78]

(d) From January 2010 to May 2018, Mustaq failed to adopt a proper accounting system for MMSCPL and caused debit notes of MMSCPL to be generated with the amount being zero.[79]

(e) Between 2007 and 2016, Mustaq used the funds of MMSCPL and the Related Companies' funds to purchase properties in Cambodia in his own name and/or that of City Mart Co Ltd, which was registered in his sole name. Mustaq then engaged in self-dealing by causing MMSCPL to pay him for a share of the properties purchased in Cambodia.[80] The Related Companies have been defined in the Suit 780 plaintiffs' pleadings as comprising Mustafa's Pte Ltd ("MPL"); BID; Mustafa Air Travel Pte Ltd ("MAT"); Mustafa Foreign Exchange Pte Ltd ("MFE"); Mustafa Holdings Pte Ltd ("MHPL"); and Mustafa Development Pte Ltd ("MDPL").

(f) Between 1996 to 2000, Mustaq remitted US$10m from MMSCPL through Mustafa Foreign Exchange Pte Ltd ("MFE") to Hang Seng Bank in Hong Kong to his own personal bank account without paying tax, and thereafter used the same money to pay for a building he bought in Jakarta.[81]

(g) Between 2000 and 2006, Mustaq caused MMSCPL to incur substantial losses as a result of foreign exchange/stock/commodity

78 SOC 780 at para 85.

79 SOC 780 at para 86.

80 SOC 780 at para 87.

81 SOC 780 at para 88.

trading. He failed to disclose this to the shareholders of MMSCPL, and instead raised the inventory level of MMSCPL artificially to cover up these losses.[82]

(h) Mustaq wrongfully diverted MMSCPL's revenue to Mustafa's Pte Ltd ("MPL") between 1998 and 2005 by installing credit card terminals in MMSCPL's business premises and paying the monies collected at these terminals to MPL's bank account instead of MMSCPL's bank accounts. Mustaq is the registered shareholder and director of MPL.[83]

(i) In their statement of claim, the Suit 780 plaintiffs had originally pleaded an incident whereby Mustaq awarded a contract for repair works to the MMSCPL premises to As Spec Technics Pte Ltd ("As Spec Technics") without any tender process, because As Spec Technics was a company run by a close friend of his nephew. Mustaq allegedly failed to disclose this transaction to the other shareholders of MMSCPL.[84] However, this allegation was withdrawn by Fayyaz under cross-examination and was not pursued in closing submissions.[85]

(j) Mustaq and the other MMSCPL directors failed to ensure that employees who were family members did not extract value from MMSCPL. Specifically, from 1996 to 2006, Osama (Mustaq's son)

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82 SOC 780 at paras 89–90.

83 SOC 780 at paras 91–93.

84 SOC 780 at para 94.

85 Transcript, 23 October 2020 at p 126, lines 8–11; Plaintiffs' Reply Submissions for Suit 780 dated 1 March 2021 ("PRS 780") at para 680.

bought electronic goods in his own firm's name and supplied the goods to MMSCPL at a profit.[86]

(k) From 2005, Mustaq (either by himself or with Ishret, Shama Osama and/or Iqbal) procured, caused or allowed MMSCPL to enter into transactions with related parties, under which MMSCPL would provide goods to these companies on credit terms. These related parties were said to be BID, Shams Gems, Ruby Impex, MPL and/or Mustaq (the "Related Parties"). The Related Parties did not pay for the goods provided to them under these credit sales transactions; and a sum of $232,935,015 which was not captured in the audited financial statements of MMSCPL for 2005 to 2018 was wrongfully appropriated by Mustaq, Ishret, Shama, Osama and/or Iqbal.[87]

Express trust

58 Over and above the claims of oppression of the Samsuddin estate's minority rights as a shareholder of MMSCPL, the Suit 780 plaintiffs claimed that Mustaq held one-third of the Family Assets less the MMSCPL shares (*ie* the "Trust Assets") on an express trust for the Samsuddin Estate. "Family Assets", according to the Suit 780 plaintiffs, meant: (i) MMSCPL, (ii) all of Mustaq's assets, and (iii) the Related Companies, referring to MPL, BID, Mustafa Air Travel Pte Ltd ("Mustafa Air Travel"), Mustafa Foreign Exchange Pte Ltd ("MFE"), Mustafa Holdings Pte Ltd ("MHPL") and Mustafa Development Pte Ltd ("MDPL").[88]

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86 SOC 780 at paras 95–96.

87 SOC 780 at paras 97A–97E.

88 SOC 780 at para 99.

59 The claim of an express trust was said to be based on an assurance or a representation by Mustaq at or around the time of incorporation of MMSCPL and the Related Companies, and on numerous subsequent occasions, to Samsuddin, the Suit 780 plaintiffs and all the other beneficiaries of the Samsuddin Estate that Samsuddin or the Samsuddin Estate would receive a one-third beneficial share of the Family Assets. The Suit 780 plaintiffs sought a declaration that the Trust Assets were held on trust "as to a one-third share thereof for the Samsuddin Estate, credit being given for the shares in MMSCPL held by Samsuddin and which now belong to his Estate, and for Mustaq to be ordered to provide a statement of account of the Trust Assets".[89]

The defendants' case

60 Suit 1158 and Suit 780 concerned the same defendants, and there was some overlap in their defences in both suits. I first set out the common defences raised, before summarising the pleadings unique to each suit.

61 It should be noted that in both suits, the third to the fifth defendants Shama, Osama and Iqbal) filed brief defences stating that they adopted the defence pleaded by the first and the second defendants (Mustaq and Ishret). Central to Mustaq's and Ishret's defence to the claims of minority oppression was the assertion of a "common understanding" reached between Mustaq, Mustafa and Samsuddin in 1973 ("the 1973 Common Understanding"), and a similar "common understanding" reached between Mustaq and the Suit 1158 plaintiffs in 2001 ("the 2001 Common Understanding"), regarding the true beneficial ownership of the shares in MMSCPL. According to the defendants, it was agreed pursuant to the 1973 Common Understanding and the 2001

89 SOC 780 at paras 98–103; p 61, para 15.

Common Understanding that MMSCPL was wholly owned by Mustaq, and that Mustaq could run the company as he saw fit.

Common aspects of the defendants' case in Suit 1158 and Suit 780

(1) The 1973 Common Understanding

62 The defendants pleaded that Mustaq had started his own business in 1963 selling handkerchiefs, and later garments, slippers and shoes. Mustaq found success early as an entrepreneur and a merchant; and by 1971, he had registered his business as a sole proprietorship under the name "Mustaq Ahmad". At that time, he conducted his business from premises at 1 Campbell Lane without any assistance from Mustafa and Samsuddin. In 1973, Mustaq decided to move his business to 19 Campbell Lane and 67 Serangoon Road (the "New Premises"), but was unable to do so himself as he had planned to travel to India to visit his pregnant wife. It was then that (according to the defendants) Mustafa offered to help supervise the running of Mustaq's business together with Samsuddin. Mustaq accepted the offer because he trusted Mustafa and Samsuddin. The partnership known as MMSC was thus set up on 11 July 1973, purely in order to facilitate the move of Mustaq's business from 1 Campbell Lane to the New Premises. MMSC was set up by Mustafa and Samsuddin in Mustaq's absence, on the understanding that the business operating out of the New Premises was solely Mustaq's business.[90] Following Mustaq's return to Singapore sometime in August or September 1973, he added his own name to the MMSC partnership sometime around 12 September 1973.

[90] Defence 780 at para 28; Defence 1158 at para 31.

63 At that stage, although the business was operating under the name of the MMSC partnership, there was a common understanding between Mustaq, Mustafa and Samsuddin (the "1973 Common Understanding") that:

(a) The business belonged solely to 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 any risks/liabilities in respect of the business;

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

(e) As partners of MMSC, Mustafa and Samsuddin would sign any and all documents Mustaq required them to sign.[91]

64 All the subsequent actions in relation to MMSC and MMSCPL up till Mustafa's death in 2001[92] were carried out pursuant to the 1973 Common Understanding.[93] In particular, Mustaq paid for all the allotments of MMSCPL shares to Mustafa and Samsuddin, who provided no consideration for their shares. Mustaq also bore all of MMSCPL's business expenses and assumed all risks for the business.[94]

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91 Defence 780 at paras 29–31; Defence 1158 at paras 33–34.

92 Defence 780 at paras 60–81H.

93 Defence 780 at paras 32–48; Defence 1158 at paras 36–51.

94 Defence 780 at para 46; Defence 1158 at para 49.

65 The defendants contended that Mustafa's and Samsuddin's conduct had always been consistent with the 1973 Common Understanding. As such, Mustafa and Samsuddin (and their respective estates) were estopped from relying on their strict legal rights in respect of their designations as MMSCPL shareholders.[95] Instead, they (and their respective estates) were holding the MMSCPL shares in their names by way of a common intention constructive trust or, in the alternative, on a resulting trust, for the benefit of Mustaq; and Mustaq was the sole and beneficial owner of all MMSCPL shares held by the Mustafa Estate and Samsuddin Estate.[96]

(2) The 2001 Common Understanding

66 A few days after Mustafa's death on 17 July 2001, Mustaq held a meeting at his home in India with Asia, Khalida, Ishtiaq, and Ishret. In the defences filed in both Suit 1158 and Suit 780, Mustaq pleaded that at this meeting, he had actually offered Asia and her children two options as to how the Mustafa estate could be dealt with. One option was for him to effect a one-off payment to Asia and each of her children equivalent to the notional value of their respective portion of the Mustafa Estate, following which parties would consider all issues relating to the Mustafa Estate closed and would go their separate ways. Alternatively, parties could maintain the status quo, leave the Mustafa Estate intact and let Mustaq continue running MMSCPL in accordance with the 1973 Common Understanding.

67 Mustaq claimed that it was Khalida, Ishtiaq, and Asia who confirmed on behalf of all of Asia's children that they all wanted the second option, *ie*, to maintain the status quo and to have Mustaq continue running the business the

95 Defence 780 at paras 49–50; Defence 1158 at paras 52–53.

96 Defence 780 at paras 51–52; Defence 1158 at paras 54–55.

way he had been running it *per* the 1973 Common Understanding. Mustaq claimed that in so choosing, Asia and her children had accepted the 1973 Common Understanding as applying to them (the "2001 Common Understanding"); and that they were accordingly estopped from insisting on their strict legal rights.[97]

(3) Alleged systematic misappropriation of funds

68 With regard to the plaintiffs' allegations of the defendants' systematic misappropriation of MMSCPL's funds, the defendants' position was as follows:

(a) The directors of MMSCPL, including Mustafa and Samsuddin, had a long-standing practice of taking personal loans from MMSCPL, and this was Mustaq's way of providing for Mustafa, Samsuddin and their families.[98]

(b) There were no sham invoices to BID and MMSCPL did not make any payments to BID in respect of these alleged sham invoices between 2000 to 2006.[99]

(c) The defendants denied that there was any falsification of applications to MOM.[100]

(d) The remaining allegations made by the Suit 780 plaintiffs (*eg*, payments by MMSCPL to Mustaq's children, payments made without basis to Zero & One, diversion of revenue from MMSCPL to MPL,

97 Defence 1158 at paras 78–86; Defence 780 at paras 82–90.

98 Defence 1158 at paras 104–115; Defence 780 at paras 101–112.

99 Defence 1158 at paras 116–118; Defence 780 at paras 113–116.

100 Defence 1158 at paras 119–122; Defence 780 at paras 117–121.

siphoning money to buy property in Cambodia, *etc*) were also denied by the defendants in their pleaded defence.[101]

(e) As for the directors' fees paid to Mustaq and Ishret, they claimed that Mustaq had full discretion to decide the quantum of the directors' fees pursuant to the 1973 Common Understanding and the 2001 Common Understanding. After Samsuddin's death on 19 April 2011 and until 2016, neither the Mustafa Estate nor the Samsuddin Estate had ever raised any objections as to Mustaq's and Ishret's directors' fees and/or the issue of dividends.[102]

(f) In respect of the express trust asserted on behalf of the Samsuddin estate in Suit 780, this was also denied by Mustaq in his defence.[103]

(4) Improper collateral motive and defence of laches and/or acquiescence

69 The defendants further alleged in their defence that both sets of plaintiffs had an improper collateral motive in commencing the suits, and had brought the action in bad faith.[104] They also pleaded the defence of laches and/or acquiescence.[105]

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101 Defence 780 at paras 122–145C.

102 Defence 1158 at paras 123–130; Defence 780 at paras 146–151.

103 Defence 780 at para 152.

104 Defence 1158 at paras 164–168; Defence 780 at paras 169–173.

105 Defence 1158 at paras 169–170; Defence 780 at paras 174–175.

(5) The first defendant's counterclaims

70 In both Suit 1158 and Suit 780, the first defendant, Mustaq, filed a counterclaim for a declaration that he was the legal and beneficial owner of all shares in MMSCPL held by the Samsuddin Estate by way of a common intention constructive trust, or, alternatively, a resulting trust – and consequently, an order that the MMSCPL share register be rectified to reflect Mustaq's ownership of all the shares in MMSCPL and for the plaintiffs to consent to and facilitate this rectification.[106]

71 In Suit 780, Mustaq also filed a counterclaim against Fayyaz in Mustaq's capacity as an executor and trustee of the Samsuddin Estate. Mustaq sought a declaration that Fayyaz had breached his fiduciary duties to the Samsuddin Estate, and an order that Fayyaz fully indemnify the Samsuddin Estate for the expenses incurred by Mustaq in defending himself against Fayyaz's claims, or alternatively, for damages to be assessed and paid to the Samsuddin Estate.[107]

Other aspects of the defendants' cases in Suit 1158 and Suit 780

72 In the defence they filed in Suit 1158, the defendants alleged that the Suit 1158 plaintiffs had no *locus standi* to bring Suit 1158 as they themselves were not shareholders in MMSCPL; and further, that they were not in any event the proper plaintiffs to pursue the claims of minority oppression because the alleged oppressive acts – even if proven – constituted corporate wrongs.[108]

73 As for Suit 780, the defendants similarly asserted that the Suit 780 plaintiffs had no standing to make any claim in relation to matters occurring

106 Defence 1158 at paras 171–175; Defence 780 at paras 177–183.

107 Defence 780 at paras 184–187.

108 Defence 1158 at paras 1 and 6.

during the lifetime of Samsuddin.[109] The first defendant also denied holding one-third of the Trust Assets on an express trust for the Samsuddin estate, and denied fraudulently breaching his duties as executor and trustee of the Samsuddin estate.[110]

Allegations of breach of duties as administrator and trustee in Suit 9

74 As for Suit 9, in claiming that Mustaq had breached his duties as administrator and trustee of the Mustafa estate, the plaintiffs relied on the same conduct which they had pleaded as oppressive conduct in Suit 1158 (*ie*, the dilution of the Mustafa estate's shares *via* the 5 January 1995 Allotment and the 11 December 2001 Allotment, the taking of large unsecured and interest-free loans by Mustafa and other directors of MMSCPL, the payment of excessive directors' fees to Mustaq and Ishret when no dividends were paid to the shareholders, *etc*). The plaintiffs contended that in breach of his duties as administrator and trustee of the Mustafa estate, Mustaq had failed to disclose to them all these matters and had also failed to take any steps to set things right.[111] Up until 2016, he concealed the truth from the plaintiffs about his own and his family members' wrongdoing so that the plaintiffs would not be able to take action to protect the Mustafa estate's interests.[112]

75 Mustaq was also alleged to have failed to distribute the assets of the Mustafa estate since the grant of the LA in January 2004 and/or to have taken steps to get the plaintiffs registered as the holders of the estate's shares in MMSCPL. The plaintiffs asserted that MMSCPL owed the estate an amount of

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109 Defence 780 at para 58.

110 Defence 780 at paras 152–156.

111 SOC 9 at paras 56–81.

112 SOC 9 at paras 82–112.

more than $1 million which the estate could have used to subscribe for more shares in MMSCPL during the 11 December 2001 Allotment. Despite Ayaz's attempts to request information about the estate from around 2013 onwards (including information on the estate's shares in MMSCPL), Mustaq wrongfully refused to provide such information.[113]

76 In Suit 9, Mustaq essentially repeated the same matters pleaded in his defence in Suit 1158. In particular, he repeated the allegations pleaded in Suit 1158 regarding the 1973 Common Understanding and the 2001 Common Understanding. While Mustaq admitted that he had not distributed the assets of the Mustafa estate and that the plaintiffs had not been registered as the holders of the estate's shares in MMSCPL, he claimed in his defence that this was because the plaintiffs themselves had "specifically requested" that the Mustafa estate not be dissolved and that he continue running MMSCPL as *per* the 1973 Common Understanding and the 2001 Common Understanding.[114] In addition, he claimed in his defence that *per* the 2001 Common Understanding, the plaintiffs had asked him to (and were content to leave him to) handle the legal and administrative matters relating to the Mustafa estate, and that they had only started questioning him from around 2016 when he refused to accede to their (and in particular, Ayaz's) unreasonable requests for excessive gratuitous benefits.[115]

77 In his Suit 9 defence, Mustaq also pleaded that MMSCPL had paid estate duties on behalf of the Mustafa estate; that the payment of estate duties was used to offset the amount due from MMSCPL to the Mustafa estate; that MMSCPL

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113 SOC 9 at paras 83–85.

114 Defence 9 at para 135.

115 Defence 9 at para 137.

had also paid the legal fees and disbursements on behalf of the estate; and that consequently, instead of MMSCPL owing any monies to the Mustafa estate, it was the estate that owed a net amount to MMSCPL.[116]

78 Before I turn to my findings of fact in this case, I address a number of preliminary legal issues which surfaced in the course of the proceedings. I address these legal issues at this stage in my written grounds because the views I formed on these issues informed and provided context for the factual findings I made at the end of the trial.

Preliminary issues

Evidence in one suit applying to the other

79 In a pre-trial conference on 12 November 2018, the Senior Assistant Registrar ("SAR") directed that all three cases – *ie*, Suit 1158, Suit 9 and Suit 780 – were to be heard by the same Judge and to be heard together or one after the other, immediately or otherwise, subject to the directions to be made by the trial judge. There was no express direction that the evidence adduced in one suit was to apply to the other.

80 In the course of the trial, the two sets of plaintiffs gave differing accounts as to what each party's rightful shareholding in MMSCPL should be. The Suit 1158 plaintiffs, who challenged the validity of only two of the share issuance resolutions, claimed that the Mustafa estate should have about 25% of the shares in MMSCPL; whereas the Suit 780 plaintiffs – who challenged the validity of nearly all the share issuance resolutions – claimed that all the parties (Samsuddin, Mustafa and Mustaq) should have an equal one-third share each.

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116 Defence 9 at paras 162(c)–(f).

In closing submissions, the defendants took the position that the evidence led in Suit 1158 was capable of being considered as evidence in Suit 780 and vice versa. In their further submissions, both sets of plaintiffs voiced their objections. They argued that the court was precluded from considering the evidence led in one suit as evidence in the other suit because there was no express order of court to such effect.

81 At the outset, it should be noted that the plaintiffs were unable to point to any statutory provisions or rules of court which specifically precluded this being done. Nor did it appear that there were any local authorities in which our courts have held that this could not be done. The local cases cited by the Suit 1158 plaintiffs were really cases where two or more actions had been ordered to be tried together before the same judge and where there were express directions by the court that evidence led in one action would be treated as having been led in the other actions. Neither the Suit 1158 plaintiffs nor the Suit 780 plaintiffs cited to me any local authority in which our courts have expressly held that where two or more actions are ordered to be tried together, evidence in one action cannot be considered as evidence in the other actions in the absence of an express order of court or express agreement by the parties.

82 Outside of Singapore caselaw, the Suit 1158 plaintiffs cited (*inter alia*) the case of *Callaghan v Independent News & Media Ltd* [2008] NIQB 32 ("*Callaghan*"), a decision of the Northern Ireland Queen's Bench Division, in which Stephens J stated that in actions which are ordered to be tried at the same time or one after the other, the evidence is to be kept "strictly separate" unless the parties agree that the evidence in one action shall also be evidence in another. With respect, Stephens J did not cite any authorities for this view; and in fact, as the Suit 780 plaintiffs acknowledged in their further submissions, the English courts appear to accept that where two or more actions have been

ordered to be tried together on the basis that there are common issues of fact requiring determination, generally the position is that evidence led in one action is to be treated as evidence in the other even where no express direction to that effect has been made. The Suit 780 plaintiffs cited *Langstone Leisure Limited v Wacks Caller* [2012] EWHC 170 (Ch) ("*Langstone*") and *Al Sadeq v Dechert LLP* [2021] EWHC 1149 (QB) ("*Al Sadeq*"). There were other cases: see, *eg*, the English Court of Appeal's decision in *Maes Finance Ltd v Leftleys (A Firm)* [1998] WL 1042407 ("*Maes Finance*").

83 *Maes Finance* involved five actions brought by the plaintiff mortgagees against the defendant solicitors' firms for alleged negligence, breach of contract and breach of fiduciary duty by a Mr Leftleys. The English Court of Appeal ("CA") dismissed the defendants' appeal against Jacob J's decision that the five actions should be tried together in one trial. It does not appear from Jacob J's judgment that he gave any express direction that evidence led in one action should stand as evidence in the other actions. In concluding that the five actions should be tried together, he nevertheless held: "If it is shown in a number of cases that Mr Leftley deliberately favoured the lenders then I do not see why a Chancery judge cannot take that into account in relation to others". On appeal, Aldous LJ (delivering the judgment of the English CA which upheld Jacob J's decision) said that he was not convinced that some of the facts in one case would be probative in another, but he did not disagree with Jacob J's view that evidence in one suit could be considered in the other suits – provided such evidence was found to be relevant.

84 In the present case, it was not disputed that the issue of the parties' rightful shareholding in MMSCPL was central to both the Suit 1158 plaintiffs' claims and the Suit 780 plaintiffs' claims against the defendants. The defendants in both suits were the same. The defendants raised essentially the same defences

in both suits. In particular, the first defendant Mustaq took the position in both suits that he was the sole beneficial owner of all the shares in MMSCPL; that Mustafa and Samsuddin (and subsequently their estates) held their shares in MMSCPL on his behalf on either a common intention constructive trust or a resulting trust; and that they had consented to his running the company at his sole discretion, based on what the defendants called the "1973 Common Understanding" and the "2001 Common Understanding". Mustaq also brought the same counterclaims in Suit 1158 and Suit 780: in both suits, he sought the same reliefs, including declarations of his legal and beneficial ownership of all the shares in MMSCPL held by the Mustafa Estate and the Samsuddin Estate respectively and rectification of the share register to reflect his sole ownership of all these shares. As for Suit 9, as I noted earlier, the plaintiffs' claim in this suit was based on the same factual allegations as those pleaded in Suit 1158, while Mustaq's defence was again based on his complete beneficial ownership of MMSCPL and his right to run the company at his sole discretion *per* the 1973 Common Understanding and the 2001 Common Understanding.

85 It was against this background that the SAR ordered on 12 November 2018 that Suit 1158, Suit 780 and Suit 9 be heard together in the same trial before the same judge. In so ordering, the SAR had expressly informed parties that she was of the view, *inter alia*, that there were common issues of fact – and also of law – to be tried. The SAR's minutes of the pre-trial conference do not show any party disagreeing with her. Nor did any of the parties appeal the SAR's order. As the Suit 780 plaintiffs noted in their analysis of the English cases of *Langstone* and *Al Sadeq*, such an order – made pursuant to O 4 r 1(1)(*a*) of our Rules of Court (2014 Rev Ed) ("ROC") – would be predicated on the need to avoid inconsistent findings on the common issues of fact (and of law).[117]

117 Plaintiffs' Further Submissions in Suit 780 dated 8 July 2021 ("PFS 780") at para 33.

With this in mind, it would make no sense to say that if the court does not explicitly so order or the parties themselves do not expressly so agree, then the evidence led in one action must be compartmentalised from the other actions being heard in the same trial. If that were to be the case, there would be no reason for there to be a joint trial of the multiple actions.

86 Indeed, it appeared to me that all parties themselves recognised this. At the JPTC on 7 September 2020, I had directed that *the three suits were to be heard together and that the common witnesses for all the suits should only take the stand once and be cross-examined at one go.* The clear understanding underlying these directions was that evidence led in one suit would stand as evidence in the other suits. I was of the view that this must have been the understanding all parties had – despite the plaintiffs' belated protestations to the contrary. Notably, prior to the trial, an agreement was reached that the parties in Suit 1158, Suit 780 and Suit 9 would be permitted to "use the documents in each Suit and the information therefrom in the other Suits"; that the parties in these suits would be released from the Riddick undertaking to this extent; that copies of all documents and other papers filed in each suit would be provided by the plaintiffs in one suit to the plaintiffs in the other Suits; and that nothing in this agreement would affect the parties' "right to object to certain lines of cross-examination on the basis of evidentiary rules and trial procedure and practice". This agreement was notified to me at the JPTC on 28 September 2020. That the parties came to this agreement, and in particular, agreed on the waiver of the Riddick undertakings, must indicate that the evidence adduced in one suit would be treated as evidence in the other suit – subject of course to the caveat that each party retained the right to object to "certain lines of cross-examination" which might contravene evidential or procedural rules.

87 In this connection, I had observed at the further hearing on 14 June 2021 that it was always open to the plaintiffs in Suit 1158 to apply for leave to cross-examine the plaintiffs in Suit 780 and their witnesses; and *vice versa*; and that their omission to make any such application was clearly a matter of choice. In their further submissions, the Suit 1158 plaintiffs argued that the law did not allow them to apply for leave to cross-examine the Suit 780 plaintiffs and their witnesses; and that had they attempted any such application it would have failed *in limine*. According to the Suit 1158 plaintiffs, since they were not joined as parties to Suit 780, any application by them to cross-examine witnesses called by the Suit 780 plaintiffs would have been "tantamount to a stranger to an action applying for permission to cross-examine a witness in that action for purposes other than the Court's determination of the issues in the action in which he is not a party".[118]

88 With respect, I found the analogy inapposite and the reasoning, incorrect. I noted firstly that the cases cited by the Suit 1158 plaintiffs in this respect did not involve a situation where two or more actions had been ordered to be tried together on the basis of there being common issues of fact and where a party in one action sought leave to cross-examine witnesses called by the party in another action. Secondly, insofar as the argument was premised primarily on the definition of cross-examination in s 139(2) of our Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), and the use of the words "adverse party" in that definition, the Suit 1158 plaintiffs were mistaken in their apparent understanding that these words required their formal joinder as parties to Suit 780 before they could seek leave to cross-examine the Suit 780 witnesses. Indeed, if Parliament had intended to prohibit cross-examination of a witness in

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118 Plaintiffs' Further Submissions in Suit 1158 dated 8 July 2021 ("PFS 1158") at para 54.

a civil action by anyone other than those formally joined as opposing parties to that action, it was exceedingly odd that Parliament should have expressed its intention in such an oblique manner. Certainly nothing in the extract from *Sarkar's Law of Evidence* which the Suit 1158 plaintiffs cited supported such a narrow interpretation of the expression "adverse parties".

89 If anything, Indian caselaw appears to accept that in a situation where two or more actions have been ordered to be tried together, it is open to the party in one action to seek leave to cross-examine the party in the other action (and his witnesses) if the position taken by the latter is adverse to the interests of the former. In *Vijaya Versus Saraswathi & others* (2008) 3 MLC 1068, for example, there were two actions – OS No 4 of 2005 and OS No 7 of 2006 – which were jointly tried together. The two actions concerned the same property, with the applicant in OS No 4 of 2005 seeking, *inter alia*, a declaration of his absolute ownership of the property and the applicants in OS No 7 of 2006 seeking orders for the partition and separate possession of the property. The fourth defendant (and two other defendants) in OS No 4 of 2005 sought leave to cross-examine PW1, who had brought the action in OS No7 of 2006. Their request was rejected by the court below, and the fourth defendant in OS No 4 of 2005 brought a petition for revision of the lower court's order. The High Court of Madras dismissed her petition. In its judgment, the High Court examined the provisions of the Indian Evidence Act 1872 which define cross-examination and which are *in pari materia* with our s 139(2). It is pertinent to note that the court dismissed her petition on the basis that she actually sided with the case of PW1 in OS No 7 of 2006 and had said nothing adverse against PW1 in her written statement. The court went on to state that "if there is any conflicting interest between [the fourth defendant in OS No 4 of 2005] and PW1 the plaintiff in OS No 7 of 2006, an opportunity should have been given to [the fourth defendant] to cross-examine PW1", but that "since it is demonstrated that their interest is common

and that there is no conflicting interest, the question of permitting [the fourth defendant] to cross-examine PW1 does not arise in any manner".

90 In our local context, in *Lee Kuan Yew v Tang Liang Hong & anor* [1997] 2 SLR(R) 141 ("*Tang Liang Hong*"), Lai Kew Chai J ordered a joint trial before the same judge of a number of actions brought by different plaintiffs against the same defendants in relation to the same property at Hua Guan Avenue. In so ordering, Lai J noted that the second defendant had expressed concern that in a joint trial of the various actions, solicitors of one plaintiff would be able in cross-examination to ask leading questions of a witness called by another plaintiff and that all solicitors would be given multiple opportunities to cross-examine her. Lai J dismissed the second defendant's objection on the basis that the trial judge would not allow any such abuse and that the defendants' counsel themselves would be able to object vigorously to any such abuse. As the defendants pointed out in their further submissions, it was clear from Lai J's judgment in *Tang Liang Hong* that he did not think the plaintiff in one action – not being a party in the other actions - would be precluded *per se* from cross-examining the witnesses called by the plaintiff in another action: rather, what the trial court would seek to prohibit would be abusive lines of cross-examination.[119]

91 I would add that while there is no equivalent of our s 139(2) of the Evidence Act in the UK, their courts have taken a similar approach to that as seen in *Vijaya Versus Saraswathi* and *Tang Liang Hong*: see, *eg*, the judgment of the English CA in *Bristol & West Building Society v Bhadresa (t/a Bhadresa & Co)* [1997] PNLR 329 ("*Bhadresa*").

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[119] Defendants' Further Submissions dated 8 July 2021 ("DFS") at para 81.

92 To sum up therefore, in assessing the evidence adduced in this trial, I was of the view that evidence led in one suit could and should be treated as evidence in the other suits. As an aside, I add that in forming this view, I did not have regard to the correspondence between the various counsel cited by the first and second defendants in their submissions,[120] as this correspondence was not adduced in evidence before me during the trial.

93 I also highlighted to the parties that the above views did not equate with a conclusion that the plaintiffs in one suit would be able to obtain reliefs which adversely affected the interests of the plaintiffs in the other suits if the latter set of plaintiffs were not joined as parties in the first suit. The question of whether evidence led in one suit could stand as evidence in the other suits in a joint trial of multiple suits was a different question from that of whether (in such a joint trial) the parties in one suit could obtain reliefs which adversely affected the interests of parties in another suit without having joined the latter as parties. The first question was one of procedure; the second question was a question concerning parties' substantive rights. I will elaborate on this later in these written grounds.

Locus standi of the Suit 1158 plaintiffs

94 The second preliminary legal issue concerned that of the Suit 1158 plaintiffs' *locus standi* to bring these proceedings.

95 Having considered parties' submissions, I was satisfied that the Suit 1158 plaintiffs had the necessary *locus standi*, based on what has been referred to as the *Wong Moy* exception (*Wong Moy v Soo Ah Choy* [1996] 3 SLR(R) 27, ("*Wong Moy*")).

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120 DFS at paras 40 and 42.

96 Generally, the proper party to obtain a remedy on behalf of and for an estate is the executor or administrator of the estate: *Fung Wai Lyn Carolyn v Kao Chai-Chau Linda* [2017] 4 SLR 1018 (at [7]). In *Wong Moy*, the CA held that while a beneficiary of an estate generally had no equitable or beneficial interest in any particular asset comprised in that estate which was yet unadministered, this did not mean that a beneficiary of an estate which was unadministered or under administration had no remedy: such a beneficiary may, if special circumstances are shown, institute proceedings *qua* beneficiary to recover assets of the estate.

97 In *Wong Moy*, the CA endorsed the judgment of the High Court in *Omar Ali bin Mohd v Syed Jafaralsadeg bin Abdulkadir Alhadad* [1995] 2 SLR(R) 407 ("*Omar Ali*"), where the High Court held that the beneficiaries of an estate had *locus standi* to bring an action *qua* beneficiaries, to protect the property of the estate and to prevent the sale of the property. In arriving at its decision, the High Court in *Omar Ali* cited with approval the decision of the Supreme Court of Victoria in *Re Atkinson* [1971] VR 612, in which Gillard J held:

> The interest of any one beneficiary in property the subject of a trust which would be constituted on completion of the administration surely cannot be defeated by the personal representative's inactivity. I repeat that, in my view, *any beneficiary would be entitled to the remedy in a court of equity to which the estate was entitled.*
>
> [emphasis added]

98 I have highlighted the above words in Gillard J's judgment because as a statement of principle, there is nothing in these words which suggest that the beneficiary's derivative action must be restricted to only certain causes of action. Indeed, the authorities make it clear that there is no such restriction. In *Joseph Hayim Hayim v Citibank NA* [1987] AC 730 ("*Joseph Hayim*"), for

example, the Privy Council explained the beneficiary's right in the following terms (at 748F–G):

> (A) beneficiary has no cause of action against a third party save in special circumstances which embrace a failure, excusable or inexcusable, by the trustees in the performance of the duty owned by the trustees to the beneficiary to protect the trust estate or to protect the interests of the beneficiary in the trust asset.

99 In *Chahwan v Euphoric Pty Ltd trading as Clay & Michael & anor* [2009] NSWSC 805 ("*Chahwan*"), Brereton J (sitting in the New South Wales Supreme Court) noted (at [18]) that the beneficiary's derivative action was "now available in respect of *all causes of action which a trustee may have against third parties*". However, it must always be borne in mind –

> … the action brought by a beneficiary in such a case is no more and no less than the action that the trustee would and could have brought against the third party. It is a claim brought, albeit by the beneficiary, in the right of the trustee.

100 In spite of the state of the authorities, the defendants sought to rely on the decision of the High Court in *Sia Chin Sun v Yong Wai Poh* [2018] SGHC 142 ("*Sia Chin Sun*") in arguing that the *Wong Moy* exception must be limited to "proprietary claims".[121] This argument was chiefly based on the following statement by the High Court in *Sia Chin Sun* (at [27]):

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

101 As the Assistant Registrar ("AR") who heard the defendants' striking-out application in SUM 1582/2018 ("SUM 1582") observed, however, the High

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[121] Defendants' Closing Submissions for Suit 1158 dated 25 January 2021 ("DCS 1158") at para 250.

Court in *Sia Chin Sun* did not actually lay down any definition of "proprietary claim" versus "purely pecuniary claim". Nor were the defendants able to show me any authority in which these terms were specifically defined by the courts in the context of a derivative action by the beneficiary of an estate. As the AR astutely observed, it did not appear that the High Court in *Sia Chin Sun* – in using these terms – had in mind the distinction between claims in respect of a *res* (*ie*, title to property) and purely *in personam* claims, since the claims she found to be "proprietary claims" included claims which were clearly not claims concerning title to property (*Ayaz Ahmed v Mustaq Ahmad* [2018] SGHCR 10 at [43]).

102 For example, in respect of Mr Sia's 7/20 share in the Emerald Garden property, Mr Sia had pleaded in the statement of claim filed prior to his death that the transfer of his share in the property to Mr Yong had been carried out at an undervalue, and moreover, that the consideration paid by Mr Yong was transferred back to Mr Yong's account. Following Mr Sia's death, his daughter Ms Sia applied for leave to be added as a second plaintiff to Mr Sia's action against Mr Yong and stated in the affidavit filed in support of her application that she believed they "would have been entitled to seek a rescission of that transfer, and [Mr Yong] would be ordered to transfer the property back to [Mr Sia's] estate". Despite the fact that the claim for the share of the Emerald Garden property clearly did not involve any question of title to property *per se*, the High Court held (at [31]) that on the facts as pleaded, there was "sufficient material to sustain a *proprietary claim* over the share in the Emerald Garden property, and to specifically seek proprietary relief over the asset". The court added that the position Ms Sia contemplated taking vis-à-vis the share in the Emerald Garden property "would serve to protect the assets of the estate", and that in principle, it saw "no reason why the rule in *Wong Moy* should not be applicable

to provide a basis for a beneficiary of the estate to be added to proceedings so as to protect or recover assets of the estate".

103 Reading the High Court's judgment in *Sia Chin Sun* in context, therefore, I agreed with the AR that what the High Court meant by its use of the term "proprietary claim" was any claim which had as its object the protection and preservation of the assets of the estate (*Sia Chin Sun* at [27]). On this basis, the Suit 1158 plaintiffs' action for minority oppression under s 216 of the Companies Act would certainly be a claim which had as its object the protection and preservation of the assets of the estate – these assets being the estate's shares in MMSCPL and the rights attached to those shares.

104 As for "special circumstances", the CA in *Wong Moy* made it clear (at [24]) that this should not be given too constricted a meaning lest inflexibility should lead to injustice. All the circumstances of the case should be considered, including the nature of the assets, the position of the personal representatives and the reason for the personal representative's default (at [28]). In the present case, as the Suit 1158 plaintiffs have pointed out, given the plaintiffs' claims of oppressive conduct by Mustaq himself and his family members, there was plainly no prospect of Mustaq initiating legal action to pursue these claims on behalf of the Mustafa estate.

105 I add that I did not find the High Court's decision in *Lakshmi Anil Salgaocar v Vivek Sudarshan Khabya* [2017] SGHC 120 ("*Lakshmi Anil Salgaocar*") to be of any assistance to the defendants. The plaintiff in that case brought suit as the beneficiary of her late husband AVS' estate for her own benefit and that of her children (the other beneficiaries). As the court noted in that case, the plaintiff framed her claim as being no more and no less than an action to recover, preserve and protect the assets of the estate, per the *Wong Moy*

exception. However, the court held that the *Wong Moy* exception did not apply because the assets which she claimed to be seeking to recover and protect were in fact apartment units and rental income from these units which belonged to AVS' company MDWL and its 22 subsidiaries. Title in these units and the rental income did not belong to AVS, nor did they vest in the estate following his death. Instead, the assets of the estate were only those assets which belonged to AVS prior to his death – namely, the shares in MDWL; and even on the grant of letters of administration, the administrator of the estate would not automatically gain title to the units and rental income but would instead gain title to the shares which, on distribution, would entitle the beneficiaries to participate in the company MDWL as shareholders – and from there, to gain control of (and eventually, title to) MDWL's assets and income.

106 It was clear even from this brief recitation of the court's decision in *Lakshmi Anil Salgaocar* that the Suit 1158 plaintiffs were in a very different position from Madam Salgaocar. The Suit 1158 plaintiffs were not seeking the recovery of the MMSCPL funds alleged to have been wrongfully misappropriated by the defendants. Insofar as they pleaded such wrongful misappropriation of company funds, it was clear that the defendants' allegedly unlawful conduct was relied on as evidence of how they disregarded the Suit 1158 plaintiffs' interests as minority shareholders (*Leong Chee Kin v Ideal Design Studio Pte Ltd & others* [2017] SGHC 192 ("*Ideal Design*") at [88]).

Corporate wrongs versus personal wrongs in the context of an oppression claim

107 In this connection, in evaluating the oppression claims in both Suit 1158 and Suit 780, I noted that while there are four grounds of oppression provided for under s 216 of the Companies Act, they are bound by the common thread of

unfairness; and the touchstone for minority oppression is whether the conduct complained of is commercially unfair (*Over and Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 at [77] and [81]). Commercial unfairness arises when there has been a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect: *per* the CA in *Ho Yew Kong v Sakae Holdings Ltd & others* [2018] 2 SLR 333 ("*Sakae (CA)*") at [81]. In this respect, a distinction must be drawn between unfairness and unlawfulness: a person may act within his legal rights and yet act in a manner which is commercially unfair; and conversely, conduct which is technically unlawful may not necessarily be commercially unfair. In other words, whether an act is commercially unfair depends on the context in which it took place; and this goes beyond the question of whether the act is lawful or regular (see *Sakae (CA)* at [82]); *Ideal Design* at [48]).

108 I add that in the present matter, neither the Suit 1158 nor the Suit 780 plaintiffs pleaded that MMSCPL was a quasi-partnership, nor did they plead the superimposition of equitable considerations. In the absence of equitable considerations, the unfairness of a party's conduct must be measured against legitimate expectations arising from the members' legal rights and the company's constitution (*Ideal Design* at [51]). *Inter alia*, the directors of a company have a fiduciary duty to act in its best interests. It follows from this that shareholders have a legitimate expectation that those in control of the company will act *bona fide* in the best interests of the company; and that is especially so when the majority shareholders are themselves the directors (*Ideal Design* at [65]). Those in control of a company must act with valid commercial reasons when pursuing a company's best interests (*Ideal Design* at [66]). At the same time, it should be remembered that while breach of a director's fiduciary duties is a relevant consideration in deciding whether there has been oppressive conduct, it is not determinative (*Ideal Design* at [66]).

Submission of no case to answer and election to call no evidence

109 In considering the various claims in the three suits (and, in the case of Suit 1158 and Suit 780, the counter-claims), I also bore in mind the fact that the defendants had submitted no case to answer and elected to call no evidence in all three suits.

110 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 (per the CA in *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 at [23] ("*Lena Leowardi (CA)*"). As the CA further noted in *Lena Leowardi*, three important implications flow from this submission.

111 First, the plaintiff only has to establish a *prima facie* case as opposed to proving his case on a balance of probabilities. Second, in assessing whether the plaintiff has established a *prima facie* case, the court will assume that any evidence led by the plaintiff was true, unless it was inherently incredible or out of common sense. Third, if circumstantial evidence is relied on, it does not have to give rise to an irresistible inference as long as the desired inference is one of the possible inferences. Moreover, while no adverse inference should be drawn by a defendant's making of a submission of no case to answer, I think it is logical – and it follows from the reasoning of the court in *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] 4 SLR 85 ("*Baker v BCS Business Consulting*") – that if a court were to examine a particular communication by or from the defendant and its contents can fairly be said to point to the existence of certain facts that satisfy the *prima facie* test, but the court does not have the benefit of an explanation from the defendant that that

was not what the defendant meant, the plaintiff's construction of the particular communication would prevail (*Baker v BCS Business Consulting* at [69(e)]). (I note as an aside that the decision of the court in *Baker v BCS Business Consulting* was upheld on appeal by the Court of Appeal.)

112 In considering whether the plaintiff has made out a *prima facie* case, the evidence is subjected to a minimal evaluation as opposed to a maximal evaluation (see *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 ("*Relfo*") at [20]): the court will assume that any evidence led by the plaintiff is true, unless it is inherently incredible or against common sense (*Lena Leowardi (CA)* at [24]). This does not mean that the court will not scrutinise the quality of the evidence proffered by the plaintiff, nor does it mean that all evidence must be accorded the same weight. In *Baker v BCS Business Consulting*, having set out the *prima facie* test and related tests such as that concerning inferences to be drawn from circumstantial evidence, the court noted that a number of the deceased Chantal's emails and other communications and documents were cryptic, and that she was no longer around to explain them or to fill any gaps. The court further noted (at [69(f)]:

> Baker [the executor of Chantal's estate] may tell us what he thinks it means, either from what Chantal may have told him whilst she was alive or from what he knows or concludes by going through her many documents. What weight we give to his evidence must be carefully calibrated when applying the tests enumerated above.

The defendants' reliance on documentary evidence

113 Despite having undertaken not to adduce any evidence when they chose to submit no case to answer, the defendants sought to rely in their closing submissions on various documents which had not been admitted as evidence in

the trial record.[122] Even assuming for the sake of argument that it was no breach of their undertaking for them to make such submissions, I must stress that in order for the court to consider something as evidence for or against a party's case, it must be admitted in accordance with the relevant rules and principles embodied within the Evidence Act (*per* the CA in *Jet Holdings Ltd and others v Cooper Cameron (Singapore) Pte Ltd & another* [2006] 3 SLR(R) 769 ("*Jet Holdings*") at [36]). Where it is a document that a party wishes the court to consider as evidence in the case but the opposing party does not admit its authenticity, whether or not the document can be admitted into evidence as an authentic document will depend on whether or not it satisfies the requisite criteria contained in the Evidence Act or falls within the relevant exceptions contained therein (*Jet Holdings* at [36]).

114 The decision by the CA in *CIMB Bank Berhad v World Fuel Services (Singapore) Pte Ltd* [2021] 1 SLR 1217 ("*CIMB*") did not assist the defendants. In *CIMB*, the CA reiterated the position stated in *Jet Holdings*; that once the authenticity of a document is put in issue, the burden of proof on authenticity is not discharged by simply producing the original document in court: a party who has the burden of proving the authenticity of a document first has to produce primary or secondary evidence thereof, *ie*, the alleged original or a copy, within the provisions of the Evidence Act. Thereafter, it also has to prove that the document is what it purports to be; and this would include proving the authenticity of the signatures if authenticity is in dispute (*CIMB* at [50]–[54]). The defendants sought to rely on a statement in the CA's judgment to the effect that the omission to adduce direct evidence is not necessarily fatal to proving a document's authenticity. However, this statement must be read in the context of

[122] See, *eg*, DCS 1158 at para 200.

the rest of the judgment; in particular, the CA's cautionary observation (at [57]) that:

> …[t]he 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.

115 In the context of Suit 1158 and Suit 780, the plaintiffs plainly did not admit the authenticity of the documentation for the various share resolutions they sought to have declared null and void, the various Notices of Extraordinary General Meetings ("EOGM"), and other related documents. Since the defendants elected to call no evidence and the first defendant Mustaq did not testify, there was no direct evidence of the authenticity of these documents. I add that based on my reading of the trial transcript, the plaintiffs' AEICs and the parties' submissions, these materials did not support the defendants' suggestion that either set or both sets of plaintiffs had somehow admitted or agreed to the authenticity of some or most of the disputed documents in the course of the trial. Nor did I find any indirect or circumstantial evidence establishing the authenticity of these disputed documents – unlike in *CIMB* where the CA found that there was "*overwhelming*" circumstantial evidence establishing the authenticity of the disputed Debenture.

Comparing signatures under s 75 of the Evidence Act

116 The defendants in their supplemental submissions urged me to exercise the power given under s 75 of the Evidence Act to compare signatures.[123]

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123 Defendants' Reply Submissions in Suit 1158 dated 1 March 2021 ("DRS 1158") at para 96.

However, I did not think this was an appropriate case to exercise the power under s 75.

117 As I have noted, this was a case where the defendants elected to call no evidence, presumably with full awareness that this would leave them in a position where there was no direct evidence of the authenticity of various disputed documents. They also did not persuade me that there was at least some indirect or circumstantial evidence before me which might establish the authenticity of the disputed documents.

118 Indeed, the submission that I should compare signatures struck me as an afterthought. The submission was made months after the trial had already concluded and after parties had already put in their closing and reply submissions. The defendants did not need the CA's judgment in *CIMB* to tell them about the existence of s 75 of the Evidence Act; and no explanation was given as to why they did not raise the question of my exercising the power under s 75 at any stage in the course of the trial – apart from a passing reference during the cross-examination of Ayaz[124] – or even at the point when their election to call no evidence was made.

119 In the circumstances, I declined to exercise the power under s 75 to compare signatures.

The burden of proof

120 Finally, insofar as my findings of law are concerned, I should also say something about the burden of proof. It appeared to be the defendants' position in both Suit 1158 and Suit 780 that the plaintiffs bore the burden of proving that

[124] Transcript, 19 October 2020 at p 41, lines 12–17.

Mustafa and Samsuddin had always regarded themselves as true owners of MMSCPL (and prior to that, the partnership Mohamed Mustafa & Samsuddin Company or "MMSC").

121 This is not the correct position in law. There was no dispute in the two oppression suits that the Mustafa Estate and the Samsuddin Estate were registered minority shareholders in MMSCPL. It was the defendants who pleaded that the two estates could not complain of oppression of their minority interests because, in truth, they had no such interests despite being registered minority shareholders. It was the defendants who pleaded that from the outset Mustafa and Samsuddin held their shares on trust for Mustaq; that they were well aware they held their shares on trust for Mustaq; that the Mustafa Estate and the Samsuddin Estate thus now held their shares on trust for Mustaq; that it was Mustaq who was the sole beneficial owner of MMSCPL; that it was Mustaq who was entitled to run the company at his sole discretion, and he was not bound to abide by MMSCPL's Constitution in running the company.

122 The defendants, being the ones who asserted these facts in their pleadings and who wished me to believe in their existence, must bear the legal burden of proving these assertions: see in this respect ss 103 and 105 of the Evidence Act and the judgments of the CA in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*") at [58], in *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 ("*SCT Technologies*") at [17] and in *Cooperative Central Raiffeisen-Boerenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [31]). It follows that they also bore the corresponding evidential burden of proof (*SCT Technologies* at [18]).

123 This then is a convenient point for me to segue into my findings of fact. I will set out the major findings of fact which I arrived at following the relevant evidential rules and principles, including those I have set out above.

The beneficial ownership of MMSCPL

124 I start by setting out my findings on the beneficial ownership of MMSCPL, as this issue was central to all three suits. To recap: the claims of minority oppression by the plaintiffs in Suit 1158 and Suit 780 were resisted by the defendants in the first place because they contended that the plaintiffs were not entitled to complain of their interests being oppressed: despite the Mustafa Estate's and the Samsuddin Estate's registered minority shareholdings in MMSCPL, the defendants contended that Mustaq was the true beneficial owner of the shares held in the estates' names. As the oppressive behaviour alleged against the defendants in Suit 1158 and Suit 780 formed the factual premise of the Suit 9 plaintiffs' claim of breach of administrator's and trustee's duties by Mustaq, the beneficial ownership of these shares was also a pertinent issue in Suit 9.

125 As I noted above, since it was the *defendants* who pleaded that Mustaq was the true beneficial owner of all MMSCPL held in the Mustafa and Samsuddin estates' names, the defendants bore the burden of proving this alleged beneficial ownership. Having considered the evidence adduced at trial, I did not find that the defendants had discharged their burden of proof.

126 I will next summarize the parties' submissions on this issue before setting out the evidence adduced and the findings of fact I arrived at.

The defendants' submissions on the issue of beneficial ownership of MMSCPL

127 In both Suit 1158 and Suit 780, the defendants argued 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 so arguing, the defendants relied on the framework in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160].[125]

128 First, the defendants argued that from the evidence available, it was a reasonable inference that neither Mustafa nor Samsuddin had paid, or could have paid, for their MMSCPL shares, and that it was Mustaq who had paid for the shares. As such, there was a presumption that Mustafa and Samsuddin held their MMSCPL shares on a resulting trust for Mustaq.[126] Further, the plaintiffs had not adduced evidence to show that when the shares were allotted, Mustaq intended to gift the shares to Samsuddin or Mustaq: accordingly, the presumption of advancement did not operate to rebut the presumption of resulting trust.[127]

129 In the alternative, the defendants argued that regardless of whether or not Mustaq had paid for the shares, there was a common intention between him, Mustafa and Samsuddin that Mustafa's and Samsuddin's shares would be held on trust for him. According to the defendants, this common intention could be inferred from, *inter alia*, the absence of any objections from Mustafa and Samsuddin to the manner in which Mustaq had run the business since 1973 (*ie*

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125 DCS 1158 at paras 831–848; DCS 780 at paras 1038–1055.

126 DCS 1158 at para 834; DCS 780 at para 1042.

127 DCS 1158 at paras 846–848; DCS 780 at paras 1053–1055.

based on the 1973 Common Understanding and the 2001 Common Understanding).[128] Clearly (according to the defendants), all three individuals had always understood that the business belonged solely to Mustaq and was his to deal with as he wished. Even during the tenure of the MMSC partnership, Mustafa and Samsuddin had not conducted themselves as true partners, and had left all the decision-making to Mustaq; and this pattern of behaviour continued after the incorporation of MMSCPL in 1989.

The plaintiffs' submissions

130 Both the Suit 1158 and Suit 780 plaintiffs denied from the outset the existence of the alleged 1973 Common Understanding and the 2001 Common Understanding.[129]

131 I summarise the Suit 1158 plaintiffs' key submissions as follows:

(a) Overall, the conduct of Mustaq, Mustafa and Samsuddin – as demonstrated in the evidence adduced at trial – was inconsistent with there having been a "1973 Common Understanding". The evidence adduced at trial did not support – and in many instances, undermined – the defendants' case that Mustafa and Samsuddin did not conduct themselves as partners of MMSC and/or that they had operated MMSC on the understanding that the business belonged to Mustaq.[130] The evidence also undermined the defendants' case that Mustafa and

128 DCS 1158 at para 843; DCS 780 at para 1050.

129 Reply and Defence to Counterclaim for Suit 1158 (Amendment No. 2) dated 31 August 2018 ("Reply 1158") at paras 10–11; Reply and Defence to Counterclaim for Suit 780 (Amendment No. 1) dated 8 September 2020 ("Reply 780") at paras 5–6; PCS 1158 at paras 80–415; PCS 780 at paras 153–156.

130 PCS 1158 at paras 256–302.

Samsuddin had started MMSC only as a "formality" to facilitate the administrative aspects of the move of Mustaq's sole proprietorship ("Mustaq Ahmad") from 1 Campbell Lane to the New Premises in July 1973.[131]

(b) The evidence adduced at trial similarly did not support – and in many instances, undermined – the defendants' case that Mustaq's, Mustafa's and Samsuddin's, conduct was consistent with the understanding that Mustaq was the absolute and sole owner of all the shares in MMSCPL,[132] and/or that the share allocations in MMSCPL did not bestow legal rights or entitlements on Mustafa and Samsuddin.[133]

(c) The correspondence leading up to the commencement of Suit 1158 and Suit 9 showed that the defendants' allegations about the 1973 Common Understanding and the 2001 Common Understanding were an afterthought, concocted purely to resist the plaintiffs' claims.[134]

(d) The defendants' conduct in trying mid-trial to recast their version of the 1973 Common Understanding and the 2001 Common Understanding – by making a sudden application to amend their defences in the minority oppression suits – demonstrated that their narrative of the "Common Understanding" was built on invention, not fact.

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131 PCS 1158 at paras 227–255.

132 PCS 1158 at paras 303–354.

133 PCS 1158 at paras 355–382.

134 PCS 1158 at paras 94–187.

132 As for the Suit 780 plaintiffs,[135] in gist, they too submitted that there was no "1973 Common Understanding". They too relied on the defendants' conduct in applying belatedly to amend their defences mid-trial[136] to support their argument that the 1973 Common Understanding was a lie the defendants had concocted for the purpose of resisting the plaintiffs' claims. Like the Suit 1158 plaintiffs, the Suit 780 plaintiffs submitted that there was no evidence to support the defendants' assertions concerning the manner in which Mustaq, Mustafa and Samsuddin had participated in the business.

The evidence and my findings of fact

133 Since the defendants called no evidence, Mustaq did not testify about the 1973 Common Understanding and the 2001 Common Understanding. It was also not disputed that there was no documentary or other objective evidence recording the alleged 1973 Common Understanding and the 2001 Common Understanding, or, for that matter, alluding to Mustaq's sole beneficial ownership of the company.

The conduct of the parties was inconsistent with the alleged 1973 Common Understanding

134 I will first deal with the plaintiffs' submissions that the conduct of Mustaq, Mustafa and Samsuddin was inconsistent with the alleged 1973 Common Understanding.

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135 PRS 780 at paras 819–825.

136 PCS 780 at paras 153–156; PRS 780 at para 821.

(1) The setting-up of the MMSC partnership

135 It will be remembered that prior to the incorporation of MMSCPL in February 1989 and their taking up MMSCPL shares in their names, Mustafa, Samsuddin and Mustaq were already partners in the partnership known as MMSC. The defendants' defences in the two minority oppression suits asserted that prior to the setting-up of MMSC in July 1973, Mustaq had already been successfully running his own business pursuant to a sole proprietorship named "Mustaq Ahmad". In July 1973, when Mustaq decided to travel to India to visit his then pregnant wife, MMSC was set up "purely" as a "formality to facilitate the operation of the business in [Mustaq's] absence" and to "facilitate the administrative aspects" of the move of his business from 1 Campbell Lane to the New Premises.[137] The defendants pleaded that although it was Mustafa and Samsuddin who had set up the MMSC partnership in July 1973, the two of them operated the partnership "at all material times…on the understanding that the business operating out of the New Premises was [Mustaq's] business";[138] and although Mustaq added his name to the partnership on 12 September 1973 after returning from India, he "did not see any need to change the name of the Partnership" as "he did not wish to confuse his customers and suppliers".[139] Further, "the business was already operating at the New Premises"; and by that stage, the three men already shared a common understanding that the business operating at the New Premises belonged solely to Mustaq.[140]

136 The defendants' pleadings posited, in other words, that Mustaq's business – which he had originally set up as a sole proprietorship ("Mustaq

137 SOC 1158 at para 31; SOC 780 at para 28.

138 SOC 1158 at para 31; SOC 780 at para 28.

139 SOC 1158 at para 33; SOC 780 at para 30.

140 SOC 1158 at para 34(a); SOC 780 at 30(a).

Ahmad") – operated in the name and the form of the MMSC partnership after its move to the New Premises; and that Mustafa and Samsuddin, who had helped to set up MMSC, knew all along that it was solely Mustaq's business.

137 The above narrative did not appear to me to be supported by the undisputed documentary evidence. In a form lodged with the ROB on 22 February 1975, Mustaq had stated that the principal place of business for his sole proprietorship ("Mustaq Ahmad") was 65 Serangoon Road.[141] In that same form, Mustaq had also stated that he himself lived at 67 Serangoon Road; and that in addition to the sole proprietorship "Mustaq Ahmad", he was also a partner in MMSC, which was located at 67 Serangoon Road.[142] A few months later, on 31 July 1975, Mustafa and Samsuddin signed and lodged an application to register MMSC, stating that its principal place of business was 67 Serangoon Road, with a branch at 19 Campbell Lane.[143] In this form, they stated that Mustaq was also the proprietor of "Mustaq Ahmad", which was operating out of 65 Serangoon Road.[144] These statements suggested that even after Mustaq was added as a partner of MMSC in September 1973, the three men viewed MMSC as a separate and different entity from the sole proprietorship "Mustaq Ahmad"; and all three – including Mustaq himself – differentiated between Mustaq's ownership of "Mustaq Ahmad" and his ownership of MMSC.

(2) Management of the business

138 Further to their allegations about the origins of the MMSC partnership, the defendants focused a not inconsiderable amount of attention on the question

141 JCB Vol 3 at p 2320.

142 JCB Vol 3 at p 2321.

143 JCB Vol 3 at p 2331.

144 JCB Vol 3 at p 2332.

of who managed the business of MMSC and later MMSCPL. *Per* the defendants' pleadings, the 1973 Common Understanding included acceptance by Mustafa and Samsuddin that Mustaq would be the sole decision-maker. The defendants' premise appeared to be that Mustaq alone managed the business of MMSC, and later, MMSCPL, because he alone owned the business; whereas Mustafa and Samsuddin, being well aware that they were not the true owners of the business, raised no objections to how he chose to run it. The plaintiffs, of course, disputed the allegation that Mustafa and Samsuddin had played no part in running the business of MMSC and later MMSCPL. In [139] to [179] below, I deal with the various aspects of the parties' submissions.

139 First, the defendants argued that in the official documentation lodged with the then ROB (later ACRA), Mustaq was the one who signed off on the relevant forms and/or who was listed as the only person responsible for the management of the business.[145]

140 As Fayyaz pointed out in his evidence, however, the fact that Mustaq filled out the documents and that his name was on the forms did not mean that Mustaq was therefore the only person responsible for running the company.[146] In any event, evidence that Mustaq was the one who had signed off on the ROB/ACRA forms, and/or who had been listed in these forms as the person responsible for the management of the business, did not prove that he was therefore the sole owner of the business.[147] For example, the defendants contended that Mustafa and Samsuddin did not sign on all the documents

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145 DCS 1158 at paras 84–89; DCS 780 at para 12; *see eg* JCB Vol 3 at pp 2332, 2336–2339, 2341–2344, 2347; Transcript, 13 October 2020 at p 41, lines 1–14; Transcript, 20 October 2020 at p 89, line 4 to p 90, line 3.

146 Transcript, 20 October 2020 at p 94, lines 20–24.

147 PCS 1158 at para 283.

submitted to the ROB because they did not consider themselves to be owners of MMSC.[148] However, as the plaintiffs pointed out, the relevant legislation at the time (s 7(c)(*i*) of the Business Names Act, and s 8(1)(*d*) of the Business Registration Act), provided that the ROB forms could be signed by "one individual of MMSC who is a partner". As such, the fact that Mustaq was the one who had signed off on these forms did not *per se* establish that he was the sole owner of MMSC; nor did it establish that Mustafa and Samsuddin were not the owners of MMSC.[149]

141 Further, and in any event, leaving aside the ROB/ACRA forms, I found that the evidence available showed that Mustafa and Samsuddin were in fact involved in the running and management of MMSCPL. In this connection, I first summarise in brief the relevant portions of the witnesses' evidence.

(A) AYAZ'S EVIDENCE

142 Ayaz testified that by 1990, Mustafa's health had begun to deteriorate and Mustaq was "running the show", meaning that he was given the responsibility to manage MMSCPL – but that Mustaq would make "all the decisions and policies… after discussing with other two partners".[150] Ayaz also testified that while Mustaq was a managing partner of MMSC, he took orders from Mustafa and Samsuddin.[151] Thus, while Ayaz accepted that Mustaq had a larger role to play in managing MMSCPL, Mustaq was not given free rein to do as he pleased with MMSCPL.

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148 Transcript, 13 October 2020 at p 80, lines 20–24.

149 PCS 1158 at para 279.

150 Transcript, 14 October 2020 at p 31, lines 18–21; Ayaz 1158 AEIC at paras 334, 439.

151 Transcript, 13 October 2020 at p 65, line 22 to p 65, line 3.

(B) FAYYAZ'S EVIDENCE

143 Fayyaz's evidence was that Samsuddin continued to be in charge of textiles and garments as MMSCPL grew;[152] and that Samsuddin remained involved in the running of the business, at least up till 2008.[153] Although the defendants alleged that Samsuddin was really responsible for a very small percentage of the clothing department revenue (10.9%) as he was only stationed in the suiting and shirting department, Fayyaz denied that this allegation – even if true – in any way diminished or negated Samsuddin's role in the management of the business.[154]

(C) ISHTIAQ'S EVIDENCE

144 Ishtiaq, like Ayaz, gave evidence that Mustafa was very much involved in the business of MMSCPL.[155] According to Ishtiaq, Mustafa was a "straightforward illiterate person", so it was no surprise that the "accounts of the company and the government documentation and the formalities all was taken care [*sic*] by…Mr Mustaq".[156] Ishtiaq testified that he himself had never looked at the financial documents for MMSCPL because he respected and trusted Mustaq as his elder brother.[157] Like Ayaz, Ishtiaq too testified that decisions about the running of the business were made by "all three partners" (*ie*, Mustaq, Mustafa and Samsuddin):

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152 AEIC of Fayyaz Ahmad for Suit 780 dated 21 August 2020 ("Fayyaz 780 AEIC") at para 69.

153 Fayyaz 780 AEIC at para 69.

154 Transcript, 23 October 2020 at p 21, line 25 to p 22, line 10.

155 Transcript, 27 October 2020 at p 160, lines 19–20.

156 Transcript, 27 October 2020 at p 162, lines 14–17.

157 Transcript, 27 October 2020 at p 165, lines 7–14.

> Whatever matters were brought to my father and to my uncle's notice, that was decided by all three partners. If it was not brought to their notice, I don't think there is no way they can decide on those issues.[158]

(D) MAAZ'S EVIDENCE

145 Maaz's evidence was that around the 1980s, Mustafa used to make decision together with Samsuddin about MMSCPL but Mustaq would "help them out". Maaz admitted that he did not have personal knowledge of this state of affairs,[159] but had come to know about it when he was seven to eight years old, because Mustafa had told him about these matters.[160] Like Ayaz and Ishtiaq, he said that Mustafa was very much involved in the matters of MMSCPL.[161] While Mustafa generally did not raise objections to the way Mustaq ran the business, all three of them (Mustafa, Mustaq and Samsuddin) were owners of MMSCPL, and not just Mustaq.[162]

(E) ABOO SOFIAN'S EVIDENCE

146 Aboo Sofian, who had been a close friend of Mustafa and Samsuddin since 1962,[163] testified that he was aware that as at 1971, there had been two partners in the business of MMSC (*ie*, Mustafa and Samsuddin); and in 1973, they had added Mustaq into the partnership.[164] He agreed that he did not have personal knowledge of the "father and son matters and the property issue", but

158 Transcript, 27 October 2020 at p 166, lines 11–15.

159 Transcript, 28 October 2020 at p 7, lines 3–13.

160 Transcript, 28 October 2020 at p 8, line 20 to p 9, line 15.

161 Transcript, 28 October 2020 at p 10, lines 17–23.

162 Transcript, 28 October 2020, at p 15, lines 18–25.

163 AEIC of Aboo Sofian Moinuddin for Suit 1158 dated 20 August 2020 ("Sofian 1158 AEIC") at para 4.

164 Transcript, 28 October 2020 at p 86, lines 24 to p 87, line 2.

reiterated that he did know that the business was started by Mustafa and Samsuddin and that "later Mr Mustaq was made a partner".[165]

(F) ASIA'S EVIDENCE

147 As for Asia, who was Mustafa's second wife, she testified that she did not know anything about business matters and that she only knew the business was doing well.[166] She knew Mustafa, Samsuddin and Mustaq were equal partners in the company, and that Mustaq had been made a partner because he could read and write.[167]

148 Asia was aware that in July 1975, Mustafa, Samsuddin and Mustaq had signed official business documents naming Mustaq as the person responsible for the management of the business. However, this was to "look after and to run the business", not to "hand over the business completely".[168] She reiterated that Samsuddin, Mustafa and Mustaq were equal partners and all had equal shares in MMSCPL.[169]

149 According to Asia, Mustafa had told her that Mustaq was given the responsibility to look after the company, but nobody "gave [Mustaq] the whole company".[170] She testified that Mustafa would sign documents given to him by Mustaq, "[s]olely on the basis of trust".[171]

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165 Transcript, 28 October 2020 at p 90, lines 10–14.

166 Transcript, 28 October 2020 at p 115, line 25 to p 116, line 3.

167 Transcript, 28 October 2020 at p 117, lines 6–16.

168 Transcript, 28 October 2020 at p 123, lines 22 to p 124, line 3.

169 Transcript, 28 October 2020 at p 126, lines 20–23.

170 Transcript, 28 October 2020 at p 132, lines 16–20.

171 Transcript, 28 October 2020 at p 143, line 13.

(3) My findings

150 In the course of cross-examining the plaintiffs and their witnesses, the defendants sought to suggest that their evidence about Mustafa's and Samsuddin's roles in managing the business of MMSC and MMSCPL was unreliable because they had no personal knowledge of how these two entities had been managed. In my view, this allegation was not accurate, since Fayyaz – at the very least – was already working in MMSC from 1979 and in MMSPCL by 1995[172] and would have been in a position to observe the manner in which MMSCPL was managed prior to Mustafa's and Samsuddin's death.

151 More importantly, it should be remembered that the assertion that Mustafa and Samsuddin played no part in managing the business was made by the defendants themselves, as part of their pleaded case regarding Mustaq's sole beneficial ownership of MMSCPL. It was the defendants, therefore, who had the legal burden of proving this assertion (see above at [120] to [122]). Since Mustaq – who undoubtedly had personal knowledge of how the business of MMSC and MMSCPL was managed – chose not to testify, I was left with the evidence of the ROB/ACRA records (which the defendants placed heavy reliance on), as well as the evidence of the plaintiffs and their witnesses.

152 In respect of the ROB/ACRA records, as I noted earlier, these documents could not prove that Mustaq was the only person responsible for managing the business. *A fortiori*, they could not prove that he was the only person who owned the business.

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172 Fayyaz 780 AEIC at para 22; AEIC of Fayyaz Ahmad dated 21 August 2020 in Suit 1158 ("Fayyaz 1158 AEIC") at para 1; Transcript, 20 October 2020 at p 105, line 21 to line 25.

153 I would also add that some of the inferences which the defendants tried to draw from the evidence of the plaintiffs and their witnesses seemed to me to be flimsy and/or illogical. For example, Ishtiaq was cross-examined on his AEIC evidence about an incident sometime between 1990 and 1992: according to Ishtiaq, when he was in Singapore, Mustaq had handed him a document in a sealed envelope and asked him to get Mustafa's and Samsuddin's signatures on the document when he returned to India.[173] Subsequently Ishtiaq met with Mustafa and then Samsuddin, both of whom signed the document without asking him what the document said.[174] The defendants suggested that Mustafa must have refrained from asking questions about the document because he regarded MMSC and MMSCPL as belonging solely to Mustaq.[175] However, this suggestion did not appear to be borne out either by logic or on the basis of the evidence. Asia's evidence was that Mustafa would sign documents given to him by Mustaq, "[s]olely on the basis of trust".[176] I saw no reason to doubt her evidence on this score, given that Mustaq was Mustafa's eldest son and the only one of the three partners who could read and write English.

154 On the basis of the evidence adduced, I rejected the defendants' assertion that MMSC was set up purely as a "formality" to "facilitate" the operation of Mustaq's business during his absence in July 1973. I found that contrary to the defendants' assertion, Mustafa and Samsuddin did in fact participate in the running of MMSC, and later MMSCPL. While I accepted that Mustaq appeared to have played a considerably more active management role, this in itself was hardly surprising, given that he was at the material time much

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173 Ishtiaq 1158 AEIC at para 14.

174 Transcript, 27 October 2020 at p 171, line 9 to p 173, line 8.

175 Transcript, 27 October 2020 at p 175, lines 20–24.

176 Transcript, 28 October 2020 at p 143, line 13.

younger than the other two men, and he was the only one who read and wrote English. I accepted the plaintiffs' evidence that while Mustaq might have played a larger role in managing the business, decisions were still discussed with Mustafa and Samsuddin.

155 Insofar as the 1973 Common Understanding included (purportedly) an understanding between the three men that Mustaq would be the sole owner of MMSC (and later MMSCPL) and its sole decision-maker, my finding as to Mustafa's and Samsuddin's participation in the management of MMSC and MMSCPL was inconsistent with there having been any such "Common Understanding".

156 My finding herein was bolstered by other evidence which I summarise below.

(A) MUSTAFA AND SAMSUDDIN WERE REMUNERATED AS PARTNERS OF MMSC

157 On the evidence available, I found that Mustafa and Samsuddin received payments which were clearly made on the basis of their ownership of MMSC, and later, of MMSCPL. First, the evidence showed that while MMSC was in existence, Mustafa and Samsuddin were remunerated as partners of MMSC, and they declared this remuneration as trade income in their Notices of Assessment.[177] Mustafa's and Samsuddin's receipt of such remuneration from MMSC was inconsistent with the defendants' assertion that MMSC was set up purely to facilitate the operation of Mustaq's business from the New Premises and that/or that MMSC belonged solely to Mustaq. I add that contrary to the

[177] PCS 1158 at para 298; TB Vol 20 at pp 12652 and 12705 (1988); 12654 and 12703 (1989); 12660, 12707 and 12716 (1990); 12658 and 12709 (1991); 12711 (1992, for Samsuddin) and 12662 (1993).

defendants' assertion,[178] I did not believe that the remuneration paid to Mustafa and Samsuddin was merely a form of "goodwill payments" from Mustaq. If that were the case, there would have been no reason for Mustafa and Samsuddin to pay income tax on these payments – which, indisputably, they did.[179]

(B) MUSTAFA AND SAMSUDDIN RECEIVED DIVIDENDS AS SHAREHOLDERS OF MMSCPL

158 Second, the evidence showed that following the incorporation of MMSCPL, Mustafa and Samsuddin were paid dividends by the company. Based on MMSCPL's financial statements, MMSCPL declared dividends between 1992 and 1996 in the following amounts:

Financial Statements	**Total dividends declared after tax**	**Financial year in which dividends to be paid**
1992	Proposed dividend of $966,000	1993
1993	Interim Dividend of $1,011,780	1993
1994	Final Dividend of $1,341,000	1995
1995	Final Dividend of $1,606,000	1996
1996	Final Dividend of $1,998,000	1997

178 Defence 1158 at para 31(d).

179 PCS 1158 at para 302.

159 Based on Mustafa's and Samsuddin's Notices of Assessment from 1994 to 1998, the two of them declared having received dividends as follows:

Year of Assessment	**Dividends received by Mustafa after tax**	**Dividends received by Samsuddin after tax**
1994	$504,669.43	$513,222.72
1995	$333,169	$338,341
1996	Nil	Nil
1997	$354,420	$473,732
1998	$440,929.63	$447,771.78

160 As with the remuneration they received as partners of MMSC, I did not believe that the share dividends paid to Mustafa and Samsuddin were merely a form of "goodwill payments" from Mustaq. If that were the case, there would have been no reason for Mustafa and Samsuddin to pay income tax on these dividends – which, indisputably, they did. Insofar as the 1973 Common Understanding (purportedly) included an understanding between the three men that Mustaq was the sole owner of MMSCPL and that neither Mustafa nor Samsuddin was entitled to be paid anything by MMSCPL except for "goodwill payments" made purely in Mustaq's discretion, the fact that Mustafa and Samsuddin received dividends from MMSCPL and paid tax on them was inconsistent with the alleged existence of any such "Common Understanding".

161 Further, when the declaration of dividends by MMSCPL resumed in 2014, the manner in which Mustaq chose to make the dividend payments to the Mustafa estate was also inconsistent with the alleged existence of the 1973 Common Understanding. The undisputed documentary evidence showed that between 2014 and 2017, the dividend payments to the Mustafa Estate were distributed to the Suit 1158 plaintiffs in the proportion of their respective shareholdings as stated in the Syariah Court Inheritance Certificate: Mustaq

signed and acknowledged these dividend payments in his capacity as the administrator of the Mustafa Estate.[180] This militated against the defendants' assertion (in their pleaded case) that these were purely "gratuitous payments" made in response to Ayaz's repeated demands for financial benefits. In addition, as the plaintiffs pointed out,[181] the transcript of the 4 September 2016 meeting showed that when Ayaz expressed unhappiness with the quantum of monthly dividend amounts received ("*What benefit would we get from the dividend? We cannot buy house! You are giving 13 thousands, you start giving 26 thousands*"[182]), Mustaq did not dispute that these were payments of dividends by MMSCPL – as opposed to purely "gratuitous payments".

162 In sum, therefore, the remuneration received by Mustafa and Samsuddin from MMSC, as well as the dividends paid to them (and later, their estates) by MMSCPL constituted yet another piece of evidence which militated against the alleged existence of the 1973 Common Understanding. The evidence of these payments to Mustafa and Samsuddin contradicted Mustaq's claims to sole beneficial ownership of the shares held in their names.

(C) MUSTAFA AND SAMSUDDIN CONTRIBUTED FUNDS TO AND ASSUMED LIABILITIES FOR MMSCPL

163 In addition to the above evidence of payment of remuneration and dividends to Mustafa and Samsuddin, there was also clear evidence that both of them had assumed significant risks and liabilities on behalf of MMSCPL.[183] I refer to the following examples of guarantees given by both Mustafa and

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180 PCS 1158 at para 349; JCB Vol 4 at pp 2719–2765.

181 PCS 1158 at para 352.

182 Suit 1158 Plaintiff's Bundle of Documents ("1158 PBOD") at pp 72, 73, 78.

183 PCS 1158 at para 359.

Samsuddin in respect of MMSCPL's financial liabilities. It should be highlighted that in fact, Mustafa signed some of these guarantees after 11 March 1999, *ie*, after he had already resigned as a director of MMSCPL.[184]:

Date	**Nature of risk / liability assumed**
30 June 1991[185]	Directors of MMSCPL (including Mustafa and Samsuddin) provided a guarantee for banking facilities of $26.7 million from MMSCPL's working capital requirements to finance the purchase of the warehouse at Ruby Industrial Complex
30 June 1993[186]	Directors of MMSCPL (including Mustafa and Samsuddin) provided a guarantee for banking facilities of $30 million
30 June 1995[187]	Directors of MMSCPL (including Mustafa and Samsuddin) provided a guarantee for banking facilities of $73.4 million
30 June 1997[188]	Directors of MMSCPL (including Mustafa and Samsuddin) provided a guarantee for banking facilities of around $86.5 million
29 September 1999[189]	Letter of offer from UOB to MMSCPL where Mustafa, Samsuddin, Mustaq and Ishret provided a joint and several guarantee for overdraft facilities for $58 million

184 Ayaz 1158 AEIC at para 41; Transcript, 20 October 2020 at p 21, lines 5–18.

185 JCB Vol 1 at p 348.

186 JCB Vol 1 at p 388.

187 JCB Vol 1 at p 438.

188 JCB Vol 1 at pp 470–471.

189 TB Vol 13 at pp 8592–8593.

11 November 1999[190]	Letter of offer from Indian Overseas Bank to MMSCPL where Mustafa, Samsuddin, Mustaq and Ishret provided a guarantee for $1.1 million and for US$500,000 in the capacity of a shareholder

164 I also accepted that the evidence showed that quite apart from assuming significant risks and liabilities on behalf of MMSCPL, Mustafa and Samsuddin had also contributed funds to MMSCPL by paying for their shares in MMSCPL. In this connection, it should be noted that since Mustaq did not testify at trial, no evidence was forthcoming from him to substantiate his allegation that he was the one who had paid for all the MMSCPL shares held in their names.[191] Nor did he disclose any documents showing that he had paid for those shares.[192]

165 Indeed, during Mustaq's correspondence with the Commissioner of Estate Duties ("CED") between November and December 2002, when the CED sought to ascertain from Mustaq whether Mustafa had paid for the shares for any of the other MMSCPL shareholders,[193] he failed to tell the CED in his responses that he (*ie*, Mustaq) was the one who had paid for Samsuddin's shares – and/or that he had paid for Mustafa's shares as well.[194] In his lawyers' 11 December 2002 letter to the CED, they had even stated that they were "ascertaining" whether Mustafa had provided any funds for the other shareholders' shares.[195] As the Suit 1158 plaintiffs pointed out, if Mustaq had paid for Samsuddin's and Ishret's shares in MMSCPL, there would have been

190 TB Vol 13 at pp 8599–8601.

191 DCS 1158 at para 834; DCS 780 at para 1042.

192 1158 PBOD Vol 2 at Tab 31; see p 910 at para 10.

193 JCB Vol 4 at pp 3174, 3176.

194 JCB Vol 4 at p 3205.

195 JCB Vol 4 at p 3176.

nothing for him to "ascertain".[196] Again, since Mustaq did not testify at trial, no evidence was forthcoming from him to explain his reticence. At least one possible inference from this evidence was that he said nothing about having paid for Samsuddin's and/or Mustafa's shares because in reality these two individuals had paid for their own shares. In this connection, evidence was also led from Rajesh to the effect that during his review in mid-2016 of the forms lodged by MMSCPL with ACRA for each of the share allotments, he had observed that these forms showed Mustafa, Samsuddin, Mustaq and Ishret to have paid for each of their share allotments using the credit balances in their accounts with MMSCPL.[197]

166 *Per* the defendants' pleaded case, the 1973 Common Understanding included an understanding that Mustafa and Samsuddin would not need to contribute to or be responsible for the business' finances or assume any risks/liabilities in respect of the business. The above evidence constituted yet another piece of evidence which militated against the alleged existence of this "Common Understanding". The evidence of the assumption of risks and liabilities by Mustafa and Samsuddin, as well as the contribution of funds by them, flew in the face of Mustaq's claims about their lack of any beneficial interest in the MMSCPL shares. If indeed the two of them had merely been holding the MMSCPL shares on trust for Mustaq all along, there was no reason for them to pay for these shares, or to take on any risks or liabilities on behalf of the company.

196 PCS 1158 at para 368.

197 PCS 1158 at para 370; AEIC of Bafna Rajesh Jograj in Suit 1158 dated 21 August 2020 ("Rajesh 1158 AEIC") at paras 50–51.

(D) THE BELATED NATURE OF MUSTAQ'S ALLEGATIONS ABOUT HIS SOLE BENEFICIAL OWNERSHIP OF MMSCPL

167 I address next the plaintiffs' submission that the correspondence leading up to the commencement of Suit 1158 and Suit 9 showed the defendants' allegations about the 1973 Common Understanding and the 2001 Common Understanding to be a fabrication.[198]

168 I refer first to the correspondence between the Suit 1158 plaintiffs' lawyers and the defendants' lawyers. Between July 2016 and December 2016, the Suit 1158 plaintiffs' lawyers and the defendants' lawyers exchanged correspondence on a number of matters.[199] Ayaz gave detailed evidence about this in his AEIC. The correspondence itself was not disputed; and I summarise the key points below (I refer to the Suit 1158 plaintiffs' lawyers as "P" and the defendants' lawyers as "D"):

Date	**Correspondence**
13 July 2016[200]	P wrote to Mustaq to inform him that they acted for the Suit 1158 plaintiffs, requesting for, *inter alia*, information on how the Mustaq POA was obtained and the latest financial statements of all companies held under the Mustafa Estate. The letter also requested that Mustaq not pursue 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.

198 PCS 1158 at paras 94–187.

199 AEIC of Ayaz Ahmed for Suit 1158 dated 21 August 2020 ("Ayaz 1158 AEIC") at paras 131–272.

200 Ayaz 1158 AEIC at pp 910–911.

4 August 2016[201]	Mustaq replied, stating that the Mustaq POA was obtained at nobody's behest but done willingly and lawfully, and adding that insofar as company matters were concerned, he would deal with the issues lawfully with the appropriate shareholders or directors' resolution, where it was appropriate.
3 October 2016[202]	P wrote to Mustaq, reiterating that Mustaq was not to pursue any reduction or dilution of any shareholding in an entity in which the Mustafa Estate had an interest, unless written confirmation was procured from Ayaz.
12 October 2016[203]	Osama, Shams, Shama and Bushra replied to P's letter of 3 October 2016 (though on D's letterhead), stating that there was no basis for P's demands given that Mustaq had single-handedly steered the company since its inception.
14 October 2016[204]	P wrote to Mustaq to repeat the matters stated in their letters of 13 July 2016 and 3 October 2016. P asked Mustaq to explain why he had failed to provide the documents they requested.
17 October 2016[205]	D wrote to P to inform P they had been instructed to act for Mustaq and asked P to "hold [their] hands".
21 October 2016[206]	P replied to D to ask them to provide a substantive response by 7 November 2016, and reiterated their request for information.

201 Ayaz 1158 AEIC at p 931.

202 Ayaz 1158 AEIC at pp 1151–1152.

203 Ayaz 1158 AEIC at p 1153.

204 Ayaz 1158 AEIC at pp 1156–1157.

205 Ayaz 1158 AEIC at p 1159.

206 Ayaz 1158 AEIC at pp 1161–1163.

7 November 2016[207]	D wrote to P and said, *inter alia*, that Mustaq intended to take steps to transfer the Mustafa Estate's shares in MMSCPL to the beneficiaries of the Mustafa Estate, in accordance with the Certificate of Inheritance issued by the Syariah Court. D also said that, in July 2001, Mustaq had held a meeting with the Suit 1158 plaintiffs, Ishret, and Shama, in which he had said that if desired, he would arrange for the Mustafa Estate's shares in MMSCPL to be vested directly in the respective beneficiaries – but that Ishtiaq and Asia had decided such an arrangement was not necessary and had expressed their preference to Mustaq to continue running MMSCPL as he had been doing all along, without the input of the Suit 1158 plaintiffs. D also provided P with the latest financial statements of MMSCPL and MAT ended 30 June 2015.
17 November 2016[208]	P responded to D's letter, stating, *inter* alia, the plaintiffs' concerns that MMSCPL's directors owed $30,010,750 to MMSCPL as at 30 June 2014, and the plaintiffs' position that the alleged meeting in July 2001 did not happen at all. P also proposed that Ayaz be appointed as administrator of the Mustafa Estate in lieu of Mustaq.
28 November 2016[209]	D replied to P stating that they were still taking Mustaq's instructions.

[207] Ayaz 1158 AEIC at pp 1165–1167.

[208] Ayaz 1158 AEIC at pp 1341–1344.

[209] Ayaz 1158 AEIC at p 1550.

27 December 2016[210]	D replied to P, stating, *inter alia*, that there was no legal basis for the plaintiffs' request for financial statements before 2001, given that the plaintiffs' interest had not even arisen prior to July 2001. D also said that the Mustafa Estate's interest was limited to the shares in MMSCPL and MAT as stated in the schedule attached to the Grant of Probate.

169 From the correspondence, it was evident that as late as August 2016, in responding to correspondence in which the Suit 1158 plaintiffs' solicitors were requesting financial statements for MMSCPL and insisting that he refrain from reducing or diluting the estate's shareholding in any entity in which it held an interest, Mustaq made no mention of his purported sole beneficial ownership of MMSCPL and/or the Mustafa Estate's lack of any beneficial interest.

170 Had the 1973 Common Understanding and the 2001 Common Understanding genuinely been in existence all along, the most natural – and rational – thing for Mustaq to have done was to explain in his responses that these two Common Understandings rendered the Suit 1158 plaintiffs' complaints entirely baseless.[211] However, not only did Mustaq not say this, he made various statements acknowledging the Suit 1158 plaintiffs' interest in MMSCPL, as beneficiaries of the Mustafa Estate. For instance, Mustaq referred to his proposal to arrange for the MMSCPL shares of the Mustafa Estate to be vested in the beneficiaries.[212] Far from denying any interest on the estate's part in the shares of MMSCPL, Mustaq also stated that the Suit 1158 plaintiffs'

210 Ayaz 1158 AEIC at pp 1582–1586.

211 PCS 1158 at para 104.

212 Ayaz 1158 AEIC at p 1165, para 5.

interest in the MMSCPL shares had arisen from July 2001 (*ie*, after Mustafa died).[213]

171 While Mustaq did allude to a "common understanding" in the letter of 7 November 2016, I agreed with the Suit 1158 plaintiffs that this was something very different from the version of the Common Understandings that was advanced at trial.[214] I understood from the 7 November 2016 letter that Mustaq acknowledged that Mustafa's shares in MMSCPL were indeed Mustafa's own shares: otherwise, there would have been no reason for Mustaq to offer (at the alleged July 2001 meeting) to arrange for the Mustafa Estate's shares in MMSCPL to be "vested directly in the respective beneficiaries". In the letter, Mustaq even elaborated on this purported offer by explaining that Ishtiaq and Asia were the ones who had decided such an arrangement was not necessary, and who had expressed their preference for Mustaq to continue running MMSCPL without the Suit 1158 plaintiffs' input.[215] By contrast, the version advanced by the defendants at trial posited not only that the plaintiffs left it to Mustaq to run MMSCPL, but also that Mustaq was the absolute and sole owner of all the shares in MMSCPL, including the shares held by the Mustafa Estate and the Samsuddin Estate.

172 The official correspondence and other documents relating to the administration of the Mustafa Estate further supported the contention by both sets of plaintiffs that Mustaq's story of the 1973 Common Understanding (as well as the 2001 Common Understanding) was something he concocted to resist the plaintiffs' claims. On 26 October 2002, Mustaq's then lawyers (who acted

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213 Ayaz 1158 AEIC at p 1585, para 15.

214 PCS 1158 at para 129.

215 Ayaz 1158 AEIC at p 1165, para 5.

for him in his capacity as administrator of the Mustafa Estate) submitted an estate duty form, signed by Mustaq, to the CED.[216] The form stated that Mustafa Estate owned 1,986,170 shares in MMSCPL worth $16,157,492.95.217. The form also stated that the property in respect of which the Grant of Probate was to be made "devolves to and vests in the personal representative of the deceased by Law".[218] On 30 January 2003, Mustaq's lawyers also informed the CED that they had omitted to include Mustafa's 42,000 shares in MAT which were worth $155,000 in the earlier estate duty form.[219] On 15 July 2003, the CED issued a Schedule of Assets, listing Mustafa's shares in MMSCPL and MAT.[220] 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 more than $3 million; and he affirmed on oath in filing this petition that the contents were "in all respects true" to the best of his knowledge, information and belief[221] The Grant of Letters of Administration was eventually issued on 28 January 2004.[222] Not once in any of these court filings and official correspondence did Mustaq reveal that Mustafa's MMSCPL shares were actually held on trust for him.

173 The same applied to the documents relating to the Samsuddin estate. Leaving aside for the moment the Suit 780 plaintiffs' contention that Samsuddin's will failed to reflect the true extent of his assets, it should be noted

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216 JCB Vol 4 at pp 3160–3169.

217 JCB Vol 4 at p 3163.

218 JCB Vol 4 at p 3161.

219 JCB Vol 4 at p 3196.

220 JCB Vol 1 at p 85.

221 JCB Vol 4 at pp 3224–3225.

222 JCB Vol 1 at p 153.

that Samsuddin was described in the will as a shareholder of MMSCPL, holding beneficially 2,016,993 ordinary shares in MMSCPL.[223] This description could not have escaped Mustaq's notice, since he was the joint executor and trustee of the will, together with Fayyaz. Given Mustaq's claims to sole beneficial ownership of all MMSCPL shares, one would have expected from him some expression of consternation – if not indignation – at Samsuddin's apparent disposition of these shares. There was none. On the contrary, in the Schedule of Assets he subsequently filed jointly with Fayyaz in the probate proceedings, reference was made to Samsuddin's MMSCPL shares.[224] Similarly, in the joint affidavit dated 31 October 2012 he filed together with Fayyaz, it was stated that the contents of the Schedule of Assets were "true and accurate…to the best of [their] knowledge and belief".[225] In short, the position taken by Mustaq in these official documents was entirely inconsistent with his subsequent story of the 1973 Common Understanding and his purported beneficial ownership of all shares held in Samsuddin's (and later the estate's) name.

174 Even in MMSCPL's corporate documents, Mustaq's (alleged) sole beneficial ownership of all shares was not on record until very recently. In all of MMSCPL's financial statements for a quarter of a century from 1990 to 2016,[226] Mustaq repeatedly declared that his interest in MMSCPL was limited to the shares registered under his name.[227] It was only after 2016 – in the wake

223 JCB Vol 1 at p 228.

224 JCB Vol 1 at p 234.

225 JCB Vol 1 at p 191.

226 AEIC of Ayaz Ahmad in Suit 1158 dated 21 August 2020 ("Ayaz 1158 AEIC") Vol I at para 464; Vol II at Exhibit AA-192 (pp 2538–3590); PCS 1158 at para 337.

227 PCS 1158 at para 336; *see* JCB Vol 1 at pp 322, 337, 356, 376, 400, 425, 455, 486, 521, 551, 615, 645, 731; JCB Vol 2 at pp 871, 916, 1006, 1091, 1183, 1275, 1369, 1467, 1573, 1679; JCB Vol 3 at pp 1790, 1900, 1957, 2014.

of the Suit 1158 plaintiffs' refusal to sign the draft Deed of 29 March 2016 – that Mustaq declared for the first time in the financial statements of 2017[228] and 2018[229] his "deemed interest" in the shares held by the estates.[230]

175 Since Mustaq did not testify, there was no explanation from him as to the stark discrepancy between the documentary records and his subsequent narrative of the 1973 Common Understanding and the 2001 Common Understanding. This inconsistency between the documentary evidence and his pleaded defence further supported the plaintiffs' contention that the 1973 Common Understanding and the 2001 Common Understanding were nothing more than stories concocted by him to resist their claims.

(E) THE DEFENDANTS' ATTEMPT MID-TRIAL TO RECAST THEIR NARRATIVE OF THE 1973 COMMON UNDERSTANDING AND THE 2001 COMMON UNDERSTANDING

176 Finally, I agreed with the plaintiffs in both minority oppression suits that the defendants' conduct in scrambling mid-trial to recast their narrative of the 1973 Common Understanding and the 2001 Common Understanding showed that the narrative of the "Common Understanding" was built on invention, not fact.

177 The defendants applied on the 13th day of the trial to amend their defences in Suit 1158 and Suit 9. Their counsel sought to persuade me that the proposed amendments did nothing more than regularise the pleadings. With respect, this characterization of the proposed amendments was far off the mark. In fact, the amendments would have introduced a new narrative about the

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228 JCB Vol 3 at p 2072.

229 JCB Vol 3 at p 2129.

230 PCS 1158 at para 346.

ownership of the MMSCPL shares. This new version posited that while MMSCPL was entirely Mustaq's, Mustaq had *gifted* 14.89% of the shares in MMSCPL to the Mustafa Estate sometime in 2002, and 15.12% of the shares to the Samsuddin Estate sometime in 2004 – but had later decided to revoke the gifts when the Mustafa Estate and Samsuddin Estate commenced claims against him.[231]

178 Clearly, this new version of events was at odds with the defendants' pleaded case which posited that Mustaq had always enjoyed uninterrupted beneficial ownership of all MMSCPL shares, pursuant to the 1973 Common Understanding and the 2001 Common Understanding.[232] The defendants proffered no explanation as to why such an important aspect of their defence was surfaced only mid-trial. It appeared to me that their true motivation for the proposed amendments was the realisation that their story of the 1973 Common Understanding had been completely undermined by evidence – particularly, documentary evidence – of Mustaq's contemporaneous conduct: it was in the wake of this belated realisation that the defendants tried to recast their narrative – or more precisely, to concoct a new narrative.[233] In the circumstances, while the application for leave to amend the defences was dismissed, I agreed with the plaintiffs that it was useful in exposing Mustaq's claim of a "Common Understanding" for the sham that it was.

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231 PCS 1158 at para 197; Transcript, 22 October 2020 at p 7, lines 11–17.

232 PCS 1158 at para 210; PCS 780 at para 182; Transcript, 29 October 2020 at p 37, line 12 to p 38, line 14.

233 PCS 1158 at para 216.

Conclusion on the issue of beneficial ownership of the MMSCPL shares

179 For the reasons set out above in [139] to [178], I found that the evidence available did not support the defendants' pleaded case on the 1973 Common Understanding and the 2001 Common Understanding. Indeed, as I have pointed out, there were numerous instances where the evidence undermined or contradicted the defendants' pleaded case. The defendants having premised Mustaq's claim to sole beneficial ownership of the shares on the purported "Common Understanding", it followed that they were unable to discharge their burden of proving such beneficial ownership. On the evidence available, I was satisfied that the Mustafa and the Samsuddin estates were the beneficial owners of the shares held in their names.

The alleged acts of oppression

180 I address next the specific acts which were pleaded by the plaintiffs as oppressive conduct. I begin with the 5 January 1995 Allotment and the 11 December 2001 Allotment, as the allegation of oppressive conduct in respect of these two allotments was common to both Suit 1158 and Suit 780.

The 5 January 1995 Allotment and 11 December 2001 Allotment

The plaintiffs' and the defendants' respective positions

181 In respect of the 5 January 1995 Allotment and the 11 December 2001 Allotment, both sets of plaintiffs submitted that these share allotments were conducted in breach of various provisions of MMSCPL's Constitution;[234] that they were conducted at an undervalue;[235] that there was no genuine commercial

234 PCS at paras 420–596; SOC 1158 at paras 41, 41B and 49; SOC 780 at paras 48–48A, 55–55A, 62 and 64B.

235 PCS at paras 597–628; SOC 1158 at paras 43 and 51; SOC 780 at paras 50, 52, 61, 66.

purpose for either allotment;[236] and that both allotments had the effect of diluting Mustafa's and Samsuddin's shareholding while increasing Mustaq's shareholding (as well as Mustaq's and Ishret's collective shareholding).[237]

182 In response, the defendants' pleaded case relied heavily on the existence of the 1973 Common Understanding. They claimed that *per* the 1973 Common Understanding, Mustaq was the sole owner of all the shares in MMSCPL, and its sole decision-maker. Mustafa and Samsuddin were said to have been fully aware of the 5 January 1995 Allotment: the defendants' position was that they raised no objections because *per* the 1973 Common Understanding, they accepted that the shares in their names were held on trust for Mustaq; and the decision to allot shares was Mustaq's alone to make. Mustaq – and for that matter, Ishret as well – were not bound to act in accordance with the MMSCPL Constitution because none of the MMSCPL shareholders and directors had ever considered themselves bound by it, nor had they ever conducted themselves in accordance with it. Moreover, the 5 January 1995 Allotment was said to be in MMSCPL's commercial interests as MMSCPL needed to raise funds for business growth.

183 Based on the evidence adduced (which included not only the various plaintiffs' evidence but also the evidence of their experts), I found that both sets of plaintiffs were able to establish a *prima facie* case that the 5 January 1995 Allotment and the 11 December 2001 Allotment were conducted in breach of MMSCPL's Constitution (at the very least, Articles 7 and 57 of the Constitution); that they were conducted at an undervalue; that they were not in MMSCPL's commercial interests; and that they diluted Mustafa's and

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236 PCS at paras 629–664; SOC 1158 at paras 42 and 50; SOC 780 at paras 51, 65.

237 PCS at paras 665–674; SOC 1158 at paras 44 and 52; SOC 780 at paras 53 and 67.

Samsuddin's shareholding while increasing Mustaq's shareholding (as well as Mustaq's and Ishret's collective shareholding).

184 Before I explain my findings in relation to each allotment, I reproduce below the relevant provisions of the MMSCPL Constitution.

Provisions of the MMSCPL Constitution

185 Article 7 of the MMSCPL Constitution states:

> (a) Unless otherwise determined by the Company by Special Resolution or otherwise agreed by the holders of all the shares for the time being issued, all unissued shares shall before issue be offered for subscription to the members in proportion as nearly as the circumstances will admit to the number of shares then held by them.
>
> (b) Any such offer as aforesaid shall be made by notice specifying the number and class of shares and the price at which the same are offered and limiting the time (not being less than twenty-eight days, unless the member to whom the offer is to be made otherwise agrees) within which the offer if not accepted will be deemed to be declined.
>
> …

Article 57 of the MMSCPL Constitution states:[238]

> The Company may from time to time by Ordinary Resolution, whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not increase its capital by the creation and issue of new shares …

Articles 65 and 66 of the MMSCPL Constitution state:[239]

> 65. (1) An Annual General Meeting and a meeting called for the passing for the passing of a special resolution shall be called by twenty-one days' notice in writing at the

238 JCB Vol 5 at p 3603.

239 JCB Vol 5 at p 3605.

> least. Any other meeting of the Company shall be called by fourteen days' notice in writing at the least.
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> …
>
> (2) The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of meeting and in case of special, business the general nature of the business.
>
> …
>
> 66. (1) Notice of every General Meeting shall be given in any manner authorised by these Articles to:
>
> (a) every Member holding shares conferring the right to attend and vote at the meeting who at the time of the convening of the meeting shall have paid all calls or other sums presently payable by him in respect of shares in the Company; and
>
> (b) the Auditors of the Company.
>
> …

Article 68 of the MMSCPL Constitution states:[240]

> A member or members present in person or by proxy and holding not less than seventy-five per cent in nominal value of the issued capital of the Company for the time being shall be a quorum for a General Meeting and no business shall be presented at any General Meeting unless the quorum requisite is present at the commencement of the business. …

The 5 January 1995 Allotment

186 The 5 January 1995 Allotment involved the issuance of 700,000 MMSCPL shares to Mustaq at $1 each.[241] Mustaq was the only shareholder who was issued shares in the 5 January 1995 Allotment. As a result of this allotment, Mustaq's shareholding increased from 34.01% to 42.57%; Ishret's shareholding decreased from 14.88% to 12.95%; Mustafa's shareholding decreased from

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240 JCB Vol 5 at p 3606.

241 SOC 1158 at para 40.

25.35% to 22.07%; and Samsuddin's shareholding decreased from 25.75% to 22.41%.

Documents relating to the 5 January 1995 Allotment

187 At trial, the following documents were brought up in relation to the 5 January 1995 Allotment.[242]

188 First, there was a document which the defendants alleged to be a Notice issued on 23 December 1994 of an EOGM to be held on 5 January 1995 ("23 December 1994 Notice"), where the stated agenda was to "approve the allotment of shares" and to "transact any other business".[243]

189 Second, there was a document which the defendants alleged to be the Minutes of the EOGM on 5 January 1995, allegedly signed by Mustafa, Samsuddin, Mustaq, and Ishret (who was named in the Minutes as the Chairman of the EOGM), and purporting to record the passing of a resolution for the allotment of 700,000 shares to Mustaq at $1 per share ("5 January 1995 EOGM Minutes").[244] The 5 January 1995 EOGM Minutes did not state the reasons for the issuance of the shares.

190 Third, there was a Notice of Resolution in Form 11 dated 5 January 1995, which was registered with ACRA on 12 January 1995, and signed only by Mustaq ("12 January 1995 Notice of Resolution").[245]

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242 Exhibit 1158-D4 at pp 8 (items 81 and 82), 13 (items 135 and 136); Transcript, 26 October 2020 at p 144, line 23 to p 146, line 1.

243 JCB Vol 3 at p 2559.

244 JCB Vol 3 at p 2567; Exhibit 1158-D7.

245 JCB Vol 3 at pp 2564–2565.

191 Lastly, there was a Return of Allotment of Shares in Form 24, stating that 700,000 shares were allotted to Mustaq for cash, signed only by Mustaq ("5 January 1995 Return of Allotment of Shares").[246]

Oral testimony and affidavit evidence

192 Having elected to submit no case, the defendants did not adduce any evidence, though they claimed to rely on a number of documents (which I address later). As for the evidence led by the plaintiffs, this is summarised below:

(1) Ayaz's evidence

193 Ayaz's evidence was as follows:

(a) Mustaq, Ishret and Iqbal did not give Mustafa an Offer Notice as required by Article 7 of the MMSCPL Constitution.[247]

(b) The 23 December 1994 Notice was not authentic and was not given to Mustafa and Samsuddin in accordance with Article 140 of the MMSCPL Constitution.[248] Further, it did not provide for 14 days' notice of the meeting, nor did it specify the number and class of shares and the price at which the shares were offered and/or limit the time within which the offer would be deemed to be declined.[249]

(c) Although Mustafa was in Singapore on 5 January 1995, the signature which appeared against Mustafa's name on the 5 January 1995

246 JCB Vol 5 at pp 3645–3648.

247 PCS 1158 at para 421; Ayaz 1158 AEIC at para 291.

248 Ayaz 1158 AEIC at paras 294–295.

249 Ayaz 1158 AEIC at paras 296–298.

EOGM Minutes was not his signature.[250] Ayaz was "100 per cent sure about [Mustafa's] sign [*sic*] being forged".[251]

(2) Fayyaz's evidence

194 Fayyaz's evidence was as follows:

(a) Like Ayaz, Fayyaz disputed the authenticity of the 5 January 1995 EOGM Minutes.[252] At trial, he agreed that the signature above Samsuddin's name in the 5 January 1995 EOGM Minutes "looks like" Samsuddin's signature.[253] However, he did not accept in any event that there was such a meeting. Ishret could not understand English: she would not have been able to explain the allotment at any such meeting.

(b) Fayyaz did not recall Samsuddin or, for that matter, Fayyaz himself receiving the 12 January 1995 Notice of Resolution.[254] Further, the 12 January 1995 Notice of Resolution was signed only by Mustaq while the 5 January 1995 EOGM Minutes stated that all the shareholders of MMSCPL agreed to the 5 January 1995 Allotment.

The plaintiffs' submissions

195 The plaintiffs disputed the authenticity of the 23 December 1994 Notice and the 5 January 1995 EOGM Minutes.[255]

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250 Ayaz 1158 AEIC at para 304; also, Transcript, 14 October 2020 at p 96, lines 2–11.

251 Transcript, 14 October 2020 at p 107, lines 1–6.

252 Fayyaz 780 AEIC at paras 174–176.

253 Transcript, 22 October 2020 at p 60 lines 18–21.

254 Fayyaz 780 AEIC at para 174.

255 PCS 1158 at para 450; PCS 780 at paras 467–468.

196 In the main, the submissions of the Suit 1158 plaintiffs were as follows.[256]

(a) First, there was a *prima facie* case that the 5 January 1995 Allotment was conducted in breach of Articles 7 and 57 of the MMSCPL Constitution.

(i) The shares to be issued were not offered to Mustafa "in proportion as nearly as the circumstances [would] admit to the number of shares then held by [him]". There was no evidence of any Offer Notice being sent to Mustafa. Pursuant to Article 7, no Offer Notice was necessary if there was a special resolution waiving Mustafa's right to have the shares offered to him, but there was no evidence of a special resolution either.

(ii) Based on the 12 January 1995 Notice of Resolution (which the defendants had accepted was authentic), Ishret, Mustafa and Samsuddin did not approve the 5 January 1995 Allotment.[257]

(iii) The defendants had pleaded that Mustafa and Samsuddin knew of but did not object to the 5 January 1995 Allotment because it was conducted in accordance with the 1973 Common Understanding. Since the plaintiffs had shown that their story about the 1973 Common Understanding was false, the defendants' case was completely undermined.[258]

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256 PCS 1158 at paras 416–692.

257 PCS 1158 at paras 420–444.

258 PCS 1158 at paras 445–448.

(iv) The defendants had the burden of proving the authenticity of the 23 December 1994 Notice and the 5 January 1995 EOGM Minutes – *ie*, they had to prove that Mustaq signed the 23 December 1994 Notice, and that Mustaq, Ishret, Samsuddin and Mustafa signed the 5 January 1995 EOGM Minutes. They had not done so.[259] The suggestion that the documents had been admitted into evidence pursuant to (i) s 49 read with s 75 of the Evidence Act, (ii) s 66 read with s 64 of the Evidence Act, (iii) s 67A read with s32(1)(*b*) and/or s 32(1)(*j*) of the Evidence Act and (iv) ss 18, 19 and 21 of the Evidence Act was misconceived.[260] These documents were not in evidence; and the court was urged to find that the defendants had fabricated evidence.[261]

(b) There was a *prima facie* case that the 5 January 1995 Allotment was conducted at an undervalue, based on the expert evidence of Mr Owen Hawkes ("Hawkes") and Mr Mark E Collard ("Collard").[262]

(c) There was a *prima facie* case that the 5 January 1995 Allotment was not in MMSCPL's commercial interests.[263]

197 In the main, the submissions of the Suit 780 plaintiffs were as follows:[264]

259 PCS 1158 at paras 449–492.

260 PCS 1158 at paras 494–596.

261 PCS 1158 at para 493.

262 PCS 1158 at paras 597–628.

263 PCS 1158 at paras 629–692.

264 PCS 780 at paras 464–484.

(a) There were serious issues in relation to the 5 January 1995 EOGM Minutes – for example, this document differed from the document that MMSCPL filed in ACRA, as it purported to be signed by all the shareholders while the one filed in ACRA was signed only by Mustaq.[265] In any event, there was in fact no meeting.

(b) There was no proper commercial purpose for the 5 January 1995 Allotment. The only reason for the allotment was to allow Mustaq wrongfully to acquire further shares in MMSCPL at a significant discount.

(c) The shares were issued at a significant undervalue.[266]

The defendants' submissions

198 The defendants, for their part, argued that the 5 January 1995 Allotment was not in breach of the MMSCPL Constitution.[267] As noted earlier, this argument was premised on the alleged existence of the 1973 Common Understanding between Mustafa, Samsuddin and Mustaq.

199 In any event, according to the defendants, the evidence showed that as at 5 January 1995, all existing shareholders had agreed to the issuance of the 700,000 shares to Mustaq, since the 5 January 1995 EOGM Minutes were signed by all four shareholders (*ie*, including Mustafa and Samsuddin).[268] In this connection, the defendants did not deny that no actual meeting was held on 5

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265 PCS 780 at paras 470–471.

266 PCS 780 at paras 473–484.

267 DCS 1158 at paras 375–421; DCS 780 at paras 532–552.

268 DCS 1158 at paras 375–392; DCS 780 at paras 532–544.

January 1995: instead, each of the four shareholders was said to have simply signed the resolution authorizing the share allotment.

200 The defendants also argued that the 5 January 1995 Allotment was in the commercial interests of MMSCPL.[269]

My findings

(1) The 5 January 1995 Constitution was conducted in breach of the MMSCPL Constitution

201 I address first the plaintiffs' contention that the 5 January 1995 Allotment was conducted in breach of the MMSCPL Constitution. In this connection, as noted earlier, the defendants' pleaded defence was premised on the 1973 Common Understanding. Pursuant to this "Common Understanding", since Mustafa and Samsuddin knew that MMSCPL belonged wholly to Mustaq and that he alone made all decisions, neither of them raised any objections (nor did they have any basis for objecting) when it was decided that 700,000 shares should be issued to him at $1 each. In other words, the 1973 Common Understanding rendered compliance with Article 7 of the MMSCPL Constitution moot.

202 Clearly, once I found that Mustaq's story of the alleged 1973 Common Understanding was a complete fabrication, the factual stratum for the above defence no longer existed. The defendants did not actually plead in the alternative that the 5 January 1995 Allotment had in any event been conducted in compliance with the MMSCPL Constitution and/or that Article 7 of the MMSCPL Constitution had been satisfied. In principle, therefore, the arguments

269 DCS 780 at paras 545–552.

they subsequently raised about the 5 January 1995 Notice of EOGM and the 5 January 1995 Resolution were really beside the point. In the interests of completeness, I will nevertheless address these arguments.

203 First, there was – indisputably – no evidence of an Offer Notice having been sent to Mustafa and Samsuddin. This was a breach of Article 7 of the MMSCPL Constitution, unless there was a Special Resolution dispensing with the requirement for such an offer, or it was "otherwise agreed to by the holders of all the shares for the time being issued".[270] There was – indisputably – no evidence of such a Special Resolution. This then left the defendants' argument that the four existing shareholders as at January 1995 – Mustaq, Ishret, Mustafa and Samsuddin – had agreed to the share allotment by signing the 5 January 1995 Resolution subsequent to the 23 December 1994 Notice of EOGM. Since Mustaq and Ishret did not give evidence, the defendants had to rely on the documents themselves; and since the plaintiffs disputed the authenticity of these documents, the defendants had to establish their authenticity.

204 In this connection, it would be helpful to revisit the judgment of the CA in *CIMB*; and in particular, the following passages in which it considered CIMB's argument that it had discharged its burden of proving the authenticity of the disputed Debenture by simply producing the original document in court. The CA rejected CIMB's argument, noting that it "arose from a misinterpretation of the [Evidence Act]". Citing the judgment of the High Court in *Jet Holding and others v Cooper Cameron (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 ("*Jet Holding (HC)*", at [146]), the CA noted that the best evidence rule required that the contents of documents must under s 66 of the Evidence Act be proved by primary evidence, *ie*, the originals themselves,

[270] Ayaz 1158 AEIC at AA-140 p 828.

except in situations falling within s 67 Evidence Act: the original documents were to be produced to the court for inspection (s 64 Evidence Act); secondary evidence being allowed only upon satisfaction of the existence of the circumstances mentioned in s 67. A document produced as primary evidence or secondary evidence will have to be proved in the manner laid down in ss 69 to 75: the making, execution or existence of a document has, for instance, to be proven 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. Importantly, the CA emphasised (at [51]) the observation of the High Court in *Jet Holding (HC*) that "a mere tender of even the original document is not enough. Documents are not ordinarily taken to prove themselves or accepted as what they purport to be. There has to be an evidentiary basis for finding that a document is what it purports to be". It also agreed (at [50]) with these observations by the judge below:

> There still remains the most important question, viz., the genuineness of the document produced as evidence, ie, is a document what it purports to be? … The production of a document purporting to have been signed or written by a certain person is no evidence of its authorship. Hence the necessity of rules relating to the authentication of documents, *ie*, proving their genuineness and execution. Proof, therefore, has to be given of the handwriting, signature and execution of a document…

205 As I noted earlier, in *CIMB* the CA went on to hold (at [54]) that proving the authenticity of a document would include proving the authenticity of the signatures in the document if authenticity was in dispute. The CA noted that s 69(1) of the Evidence Act did not provide that the authenticity of the document would be established only by direct evidence (*ie*, by the signatories themselves or a witness to the signatories), although it held that "direct evidence would usually be the strongest evidence available to a party, and the maker of a document should generally be called as a witness to prove its authenticity" (at

[57]). In each case, the impact of a party's failure or omission to adduce direct evidence would depend on the facts of that case.

206 In the present case, Mustaq and Ishret would have provided the best evidence that the 23 December 1994 Notice and the 5 January 1995 Resolution were indeed what they purported to be; in particular, that the signatures on these documents were authentic. They did not give evidence. Instead, the defendants attempted to get Ayaz and Fayyaz to concede the authenticity of the signatures. It was plain to see, however, that such indirect evidence as they were able to glean from the two plaintiffs was quite weak and/or incomplete. Thus, for example, their attempt to invoke s 49 of the Evidence Act[271] by getting Ayaz to concede the authenticity of Mustaq's signature on the 23 December 1994 Notice was undermined by the lack of any evidence that Ayaz was a "person acquainted" with Mustaq's handwriting for the purposes of s 49. As for the 5 January 1995 Resolution, while Fayyaz appeared prepared to agree that the signature shown below Samsuddin's name "looks like" Samsuddin's signature,[272] Ayaz for his part was adamant that the signature purporting to be Mustafa's signature could not be Mustafa's.[273]

207 Further, although the 5 January 1995 Resolution was supposedly signed by all four shareholders, the 12 January 1995 Notice of Resolution – which the defendants admitted had been lodged by MMSCPL with ACRA to notify the latter of the 5 January 1995 Resolution – was signed only by Mustaq. This 12 January 1995 Notice of Resolution also referred to a resolution signed by Mustaq for the issuance of 700,000 ordinary MMSCPL shares to Mustaq, and

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271 DCS 1158 at paras 217–218; DCS 780 at paras 244–245.

272 Transcript, 22 October 2020 at p 60, lines 18–21.

273 Transcript, 14 October 2020 at p 86, lines 2–8; p 89, lines 12–22.

annexed a shareholders' resolution signed *by Mustaq*. This was an odd discrepancy which demanded an explanation, given the defendants' reliance on 5 January 1995 Resolution as evidence of *all four shareholders'* agreement to the share allotment. Unfortunately for the defendants, Mustaq – who would have been best placed to proffer an explanation – did not testify.

208 Instead, in cross-examining Ayaz, the defendants' counsel suggested that either the company secretary or the management services company would have submitted the Notice of Resolution – and that they could have done so either by "set[ting] out the resolution being passed…or attach[ing] an annexure". I did not find any merit in this suggestion. First of all, there was no evidential basis for such a suggestion. Second, Ayaz obviously had no personal knowledge of how the Notice of Resolution was prepared and filed: any agreement he expressed with counsel's suggestion would simply have been speculation.

209 As for the defendants' attempt to argue that the 23 December 1994 Notice and the 5 January 1995 Resolution could be admitted into evidence under either s 32(1)(*b*) or s 32(1)(*j*) of the Evidence Act,[274] I found this argument to be devoid of merit as well. In respect of s 32(1)(*b*) of the Evidence Act, the High Court in *Bumi Geo Engineering Pte Ltd v Civil Tech Pte Ltd* [2015] 5 SLR 1322 (at [104]) has held that:

> The rationale for this exception has been stated in [Sarkar's Law of Evidence] at 970:
>
> The ground of admission is that a statement or entry made in the ordinary course or routine of business or duty may be presumed to have been done from disinterested motive and may therefore be taken to be generally true.

[274] WongP 8 December 2020 Letter at p 4 (row 42) and p 5 (row 44).

> To qualify under this exception, the entry must have been in the way of business. This has been defined to mean a course of transactions performed in one's habitual relations with others and as a material part of one's mode of obtaining a livelihood: Sarkar's Law of Evidence at p 973.

210 In the present case, there was no evidence available from which it could be inferred that the two documents were statements made "in the ordinary course or routine of business or duty" such that they might be "presumed to have been done from disinterested motive and [might] therefore be taken to be generally true". Indeed, since these two documents purported to document a transaction which resulted in Mustafa's and Samsuddin's shareholding being decreased while Mustaq's was increased, neither set of plaintiffs in this case would have agreed that the documents could be "presumed to have been done from disinterested motive".

211 As for s 32(1)(*j*), this would only apply if the maker of the document were shown to be dead or unfit to testify by reason of his bodily or mental condition. This could not the case here because Mustafa's and Samsuddin's demise notwithstanding, Mustaq and Ishret remained very much alive; and there was no evidence that either was physically or mentally unfit to testify.

212 To recap: the plaintiffs having refused to admit the authenticity of the 23 December 1994 Notice and the 5 January 1995 Resolution, the defendants bore the burden of proving their authenticity. On the basis of the evidence adduced before me, I found that these documents were not proven to be authentic. I was not satisfied that the 5 January 1995 Resolution had in fact been signed by Mustafa and Samsuddin.

213 The defendants' failure to establish the authenticity of these documents had the following implications. First, since the 23 December 1994 Notice was

not shown to be authentic,[275] there was no evidence that notice of the 5 January 1995 EOGM was given to Mustafa and Samsuddin. This was a breach of Articles 65(1) and 66(1) of the MMSCPL Constitution.

214 Second, since the 5 January 1995 Resolution was not shown to be signed by all four registered shareholders and not shown to be authentic,[276] there was no evidence of the 5 January 1995 Allotment having been "agreed by all the holders of all the shares for the time being issued". In the absence of any evidence of an Offer Notice having been given to Mustafa and Samsuddin and/or a special resolution waiving the requirement for such an offer, this was a breach of Article 7 of the MMSCPL Constitution.

215 For the reasons set out above, I agreed with both sets of plaintiffs that the 5 January 1995 Allotment was conducted in breach of the MMSCPL Constitution. Of course, the plaintiffs' submissions as to the defendants' oppressive behaviour did not stop there. In every allegation of minority oppression, the nub of the issue is whether the behaviour complained of was commercially unfair. The authorities draw a distinction between unfairness and unlawfulness: a person may act within his legal rights and yet act in a manner which is commercially unfair; and conversely, conduct which is technically unlawful may not necessarily be commercially unfair (see *Sakae (CA)* at [82]); *Ideal Design* at [48]).

(2) Allotment was not for a proper purpose

216 In respect of the 5 January 1995 Allotment, the plaintiffs asserted that not only was it in breach of the MMSCPL Constitution, it was not carried out

275 JCB Vol 3 at p 2559.

276 JCB Vol 3 at p 2567.

for a proper purpose: first, the share allotment was done at an undervalue; second, it was not in the commercial interests of MMSCPL and its real purpose was to benefit Mustaq. To prove these assertions, the plaintiffs adduced evidence from three experts: Mr Owen Hawkes ("Hawkes") of KPMG Forensic, a chartered accountant, a certified fraud examiner and a certified financial forensic accountant; Mr Mark Collard ("Collard") of KPMG Deal Advisory, a chartered valuer and appraiser; and Mr Chee Yoh Chuang ("Chee") of RSM Chio Lim LLP / RSM Corporate Advisory Pte Ltd, a chartered accountant and certified fraud examiner.[277]

217 Having considered the evidence adduced, I accepted that the 5 January 1995 Allotment was done at an undervalue,[278] that it was not in the commercial interests of MMSCPL,[279] and that the true purpose of the allotment was to benefit Mustaq. I address first the issue of the allotment having been done at an undervalue.

(3) Shares were issued at an undervalue

(A) CHEE'S EVIDENCE

218 In Chee's first report dated 20 April 2020 ("Chee's First Report"), he opined that as at 5 January 1995, the fair value range per share was $30.70 to

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277 See AEIC of Owen M Hawkes at OH-2 (Report dated 20 April 2020); 2nd AEIC of Owen M Hawkes at OH-3 (Reply Report dated 4 August 2020); AEIC of Mark Collard at MC-2 (Report dated 4 August 2020); AEIC of Chee Yoh Chuang at CYC-2 (Report dated 20 April 2020), CYC-3 (Second Report dated 4 August 2020); Supplementary AEIC of Chee Yoh Chuang at CYC-4 (Third Report dated 21 September 2020); 2nd Supplementary AEIC of Chee Yoh Chuang at CYC-5 (Fourth Report dated 5 October 2020).

278 PCS 1158 at paras 597–628; PCS 780 at paras 483–484.

279 PCS 1158 at paras 629–692; PCS 780 at paras 477–482.

$56.40.[280] Chee derived the fair value using the Market Approach. He retrieved data from two listed comparable companies operating in Singapore as at the Valuation Date (in this case 5 January 1995), *ie*, Isetan (Singapore) Limited and Metro Holdings Limited. In order to estimate the fair value range of MMSCPL, he retrieved EV[281]/EBITDA[282], EV/EBIT[283] and P/E[284] multiples for the comparable companies as at the valuation date and arrived at an opinion of the fair value range using the mid-point of the indicated valuation ranges derived from the three multiples approaches.

219 In cross-examination, the defendants challenged Chee's comparison of MMSCPL with Metro and Isetan. The defendants argued that the profile of Metro was quite different from MMSCPL's, as Metro had "evolved into a management property and investment holding company rather than focused on the retail business". In response, Chee provided the following explanation:[285]

> …When we evaluate a company or value a company based on a market valuation…there are three methods of valuation: you know, discounted cash flow and market valuation, as well as…the book value, the net asset value. So because we think that, you know, to do a discounted cash flow, we project ahead. In this case the golden rule here is we should not use hindsight…Therefore, we did not use discounted cash flow, we've chosen market value.
>
> Unfortunately, …if you're talking about a company that's exactly or very close to Mustafa, if you look at it now, yes, there's Sheng Siong for comparison, but at that point of time, Sheng Siong is not listed, so that comparative multiple is not

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280 Chee's First Report dated 20 April 2020 ("Chee's First Report") at p 23, para 2.2.4 (*see* AEIC of Chee Yoh Chuang for Suit 780 dated 25 August 2020 at Tab CYC-2).

281 EV is an abbreviation of Enterprise Value. Enterprise Value is determined as: the market value of the company's share capital plus minority interest and preferred shares plus interest bearing debt less nonoperating assets.

282 EBITDA represents Earnings Before Interest, Tax, Depreciation and Amortisation.

283 EBIT represents Earnings Before Interest and Tax.

284 P represents the share price and E represents Profit After Tax.

285 Transcript, 9 November 2020 at pp 203–206.

> available. So we look at in the market… what are the most suitable companies that can be used as a benchmark or use it as a guideline. So we look at that, Isetan and Metro were actually the closer ones…
>
> …these are the two companies that we believe are closer so we have used that when we analysed their nature of business at that point in time…While, as I said, they may not be the perfect fit but then it gives some close approximate or gives some reference. Unfortunately, we could not find any other company who is better than these two. …these two are not exactly fit, but I think, again, there is no suggestion to us that there's another company that's better than these two… We can only live with these two which are the best available, although it's not perfect.

220 I accepted Chee's explanation as being rational and sensible: as he pointed out, Isetan and Metro might not have been the perfect comparisons but these were the best options available. It should be noted that Collard too compared MMSCPL to Isetan and Metro in his report.[286]

(B) HAWKES' EVIDENCE

221 In Hawkes' expert report dated 20 April 2020 ("Hawkes' First Report"),[287] he stated that in his view, the 5 January 1995 Allotment was carried out at an undervalue because the price at which Mustaq acquired the shares ($1 per share) was lower than the value of the shares as at 5 January 1995 by $3.01.[288] Hawkes found, therefore, that Mustaq had acquired the further shares in MMSCPL at a discount of 75.04%.[289] This was not challenged by the defendants in cross-examination.[290]

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286 Report dated 4 August 2020 ("Collard's Report") at p 61, para 6.4.2.

287 See AEIC of Owen M Hawkes in Suit 1158 dated 20 April 2020 at Tab OH-2.

288 Hawkes' First Report at para 3.7.1.

289 PCS 1158 at para 604; Hawkes' First Report at para 3.7.2.

290 Transcript, 6 November 2020 at p 8, lines 13–20.

222 In his analysis, Hawkes adopted the Net Asset Value approach (the "NAV Approach"). Hawkes explained that the NAV approach was a conservative approach to estimating the value of the MMSCPL shares acquired in the allotment. While the assets and liabilities in the financial statements of MMSCPL would generally be stated at values at which they are expected to be realized or paid out in future (*ie*, their realisable values), there were exceptions to this assumption, which resulted in limitations to the NAV Approach when calculating the value of MMSCPL. The NAV approach was likely to result in a lower valuation as compared to an approach that looks at future earnings and expenses (*eg*, the Discounted Cash Flow Approach).[291]

223 According to Hawkes' calculations, the NAV of the acquired shares was $2,804,298.60, whereas the consideration paid by Mustaq for the shares was only $700,000. The deficit in consideration paid was therefore $2,104,298.60, which worked out to an estimated deficit of $3.01 per share.[292]

224 While the size of the undervalue estimated by Hawkes ($3.01) was smaller than the size of the undervalue estimated by Chee, I accepted that this was because Hawkes had, in his own words, adopted a more "conservative approach".[293]

(C) COLLARD'S EVIDENCE

225 Collard's evidence was also consistent with that of Hawkes and Chee.

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291 Hawkes' First Report at para 3.2.2.

292 Hawkes' First Report at para 2.3.2.

293 Hawkes' First Report at paras 2.1.1 and 3.2.2.

226 In Collard's expert report dated 4 August 2020 ("Collard's Expert Report"),[294] he stated that apart from the NAV Approach adopted by Hawkes, it was also appropriate to use either the Adjusted Net Asset Value approach ("Adjusted NAV Approach") or the Sum of the Parts Approach ("SOTP Approach") to obtain the fair market value of the shares as at the date of the 5 January 1995 Allotment.[295] Using these two approaches, Collard found that the fair market value was $8.06 and $10.95 respectively.[296]

227 In cross-examination, just as they did with Chee, the defendants challenged Collard's calculations on the basis that he had compared MMSCPL to companies such as Isetan and Metro.[297] The defendants argued that comparisons to such companies had to be eschewed, because unlike them, MMSCPL was really only a supermarket and department store business.[298] In response, Collard provided a similar explanation to Chee's:[299]

> In 40 years of doing valuations, I will have done hundreds. I can probably count four or five occasions where I have found truly comparable companies. Unlike Mr Reid, having not found truly comparable companies, that does not mean you don't do a multiples-based valuation. It means you make adjustments…
>
> I said [these companies] are not truly comparable but they provide a suitable benchmark which can be used to arrive at a valuation.

228 As with Chee's explanation, I found Collard's explanation to be rational and sensible. As Collard pointed out, the point of the comparisons was to

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294 See AEIC of Mark Collard in Suit 1158 dated 4 August 2020 at Tab MC-2.

295 Collard's Expert Report at para 2(c).

296 Collard's Expert Report at para 2.

297 Collard's Expert Report at Appendix F.

298 Transcript, 5 November 2020 at p 193, line 21 to p 194, line 3.

299 Transcript, 5 November 2020 at p 194, lines 4–15.

provide a benchmark which could then be used to arrive at a valuation, with appropriate adjustments being made along the way. I should point out, moreover, that there was no evidence adduced by the defendants to show that there were other, better comparisons available which Chee and Collard failed to take account of.

(D) THE DEFENDANTS' ALLEGATIONS ABOUT MMSC'S "PRACTICE" OF ISSUING SHARES AT PAR

229 In the course of cross-examining the plaintiffs' expert witnesses, the defendants' counsel suggested that MMSCPL's practice had always been to issue the share of $1 based on par value,[300] and that the shareholders had agreed to this allotment at the par value of $1.[301] I did not find found this suggestion in any way helpful. For one, there was no evidential basis at all for the suggestion of a "consistent" internal practice of issuing shares at par – or of an agreement by the shareholders to the 5 January 1995 Allotment being done at par.[302]

230 In any event, the defendants' allegation of an internal "practice" of issuing shares at par did not actually assist their efforts to resist the minority oppression claims. In this connection, the case of *Re Sunrise Radio Ltd; Kohil v Lit and others* [2009] EWHC 2893 (Ch) ("*Sunrise Radio*") is instructive. In that case, the petitioner held a 15% shareholding in the company. In 2005, the company issued more shares at par. The petitioner did not subscribe to the shares, which were allotted at par to the majority shareholder – a company (ABC Ltd) owned by L, one of the company's directors. The effect of the allotment to ABC Ltd was to dilute the petitioner's shareholding to 8.33%. The

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300 Transcript, 5 November 2020 at p 99, lines 7–9 (Collard); Transcript, 9 November 2020 at p 17, line 22 to p 18, line 1 (Chee).

301 Transcript, 5 November 2020 at p 185, line 24 to p 186, line 4.

302 PCS 1158 at para 622.

petitioner brought a minority oppression claim against L and the other directors, claiming that the rights issue and increase in share capital had unfairly prejudiced her interests as a minority shareholder and seeking an order for the respondents to buy her out. At an EOGM in 2007, the authorised share capital of the company was increased, and the directors were authorised to disapply the pre-emption rights in the company's articles of association. In the minority oppression proceedings, one of the matters in dispute was whether the petitioner had been unfairly prejudiced by the 2005 share allotment and the 2007 increase in share capital. The English High Court answered this question in the petitioner's favour, holding that she had indeed been unfairly prejudiced by (*inter alia*) the 2005 share allotment and the 2007 increase in share capital. The court held that while a rights issue might be appropriate even if the foreseeable or inevitable effect was the dilution of the percentage holding of a minority shareholder or of the value of that shareholding, such rights issue must nonetheless be priced at a level which was fair to all. Citing Hoffman J's judgment in the seminal case of *Re a company* (No 007623 of 1984) [1986] BCLC 362, the court highlighted (at [79]) that the power to allot shares was a fiduciary one, and the decision as to whether or not capital needed to be raised was separate from the price at which the shares should be offered. Directors had a duty to act even-handedly and fairly in considering what price could and should be extracted from those willing and able to subscribe to a share offer, and should not unthinkingly issue shares at par. The impact of this duty became all the more acute "if the board members, or those in a position to control or influence them, stand to benefit from the exercise of the power in a particular way" (at [95]).

231 In sum: I found the evidence given by the plaintiffs' experts to be credible and I accepted that the 5 January 1995 Allotment was carried out at an undervalue.

(4) No commercial reason for the 5 January 1995 Allotment

(A) BACKGROUND

232 As to the lack of a commercial reason for the 5 January 1995 Allotment, it should first be pointed out that based on MMSCPL's financial statements for the year ended 1994 and for the year ended 1995,[303] it was not disputed that the company had enough funds to declare a dividend of $1.314 million for the year ended 1994 and $1.606 million for the year ended 1995. The company also paid out directors' fees totalling $700,000 for the year ended 1994 and $1.2 million for the year ended 1995. The financial statements also showed that MMSCPL had fixed deposits totalling more than $22 million in both the year ended 1994 and the year ended 1995.

233 It should additionally be pointed out that although the defendants alleged that the 5 January 1995 Allotment had a genuine commercial purpose (*ie*, to raise funds for MMSCPL's business growth), there was no documentary evidence of Mustaq's and Ishret's discussions or deliberations in this respect. In response to an order for specific discovery of minutes of meetings, management accounts and/or other documentation evidencing and/or reflecting and/or recording the use of the $700,000 raised from the 5 January 1995 Allotment, the defendants affirmed affidavits saying they had no documents falling within this description other than the documents previously discovered.[304]

(B) CHEE'S EVIDENCE

234 It was against this backdrop that Chee gave evidence – which was unchallenged – that there was no requirement for MMSCPL to raise funds using

303 JCB Vol 1 at pp 397–450.

304 PCS 1158 at paras 658–659.

the 5 January 1995 Allotment.[305] Even assuming for the sake of argument that there was a need to raise funds, as Chee pointed out, this commercial purpose could have been achieved by allotting the shares in proportion to each shareholder's shareholding in MMSCPL.

235 In Chee's First Report, he observed that in FY1995, a total sum of $14,322,482 was spent on developing the Mustafa Centre, which sum included interest paid on a loan taken to finance the property development costs. However, MMSCPL appeared to have had ample funds to cover those payments. During the same year, dividends amounting to $1,314,000 were also paid, which indicated that MMSCPL had excess funds available for distribution to its shareholders. Further, as at 30 June 1995, MMSCPL's cash and bank balances had increased by $1,315,964 in total (from $149,052 as at 30 June 1994 to $1,465,016 as at 30 June 1995), meaning that even without the funds of $700,000 obtained from the 5 January 1995 Allotment, MMSCPL's cash funds would have increased by $615,964 – even taking into account the funds required and utilised for the TOP of Mustafa Centre.[306]

236 Under cross-examination, Chee was firm in maintaining that at the material time in 1995, MMSCPL had sufficient cash, even without the funds raised through the 5 January 1995 Allotment. His evidence struck me as being fair and balanced. Based on the financial statements for the year ended 30 June 1994 (dated 28 December 1994),[307] which Chee accepted as a "snapshot" of MMSCPL's financial position before the 5 January 1995 Allotment,[308] Chee

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305 PCS 780 at para 477.

306 Chee's First Report at paras 2.1.21–2.1.24.

307 JCB Vol 1 at p 397.

308 Transcript, 9 November 2020 at p 54, lines 14–17.

accepted that the gearing ratio was high.[309] He also accepted that at that point in time, MMSCPL had many debts, and increasing the capital would be something that "the banks take into account favourably". However, as he pointed out:[310]

> Q: From a bank's perspective, again, increasing the capital would be something that the banks take into account favourably?
>
> A: I do not disagree. As I said, *bank always like to see a healthier, you know, balance sheet, higher capital, because that would give the banks additional comfort, but in respect of this allotment, the very question is why is it allotted only to one person.*
>
> [emphasis added]

237 This was in my view a telling point: if the true purpose of the 5 January 1995 Allotment had been to increase MMSCPL's share capital, this purpose could have been achieved by offering the new shares to all shareholders for subscription in the same proportion as their shareholdings – *in compliance with Article 7(a) of the MMSCPL Constitution*. There was simply no good reason for conducting the share allotment in such a manner that it breached the MMSCPL Constitution and disadvantaged the shareholders other than Mustaq, by diluting their interests in the company.[311]

238 Based on the MMSCPL 1995 accounts,[312] Chee also accepted that in 1995, there was a property revaluation reserve of $35.98 million, which was provided for because of the completion of the Mustafa Centre.[313] He accepted that there was an amount of $35.98 million transferred due to the revaluation of

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309 Transcript, 9 November 2020 at p 55, lines 19–22.

310 Transcript, 9 November 2020 at p 57, lines 5–13.

311 Chee's First Report at para 2.1.24.

312 JCB Vol 1 at p 422.

313 JCB Vol 1 at p 432; Transcript, 9 November 2020 at p 58.

Mustafa Centre during the year, and that the equity position for the financial year 1995 was enhanced by the revaluation of the Mustafa Centre in May 1995.[314] He also accepted that there was a negative movement of $821,979 during 1995, which represented provision made for potential exchange rate losses for the year 1995 (though he queried why the company would have these exchange rate losses to begin with[315]). When the defendants then sought to suggest that there was a need for capital expenditure of $25 million in the years 1993 to 1994, and that the $700,000 cash injection from the share allotment did "increase capital" and "presented a better financial picture to the bank", Chee's response was as follows:[316]

> A: …definitely I think by increasing capital, it's always good to the company…The point that I make in my report is that because the argument here is giving company more cash it help, but we look at the cash flow of the company, the cash balances, actually even without the $700,000, that is still sufficient. *So why the company want to allot shares to disadvantage of certain shareholders? The shares issued to all the shareholders proportionately then there wouldn't be that concerned.*
>
> …
>
> A: …I do not disagree that by increasing the capital by 700,000, to a certain extent it neutralised the losses that's suffered by the company because of the foreign exchange speculation, right. As to the other question, I think, as I said, you know, the company has actually sufficient cash flow to meet that. So even without $700,000, it still had enough cash to go on. …
>
> [emphasis added]

(C) COLLARD'S EVIDENCE

239 Collard's evidence was largely consistent with Chee's.

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314 JCB Vol 1 at p 440; Transcript, 9 November 2020 at p 59, lines 4–24.

315 Transcript, 9 November 2020 at p 60, line 7 to p 61 line 11.

316 Transcript, 9 November 2020 at p 67, line 21 to p 69, line 13.

240 According to Collard's expert report, between 1992 and 2001, MMSCPL was a profitable company that paid out returns to its shareholders and directors.[317] Like Chee, Collard opined that the 5 January 1995 Allotment was not needed in the commercial interests of MMSCPL: as at the time of this allotment, MMSCPL was generating profits; MMSCPL had just declared a final dividend of $1.3 million for the year ended 30 June 1994; the funds required to pay for the building of the Mustafa Centre had already been arranged with a bank; MMSCPL had paid out $700,000 in directors' fees to the four shareholders in 1994, and was able to pay out even higher directors' fees of $1.2 million in 1995.[318]

241 At trial, when referred to the financial accounts from 30 June 1994 (about six months before the 5 January 1995 Allotment),[319] Collard agreed that they showed an exchange fluctuation reserve of $5,782,016.61. He explained that this meant that the value of the assets which the company held overseas had been marked down from the previous year.[320] He agreed that this exchange fluctuation reserve exceeded the then share capital of $4.7 million,[321] but also noted that the accounts did not show whether (in respect of these overseas assets) the company had "made losses at whatever the local currency value is". As to the property revaluation reserve of $3.3 million, Collard explained that while it was not a "crystallised gain" in the sense of being cash, it was still a "gain" and was "marked against the value of a tangible asset".[322] Based on

317 Collard's Expert Report at para 2.2.4.

318 Collard's Expert Report at para 2.3.3.

319 JCB Vol 1 at p 405.

320 Transcript, 5 November 2020 at p 112, lines 19–25.

321 Transcript, 5 November 2020 at p 112, line 7 to p 113, line 17.

322 Transcript, 5 November 2020 at p 114, lines 17–19.

MMSCPL's position at that time, the net profit after tax was about $1,026,934 (for the company) and $951,276 (for the group).[323] When asked whether he agreed that the $700,000 raised in the 5 January 1995 Share Allotment would "improve the equity of MMSCPL", Collard's response was:[324]

> [The 5 January 1995 Allotment] would … add $700,000 to the equity. That's all it does…

242 More fundamentally as Collard highlighted in his expert report, the 5 January 1995 Allotment came during the financial year ended 1995 when the directors' fees paid by MMSCPL rose to $1.2 million, and when MMSCPL had also paid out $1,762,950 in a dividend.[325] Indeed, between 1992 and 1996, MMSCPL had paid out dividends totalling more than $7.2 million.[326] One possible inference to be drawn from such evidence was, surely, that the company was not in any real need of cash as at 5 January 1995. The defendants tried to deflect this by suggesting in cross-examination that the dividends declared by the company "don't actually get paid out": according to the defendants' counsel, the amounts were "recorded into the general ledger of the directors and that then makes up the amounts due to and from directors at the end of each financial year".[327] In respect of the dividends of $1,762,950 paid out in 1995, counsel even suggested to Collard that the dividend payment was "actually used towards the subscription of shares".[328]

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323 JCB Vol 1 at p 406.

324 Transcript, 5 November 2020 at p 116, lines 19–23.

325 Collard's Expert Report at paras 2.3.3(d) and 7.5.1(d)(i).

326 Collard's Expert Report at para 2.2.1.

327 Exhibit 1158-D3; Transcript, 5 November 2020 at p 131, lines 1–5 and 19–24.

328 Transcript, 5 November 2020 at p 127, lines 8–14.

243 With respect, I found these suggestions startling, not least because they were made without any evidential basis. In fact, when the defendants' counsel had sought to suggest during Collard's cross-examination that the practice of dividend payments being "recorded into the general ledger of the directors" and then being used to "subscribe for the allotment of shares" could be seen in the context of the May 1993 share allotment, it was pointed out by the Suit 1158 plaintiffs' counsel that the company's "general ledgers" for 1993 were not in evidence; and to this, the defendants' counsel had responded by stating that the records were "no longer available", but that the basis for her suggestion "is that that is the practice".[329]

244 In any case, as Collard noted in his reply to counsel, the assumption he was asked to make – namely, that the company would declare dividends and record the amounts in the general ledger without paying them – was an "odd" one. As Collard put it, "a dividend is a dividend" at the end of the day.[330]

245 I add that although the defendants' counsel expended a fair amount of time asking Collard about the report of their own expert Mr Tim Reid, Reid was never called as a witness, and his AEIC was – like the AEICs of the defendants themselves – expunged from the record. It was not permissible, therefore, for the defendants to attempt to use Collard's responses in cross-examination to introduce onto the record evidence from Reid's AEIC.

246 In *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 ("*The Wellness Group*"), the High Court held (at [186]) that –

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329 Transcript, 5 November 2020 at p 132, lines 10–17.

330 Transcript, 5 November 2020 at p 131, lines 16–18.

> …there can be no commercial reason for a rights issue unless (a) the company is in need of funds, and (b) raising such funds via a rights issue, rather than other means of financing such as bank loans, is a reasonable option.

247 In the present case, based on the evidence adduced, the plaintiffs were able to make out at least a *prima facie* case that there was no commercial reason for the 5 January 1995 Allotment. The evidence did not show any need of funds as at 5 January 1995; in fact, as Chee and Collard observed (above), quite the contrary. Further, even if there had been a need for funds, raising such funds via the allotment of 700,000 shares at par to Mustaq alone – rather than other means of financing – was not a reasonable option.

(5) The dominant purpose of the 5 January 1995 Allotment

248 In *The Wellness Group*, the High Court also pointed out that in practice, "where there is no commercial reason for a rights issue, it has invariably been found that the purpose of the rights issue has been to dilute non-subscribing shareholders"; and that even if there were good commercial reasons for a rights issue, it was a fact that every rights issue would dilute the shareholders who did not subscribe to it (at [185] and [188])). A rights issue would be unfair if its dominant purpose were to dilute the non-subscribing shareholder: such a purpose "would be an improper purpose which the court [would] not permit" (at [188]). On the issue of proof of such a purpose, the High Court noted that –

> The intention to dilute non-subscribing shareholders often has to be inferred. ..(T)he absence of commercial reasons for the rights issue is one obvious indicator of such an intention. Another strong indicator is a low issue price where there is no good commercial reason for the low price. This is because the issue price is correlated to the number of shares to be issued and consequently the dilutive effect of the rights issue. The lower the issue price, the higher the number of shares to be issued, and the greater the dilutive effect on the non-subscribing shareholder. Absent some good reason, a low price would suggest an intention to dilute non-subscribing shareholders.

249 In this case, I found that the 5 January 1995 Allotment was done at an undervalue; and that there was no commercial reason for it. It was carried out in a manner that breached the MMSCPL provisions, and it had the effect of diluting both Mustafa's and Samsuddin's shareholdings while increasing Mustaq's both in terms of the percentage shareholding and value. The increase in Mustaq's shareholding gave him very tangible advantages. As Collard noted in his expert report, with his 34% shareholding prior to the allotment, Mustaq would have needed the support of either Mustafa or Samsuddin (each of whom had at least 25%) to pass a normal resolution.[331] Even combining his shareholding with Ishret's, prior to the allotment, Mustaq would have had – together with Ishret – only 48.9%. The position shifted dramatically following the 5 January 1995 Allotment. Post 5 January 1995, Mustaq – together with Ishret – held 55.6% – which effectively gave him day-to-day control of MMSCPL. Conversely, whereas Mustafa and Samsuddin were each able as individual shareholders to block special resolutions prior to 5 January 1995, the diminution in their percentage shareholding post 5 January 1995 meant that each of them was no longer able as an individual shareholder to overturn special resolutions; and each would have needed the support of the other *and of Ishret* to overturn any decision made by Mustaq.[332]

250 In terms of the value of their shareholding, Mustaq's shareholding saw its value increase by $5 million; and his combined shareholding with Ishret's (as a married couple), by $8.5 million. Conversely, the value of Mustafa's and Samsuddin's percentage shareholding fell by nearly $2 million each.[333] I agreed with the plaintiffs that the increase in the value of Mustaq's shareholding was

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[331] Collard's Expert Report at para 5.2.1.2.

[332] Collard's Expert Report at para 5.2.1.3.

[333] Collard's Expert Report at para 5.2.3.

not merely dramatic; it was in fact quite disproportionate to his outlay of $700,000 for the additional shares.

251 The table below serves to illustrate the stark difference between Mustaq's shareholding position as well as Mustaq's and Ishret's combined shareholding position on the one hand, and Mustafa's and Samsuddin's shareholding position on the other hand, before and after the 5 January 1995 Allotment:

Name	Number of shares held in MMSCPL before 5 January 1995 allotment	Proportion	Number of shares held in MMSCPL following 5 January 1995 allotment	Proportion
Mustaq	1,598,700	34.01%	2,298,700	42.57%
Samsuddin	1,210,200	25.75%	1,210,200	22.41%
Mustafa	1,191,700	25.36%	1,191,700	22.07%
Ishret	699,400	14.88%	699,400	12.95%
Total	4,700,000	100%	5,400,000	100%
Mustaq and Ishret (combined)	2,298,100	48.89%	2,998,100	55.52%

252 Having regard to the evidence set out above, I found that the plaintiffs were able to make out at least a *prima facie* case that the dominant purpose of the 5 January 1995 Allotment was to dilute Mustafa's and Samsuddin's shareholding while increasing Mustafa's. Chee put it most aptly when in cross-examination, he asked (perhaps rhetorically): "…*but in respect of this allotment, the very question is why is it allotted only to one person?*"

Summary of findings in respect of 5 January 1995 Allotment

253 To sum up, I found that both sets of plaintiffs were able to establish at least a *prima facie* case that the 5 January 1995 Allotment was carried out in a manner which breached the MMSCPL Constitution (including Article 7, which required an Offer Notice to be given to Mustafa and Samsuddin); it was carried out at an undervalue and for no commercial reason; its dominant purpose was to dilute Mustafa's and Samsuddin's shareholding while benefiting Mustaq's shareholding position. In the circumstances, there was at least a *prima facie* case of a "visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" (*Sakae (CA*) at [81]).

The 11 December 2001 Allotment

254 I next address the 11 December 2001 Allotment. It will be remembered that by this date, Mustafa had passed away intestate.[334] He passed away on 17 July 2001, although the Letters of Administration (LA) in respect of his estate were obtained by Mustaq only on 24 November 2003.

[334] Transcript, 15 October 2020 at p 23, lines 14–18.

255 The 11 December 2001 Allotment involved the issuance of 4,340,000 MMSCPL shares at $1 each to Mustaq. As with the 5 January 1995 Allotment, the other shareholders of MMSCPL did not receive any shares in this allotment. Both the Suit 1158 and the Suit 780 plaintiffs alleged that the 11 December 2001 Allotment came about through Mustaq, who – either acting by himself or in concert with Ishret/Shama/Osama and/or Iqbal wrongfully caused MMSCPL to issue the 4,340,000 shares.[335] This was done in breach of the MMSCPL Constitution.[336] The plaintiffs asserted that the 11 December 2001 Allotment was also carried out at an undervalue and was not in the commercial interests of MMSCPL.[337] As a result of the 11 December 2001 Allotment, Mustaq's shareholding increased from 42.57% to 61.25%; Ishret's shareholding decreased from 12.95% to 8.74%; Samsuddin's shareholding decreased from 22.07% to 14.89%; and Mustafa's (or rather, his estate's) shareholding decreased from 22.41% to 15.12%.

Documents relating to the 11 December 2001 Allotment

256 The following documents were brought up in relation to the 11 December 2001 Allotment.

257 First, there was a document which the defendants alleged to be a notice of an EOGM to be held on 11 December 2001, dated 27 November 2001 ("27 November 2001 Notice of EOGM").[338]

335 SOC 1158 at para 48; SOC 780 at para 61.

336 SOC 1158 at para 49; SOC 780 at para 62.

337 SOC 1158 at paras 50–51; SOC 780 at paras 65–66.

338 JCB Vol 3 at p 2624.

258 Second, there was a document which the defendants alleged to be the minutes of the EOGM on 11 December 2001 ("11 December 2001 EOGM Minutes"),[339] ostensibly signed by Mustaq, Samsuddin and Ishret.

259 Third, there was a Notice of Resolution in Form 11 dated 11 December 2001 and registered with ACRA on 21 December 2001 ("21 December 2001 Notice of Resolution").[340] The plaintiffs did not dispute the authenticity of this document.[341]

260 Fourth, there was a Return of Allotment of Shares in Form 24 dated 11 December 2001, stating that 4,340,000 shares were allotted to Mustaq at $1 each for cash ("11 December 2001 Return of Allotment of Shares").[342]

Oral testimony and affidavit evidence

(1) Ayaz's evidence

261 Ayaz disputed the authenticity of the 27 November 2001 Notice of EOGM[343] and the 11 December 2001 EOGM Minutes[344]. He did not accept that the signature shown as Samsuddin's signature on the 11 December 2001 EOGM Minutes was genuine.

339 JCB Vol 3 at p 2630; Exhibit 780-D6.

340 JCB Vol 3 at p 2632.

341 WongP 8 December 2020 Letter at p 7 (row 72). There appears to be a typographical error in this letter as it refers to the Shareholders' Resolution as being at JCB Vol 3 at p 2630, when it is actually at JCB Vol 3 at p 2632.

342 JCB Vol 5 at pp 3680–3682.

343 Ayaz 1158 AEIC at para 357.

344 Ayaz 1158 AEIC at paras 364–365.

262 In his AEIC, Ayaz gave evidence that at the 4 September 2016 Meeting, he had questioned Mustaq about why the Suit 1158 plaintiffs were not informed about the 11 December 2001 Allotment and why they were not offered the shares. Mustaq's reply was that the Suit 1158 plaintiffs "would not have had money to buy those shares".[345] This statement, according to Ayaz, was untrue. Mustaq knew that at the material time, MMSCPL owed the Mustafa Estate $1,049,499.56, which amount could have been utilised by the Mustafa Estate to buy the shares issued in the 11 December 2001 Allotment.[346] Ayaz did not accept the suggestion made by the defendants' counsel in cross-examination that it was the Mustafa Estate which at the material time owed MMSCPL an amount of more than $50,000 by reason of MMSCPL's payment of estate duty on the estate's behalf.[347]

(2) Fayyaz's evidence

263 Fayyaz disputed that Samsuddin was given any notice of the 11 December 2001 EOGM. Like Ayaz, he too disputed the authenticity of the 11 December 2001 EOGM Minutes[348] which the defendants relied on as evidence of the agreement by all registered shareholders to the 11 December 2001 Allotment. *Inter alia*, Fayyaz pointed out that the 21 December 2001 Notice of Resolution was stated to be signed only by Mustaq.[349]

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345 Ayaz 1158 AEIC at paras 370–371; PBOD Vol 1 at p 57 (timestamp 01:52–02:15); Transcript, 16 October 2020 at p 36, lines 12–18.

346 Ayaz 1158 AEIC at para 372.

347 Transcript, 15 October 2020 at p 46, lines 1–17; JCB Vol 1 at p 85.

348 Fayyaz 780 AEIC at para 179.

349 Fayyaz 780 AEIC at para 178.

264 At trial, Fayyaz agreed that the signature shown under Samsuddin's name in the 11 December 2001 EOGM Minutes "[l]ooks like" Samsuddin's signature,[350] but he disputed that Samsuddin had agreed to the share allotment. According to Fayyaz, if Samsuddin had known that this document recorded the dilution of his shareholding, he would not have signed it and/or he would have discussed it with Fayyaz.[351]

265 As for the Suit 780 plaintiffs' allegation about the financial assistance which Mustaq received from MMSCPL for the 11 December 2001 Allotment,[352] Fayyaz filed a supplemental AEIC in which he stated that given that there were monies owing by MMSCPL's directors (including Mustaq) to MMSCPL as at the time of the 11 December 2001 Allotment, this meant Mustaq would have had financial assistance from MMSCPL to subscribe to the shares allotted in the 11 December 2001 Allotment.[353]

The plaintiffs' submissions

266 The plaintiffs disputed the authenticity of the 27 November 2001 Notice of EOGM[354] and the 11 December 2001 EOGM Minutes.

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350 Transcript, 22 October 2020 at p 68, lines 4–15.

351 Transcript, 22 October 2020 at p 70, lines 4–9.

352 SOC 780 at para 68A.

353 AEIC of Fayyaz Ahmad for Suit 780 dated 21 September 2020 ("Fayyaz 780 Supplemental AEIC") at para 67; see also transcript, 26 October 2020 at p 35, line 15 to p 36, line 5.

354 WongP 8 December 2020 Letter at p 7 (row 70); WongP 8 December 2020 Letter at p 8 (row 73). There appears to be a typographical error in this letter as it refers to the Shareholders' Resolution as being at JCB Vol 3 at p 2632, when it is actually at JCB Vol 3 at p 2630.

267 Adopting a position similar to that which they had taken on the 5 January 1995 Allotment, the Suit 1158 plaintiffs submitted that the evidence established a *prima facie* case of the following:

(a) First, the 11 December 2001 Allotment was conducted in breach of Articles 7 and 57 of the MMSCPL Constitution[355].

(b) Second, the 11 December 2001 Allotment was done at an undervalue.[356]

(c) Third, the 11 December 2001 Allotment was not needed in MMSCPL's commercial interests.[357]

268 The Suit 780 plaintiffs submitted that the evidence established a *prima facie* case of the following:

(a) First, Samsuddin had not agreed to the 11 December 2001 Allotment. The plaintiffs disputed the authenticity of the 27 November 2001 Notice of EOGM and the 11 December 2001 EOGM Minutes.[358] There were inconsistencies between the documents originally lodged by MMSCPL with ACRA and the documents subsequently produced by the defendants for the trial.

355 PCS 1158 at paras 697–739.

356 PCS 1158 at paras 740–754.

357 PCS 1158 at paras 755–799.

358 PCS 780 at paras 500–505.

(b) Second, there was no commercial justification for the 11 December 2001 Allotment and it was oppressive: the power of MMSCPL to issue shares was not exercised properly.[359]

(c) Third, MMSCPL unlawfully gave financial assistance to Mustaq to subscribe for the shares issued under the 11 December 2001 Allotment.[360]

The defendants' submissions

269 As with their pleaded case in respect of the 5 January 1995 Allotment, the defendants' pleaded case in respect of the 11 December 2001 Allotment also depended in the main on the alleged existence of the 1973 Common Agreement. The defendants admitted that there was (again) no physical meeting actually held on 11 December 2001. According to the defendants, the Notice of EOGM was served on Samsuddin, but the 1973 Common Understanding meant that this was "a mere formality", since Samsuddin would have understood that his shares were held on trust for Mustaq and that Mustaq was the sole decision-maker in MMSCPL.[361] Samsuddin, Mustaq and Ishret had signed the 11 December 2001 EOGM Minutes, which meant that all the "listed shareholders" of MMSCPL – who held more than 75% of the company's shares – had agreed to the 11 December 2001 Allotment.[362]

270 As for the Mustafa estate, the defendants' pleaded case was that Mustafa having passed away, the Mustafa estate was not a "listed shareholder" of

359 PCS 780 at paras 506–526.

360 PCS 780 at paras 527–537.

361 1158 Defence at para 89; 780 Defence at para 93.

362 DCS 1158 at paras 422–428; DCS 780 at paras 559–563.

MMSCPL as at 11 December 2001. There was "no need for [Mustaq] to consider the Mustafa Estate, and consequently, the [Suit 1158] Plaintiffs for the purpose of the 2001 Share Allotment" because pursuant to the 1973 Common Understanding and the 2001 Common Understanding, Mustaq was the beneficial owner of all the shares held in Mustafa's name anyway by virtue of either a constructive trust or a resulting trust.[363]

271 The defendants also pleaded that the 11 December 2001 Allotment was in the commercial interest of MMSCPL because the company needed to fund the expansion of Mustafa Centre at that time.[364] They denied that Mustaq received any financial assistance from MMSCPL for the 11 December 2001 Allotment.[365]

My findings

(1) The 11 December 2001 Constitution was conducted in breach of the MMSCPL Constitution

272 From the defendants' pleadings, it was clear that their pleaded defence in respect of the 11 December 2001 Allotment was premised on the 1973 Common Understanding. In respect of Samsuddin, it was alleged that pursuant to the 1973 Common Understanding, the notice given to him of the 11 December 2001 EOGM was a mere formality because he was at no point concerned with, nor did he object to or even query, the allotment: he was aware that the allotment was unilaterally decided by Mustaq and paid for by him. It was also pursuant to the 1973 Common Understanding, as well as the 2001

363 1158 Defence at para 90; 780 Defence at para 95.

364 DCS 1158 at paras 436–446; DCS 780 at paras 564–576.

365 DCS 780 at paras 577–582.

Common Understanding, that Mustaq had no need to consider the Mustafa estate for the purposes of the 11 December 2001 Allotment, since the shares held in Mustafa's name were really his (Mustaq's) in any event.

273 The defendants having taken the above position, it followed that once Mustaq's story of the alleged 1973 Common Understanding and the 2001 Common Understanding was found to be a fabrication, their pleaded case in respect of the 11 December 2001 Allotment essentially fell apart. Without the 1973 Common Understanding and the 2001 Common Understanding, the defendants had no basis for alleging that the notice given to Samsuddin of the 11 December 2001 EOGM was a mere "formality" and/or that Samsuddin would not have queried or objected to the allotment. In a similar vein, they also had no basis for alleging that Mustaq was the true owner of the shares held in Mustafa's name and that he thus had no need to consider the Mustafa estate for the purposes of the 2001 share allotment. As with the 5 January 1995 Allotment, the defendants did not actually plead in the alternative that the 11 December 2001 Allotment had in any event been conducted in compliance with the MMSCPL Constitution. In the interests of completeness, however, I address below the arguments raised.

274 First, in respect of the Mustafa estate, there was – indisputably – no Offer Notice sent to the Suit 1158 plaintiffs. At trial, the defendants tried to suggest that the absence of an Offer Notice in this instance was explained – and presumably excused – by the fact that at the time of the 11 December 2001 Allotment, the Mustafa estate had not yet been registered as the holder of the shares previously held by Mustafa: consequently, according to counsel, "there was no party to be given notice in relation to those shares".[366]

366 Transcript, 15 October 2020, at p 30 lines 1–10.

275 Counsel's suggestion was rejected by Ayaz;[367] and I found no merit in it. In the defence they filed in Suit 1158, the defendants admitted that upon Mustafa's death on 17 July 2001, "Mustafa's shares became vested in the Mustafa's Estate".[368] Mustaq would have been well aware of this, since he himself was a beneficiary of Mustafa's estate, and it was not disputed that he had held a meeting with some of the Suit 1158 plaintiffs (Khalida, Ishtiaq and Asia) on 20 July 2001 precisely for the purpose of discussing how Mustafa's estate should be managed. Further, as the Suit 1158 plaintiffs pointed out, there was no evidence as to any urgent or pressing reason why the share allotment had to be carried out on 11 December 2001 before the Mustafa estate had been formally registered as the holders of Mustafa's shares: Ayaz said as much in his AEIC, and his evidence on this score was not refuted. Given these circumstances, the decision by Mustaq and Ishret to proceed with the allotment of 4,340,000 shares to Mustaq without any notice to the Suit 1158 plaintiffs was a "visible departure from the standards of fair dealing" (*Sakae (CA)* at [81]).

276 In any event, in filing their defence in Suit 1158, the defendants did not plead that the reason why no notice of the allotment was given to the Suit 1158 plaintiffs was because they had not been registered as the holders of Mustafa's shares. Nor, for that matter, was there any evidence adduced to show that this was the reason for the lack of an Offer Notice. In fact, the transcript from Ayaz's recording of his lengthy meeting with Mustaq on 4 September 2016 showed that when Ayaz demanded to know why the Suit 1158 plaintiffs had not been told of the 11 December 2001 Allotment and/or offered the shares, Mustaq's reply was that even if he had made them such an offer, they "would not have had

367 Transcript, 15 October 2020, at p 30 line 10.

368 Defence 1158 at para 87(b).

money to buy those shares".[369] In other words, insofar as the defendants must have instructed counsel to suggest to Ayaz that he and his family members received no Offer Notice because they were not registered shareholders as at 11 December 2001, this appeared to be very much an afterthought – and once again, an invention.

277 As to the allegation that the Suit 1158 plaintiffs would not have had money to buy shares in the 11 December 2001 Allotment, the defendants sought to expand upon this in cross-examination by suggesting to Ayaz that this was a "case of the estate owing MMSCPL over $50,000 because they [MMSCPL] paid the estate duty on the estate's behalf".[370] Quite apart from the fact that this was (again) not pleaded by the defendants as a material fact for their defence, a review of the contemporaneous documentary evidence proved the suggestion false. It was not disputed that if an offer of 4,340,000 shares at $1 per share had indeed been made proportionate to the shareholders' interests, the Mustafa estate would have needed an amount of $955,775 to participate in the share allotment. As at 26 October 2002, the Estate Duty Return forwarded to the CED by M/s Mallal & Namazie (the lawyers then advising on the administration of Mustafa's estate) recorded that an amount of $1,049,499.56 was due from MMSCPL to the Mustafa estate.[371] This Estate Duty Return was signed by Mustaq and dated 25 October 2002. On 13 December 2002, Mallal & Namazie wrote to the CED again, this time enclosing *inter alia* a letter dated 10 December 2002 and addressed to the CED from MMSCPL. This letter appeared to bear Mustaq's signature and stated that MMSCPL was writing to CED to "confirm

369 Ayaz 1158 AEIC at para 175, AA-152.

370 Transcript, 15 October 2020 at p 46, lines 9–16.

371 JCB Vol 4 Tab 315.

that the amount due from us to the abovenamed deceased *as at the date of his death on 17 July 2001* is $1,049,499.56".[372]

278 As for the payments of estate duty by MMSCPL, on the other hand, these were listed in a letter dated 7 November 2016 from Mustaq's then lawyers to the Suit 1158 plaintiffs' lawyers as comprising a payment of $800,000 to Mallal & Namazie *on 28 March 2002*; a payment of $300,000 to the CED *on 9 October 2002*; and a payment of $2,210.04 to the CED *on 26 July 2002*.

279 Having regard to the above documentation, it would appear that as at the date of the *11 December 2001* Allotment, there was in fact an amount of $1,049,499.56 due from MMSCPL to the Mustafa estate.[373] There was no basis at all for Mustaq's remark to Ayaz that he and his family would not have had money to pay for shares in the 2001 allotment even if offered those shares.

280 To sum up then: the defendants admitted that no Offer Notice was given to the Mustafa estate in respect of the 11 December 2001 Allotment. Their pleaded case – that Mustaq did not need to consider the Mustafa estate because of the 1973 Common Understanding and the 2001 Common Understanding – could not be sustained once these two "Common Understandings" were found not to exist. As for their suggestions that the Mustafa estate could not have been given an Offer Notice since it was not registered as a shareholder of MMSCPL as at 11 December 2001 and/or that it would not have had money to participate in the allotment, these suggestions were unsupported – indeed, contradicted – by the evidence.

372 JCB Vol 4 Tab 321.

373 JCB Vol 4 Tab 315.

281 Both the Suit 1158 and the Suit 780 plaintiffs also disputed the defendants' allegation that the 11 December 2001 Allotment was signed off and agreed to by all three registered shareholders (Mustaq, Ishret and Samsuddin). In this connection, although Fayyaz agreed in cross-examination that the signature shown under Samsuddin's name in the 11 December 2001 EOGM Minutes "looks like" Samsuddin's signature, I did not think this rather tentative response was enough to establish Samsuddin's agreement to the allotment.

282 In the first place, as both sets of plaintiffs pointed out,[374] there were obvious discrepancies between the 11 December 2001 EOGM Minutes which allegedly recorded the shareholders' resolution to allow 4,340,000 shares to Mustaq and the 21 December 2001 Notice of this alleged resolution which was lodged by MMSCPL with ACRA. The former purported to be signed by Mustaq, Ishret and Samsuddin. The latter showed that the alleged resolution was signed *only by Mustaq and Ishret*. No evidence was forthcoming from the defendants to explain this anomaly. In cross-examining Ayaz, the defendants' counsel tried to suggest that "*someone*" must have filled in the details of the resolution when preparing the 21 December 2001 Notice for filing and that this "someone" (referred to rather ambiguously as "they") must have put down Mustaq's and Ishret's names as the signatories to the resolution while omitting to put down Samsuddin's name.[375] Ayaz rejected this suggestion; and there was no evidential basis for it anyway: the defendants did not even reveal the identity of the "someone" who had, for reasons best known to "themselves", prepared the 21 December 2001 Notice without mentioning Samsuddin as one of the signatories to the resolution.

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374 1158 PCS at para 719; 780 PCS paras 498, 500 and 504.

375 Transcript, 15 October 2020, p 32 line 25 to p 33 line 16.

283 Second, as the Suit 1158 plaintiffs pointed out, when their lawyers wrote to the defendants' then lawyers on 17 November 2016 to request copies of all resolutions passed in MMSCLP since its incorporation, the latter did not include a copy of the 11 December 2001 resolution in its reply on 27 December 2016.[376] This was yet another anomaly, especially since the defendants' then lawyers had asserted in their reply that they had provided "all the shareholder resolutions for [MMSCPL] from 2001 to 2015". There was no explanation from the defendants as to why the 11 December 2001 resolution was not provided by their then lawyers if it was in fact already in existence.

284 Given the above suspicious circumstances, I had grave reservations as to whether the signature shown under Samsuddin's name in the 11 December 2011 resolution was in fact Samsuddin's. Further, the defendants themselves admitted that there was no actual EOGM held on 11 December 2001:[377] they claimed that documents were circulated for signature instead[378] – even though it was undisputed that Samsuddin neither read nor wrote English. This lent support to the Suit 780 plaintiffs' assertion that *even if* the signature shown under Samsuddin's name in the 11 December 2011 resolution "looks like" Samsuddin's signature, Samsuddin was simply "given the form and told to sign".[379] It should be noted that both Ayaz and Asia gave evidence in their AEICs which corroborated the Suit 780 plaintiffs' assertion, as they both stated that even if Samsuddin had signed the 11 December 2001 resolution, he would not have known or understood what it meant.

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376 Ayaz 1158 AEIC at paras 391–393.

377 Defence 1158 at para 89(b); Defence 780 at para 93(b).

378 PCS 1158 at para 121; DCS 780 at para 126.

379 Transcript, 22 October 2020 at p 70, lines 1–9.

285 For the reasons set out at [272] to [284], I found that both sets of plaintiffs were able to establish at least a *prima facie* case that there was no agreement by the shareholders to the 11 December 2001 Allotment. There was therefore at least a *prima facie* case that the conduct of the said allotment was in breach of Article 7 and Article 57 of the MMSCPL Constitution.

(2) Allotment was not for a proper purpose

286 Both sets of plaintiffs submitted that not only was the 11 December 2001 Allotment done in breach of the MMSCPL Constitution, it was not carried out for a proper purpose. As with the 5 January 1995 Allotment, the 2001 allotment too was alleged to have been done at an undervalue; it was not in the commercial interests of MMSCPL; its real purpose was to benefit Mustaq.

287 As with the 5 January 1995 Allotment, evidence was adduced from the plaintiffs' experts (Chee, Hawkes and Collard).

(A) SHARES WERE ISSUED AT AN UNDERVALUE

288 Based on the evidence adduced, I found that the shares were allotted to Mustaq at an undervalue.

289 Applying the Market Approach, Chee again derived the EV[380] /EBITDA[381] , EV/EBIT[382] and P/E[383] multiples for the comparable companies Metro and Isetan as at the valuation date 11 December 2001, in order to compute

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380 EV is an abbreviation of Enterprise Value. Enterprise Value is determined as: the market value of the company's share capital plus minority interest and preferred shares plus interest bearing debt less nonoperating assets.

381 EBITDA represents Earnings Before Interest, Tax, Depreciation and Amortisation.

382 EBIT represents Earnings Before Interest and Tax.

383 P represents the share price and E represents Profit After Tax.

the fair value range for MMSCPL shares as at 11 December 2001. Chee gave evidence that the shares in the 2001 allotment were issued to Mustaq at a "significant discount" to the fair value of the shares, because as at 11 December 2001, the fair value range per share was $107.00 to $108.20.[384]

290 Hawkes' evidence was that the price at which Mustaq acquired the shares in the 11 December 2001 Allotment was lower than the value of the shares calculated using the NAV Approach by $5.05 in 2001.[385] It will be remembered that Hawkes had explained that the NAV Approach was a more conservative approach that would likely result in lower valuation figures compared to an approach that looked at future earnings and expenses (*eg*, the Discounted Cash Flow approach).

291 Collard too gave evidence that using the Adjusted NAV Approach, he computed the fair value per share of the MMSCPL shares as $8.50 as at 11 December 2001; whereas using the SOTP Approach, the fair value per share was $10.78.[386] On either approach, therefore, it was clear that Mustaq had obtained the shares at a "steep discount".[387]

292 In the defences filed in these proceedings, the defendants merely pleaded that they denied the plaintiffs' claims about the 2001 allotment being at an undervalue and put the plaintiffs to proof.[388] In the course of the trial, having submitted no case to answer, they did not adduce any evidence of an alternative valuation of the shares. Having considered the evidence adduced by the

384 Chee's First Report at paras 2.1.27 and 2.2.4.

385 Hawkes' First Report at para 3.7.1.

386 Collard's Expert Report at para 2.

387 Collard's Expert Report at para 4.14.1.1.

388 780 Defence at para 99; 1158 Defence at para 92.

plaintiffs, I noted that although the valuation figures of the Suit 1158 experts using the more conservative NAV Approach or Adjusted NAV Approach were lower than those obtained by the Suit 780 expert using the Market Approach, all three experts were unanimous in opining that the allotment of the shares to Mustaq at par allowed him to acquire those shares at a large discount – in other words, at a considerable undervalue. I accepted the plaintiffs' submission, therefore, that the 11 December 2001 Allotment was done at an undervalue.

(B) NO COMMERCIAL REASON FOR THE 5 JANUARY 1995 ALLOTMENT

(I) *BACKGROUND*

293 As to the lack of a commercial reason for the 11 December 2001 Allotment, based on MMSCPL's financial statements for the financial year ended 30 June 2000 respectively, it was not disputed that the company paid out directors' fees totalling $4.4 million; and for the financial year ended 30 June 2001, it paid out directors' fees totalling $5.4 million. The financial statements also showed that for the year ended 30 June 2000, MMSCPL's directors owed the company a total amount of $3,359,162; and for the year ended 30 June 2001, the amount owed by the directors had risen to $14,217,978.

294 Although the defendants alleged that the 5 January 1995 Allotment had a genuine commercial purpose (*ie,* to raise funds for MMSCPL's business growth), there was no documentary evidence of Mustaq's and Ishret's discussions or deliberations in this respect. In response to an order of court issued on 18 June 2019 directing them to give specific discovery of minutes of meetings, management accounts and/or other documentation evidencing and/or reflecting and/or recording the use of the $4.34 million raised from the 11 December 2001 Allotment, the defendants affirmed affidavits saying they had

no documents falling within this description other than the documents previously discovered.[389]

295 It was against this backdrop that both Chee and Collard gave evidence that there was no commercial reason for the 11 December 2001 Allotment.

(II) CHEE'S EVIDENCE

296 In Chee's First Report, Chee noted that MMSCPL was "profitable over the years" and had accumulated profits amounting to $37.3 million as at 30 June 2002.[390] The cash flow statement in MMSCPL's FY2002 audited financial statements shows that MMSCPL and its subsidiaries (collectively, the "Group") generated a positive cash flow of S$20,377,305 in FY200224, after taking into account cash flows from the Group's operating, investing, and financing activities. Even without the funds of S4.34 million raised from the 2001 allotment, the Group's cash and cash equivalents would have increased by S$16,037,305.[391]

297 In cross-examination, Chee was brought to evidence of guarantees and security provided by Mustaq (and in some instances, by Mustaq and Ishret) to secure financing for the company. For example, the defendants' counsel referred him to an RHB loan dated 4 November 2000, with a credit line of $17.75 million, for which Mustaq and Ishret had executed joint and several guarantees.[392] With reference to the accounts for the year ended 30 June 2001

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389 HC/ORC 5355/2019 dated 18 June 2019 (filed 7 August 2019); Iqbal Ahmad's affidavit dated 26 August 2019; Mustaq's affidavit dated 15 October 2019; PCS 1158 paras 780–782.

390 Chee's First Report at para 2.1.29.

391 Chee's First Report at para 2.1.30.

392 AB Vol 5 at pp 3703, 3707 (para 6.1).

(dated 29 November 2001), it was also suggested[393] that MMSCPL was "still highly geared", and that this meant there was a risk it might not be able to meet its current liabilities within the next 12 months as they fell due, and it also had a "relatively high debt to equity ratio". Chee's response, however, made it clear that although this might appear to be the case based on "the number", MMSCPL's financial position was far from being in the parlous state depicted by the defendants:[394]

> Based on the number, yes, but if you were to compare the trend, the company's, actually, financial position has improved a lot more. In the report, it would also say that the cash flow is very, very strong, they have a lot of cash, so the question here is since they have so much cash, do they really need the 4.3 million?

298 In essence, therefore, Chee maintained his opinion that MMSCPL was doing well in the time leading up to the 11 December 2001 Allotment. Chee accepted that a large part of the cash flow for financing activities came from the term loans and land loans,[395] and that the financial statements for the year 2001 showed that the cash and cash equivalents at the end of the year was still a negative position of $28,075.508.[396] However, as Chee noted, this was an improved cash flow of $33 million, compared with the previous year.[397] In addition, in 2001, the net assets of the company were $77.3 million.[398]

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393 JCB Vol 1 at p 684; Transcript, 9 November 2020 at p 95, lines 5–12.

394 Transcript, 9 November 2020 at p 96, lines 1–10.

395 Transcript, 9 November 2020 at p 97, line 23 to p 98, line 8.

396 Transcript, 9 November 2020 at p 100, lines 5–9.

397 Transcript, 9 November 2020 at p 99, lines 18–24.

398 JCB Vol 1 at p 694.

299 In cross-examination, Chee – as well as Collard – were also referred to a number of letters from OCBC.[399] In gist, there were five letters from OCBC to MMSCPL dated (respectively) 14 June 2000, 26 September 2000, 21 October 2000, 19 May 2001 and 22 October 2002. As a preliminary point, it should be noted that Chee and Collard were cross-examined about these letters on the basis that they would subsequently be admitted as evidence through the defendants' witnesses. They were not so admitted because in the end, the defendants elected to submit no case and undertook not to adduce any evidence. Even putting aside this evidential hurdle, the documents themselves did not say what the defendants tried to suggest they said.

300 In particular, the defendants tried to suggest that the correspondence from OCBC showed that the 11 December 2001 Allotment was necessary in order to meet the bank's requirement that the company's net assets, or net worth, be not less than $80 million by 30 June 2003.[400] However, this suggestion was a misleading one. There was nothing in the letters of 14 June 2000, 26 September 2000, 21 October 2000 and 19 May 2001 which mentioned the imposition of a requirement for minimum net assets of $80 million. The figure of "not less than $80 million by 30 June 2003" actually appeared in the letter dated *22 October 2002*.[401] Logically, it was just not possible that a requirement mentioned in a letter sent in October 2002 could have become the reason for the 11 December 2001 Allotment. Indeed, as Chee pointed out in the following piquant observation:[402]

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399 Transcript, 9 November 2020 at pp 100–111; Transcript, 5 November 2020 at pp 153–163.

400 Transcript, 5 November 2020 at lines 1–5; Transcript, 9 November 2020 at lines 1–25.

401 Trial Bundle of Documents for Suit 1158 and Suit 9 ("TB") Vol 13 Tab 979 p 8859.

402 Transcript, 9 November 2020 at p 109, lines 15–19.

> No doubt, but I'm just wondering why the director had the crystal ball to look ahead for OCBC to know that OCBC going to have 80 million, so I better have the increase in the 4.3 million ahead before OCBC imposed these conditions.

301 The defendants' counsel sought to parry Chee's comment by suggesting to him that "this is because of the continuation of the review of the banking facilities and the information that was available to OCBC".[403] As Chee pointed out, however, such a suggestion really called for him to speculate as to the bank's position – which he could not do. In fact, when I queried counsel as to the basis for her suggestion, she did not identify any evidential basis for it apart from a rather amorphous and (with respect) unhelpful reference to "the bank offer letters, and how they evolved, and how there was reference to the previous bank offer letters, and also the dates".[404] The defendants' subsequent argument[405] that the terms of the 22 October 2002 letter would have been the subject of negotiations between OCBC and MMSCPL *before* 22 October 2002 was entirely speculative; and I did not see any factual or logical basis for accepting it.

302 In a similar vein, I found the HSBC letters relied on by the defendants to be of no help in showing that the 11 December 2001 Allotment was necessary to raise funds for the company's business growth. The defendants pointed *inter alia* to a letter of offer from HSBC dated 25 September 2003 for a term loan to MMSCPL for $45 million[406] and another HSBC letter dated 16 April 2004. Their argument appeared to be that HSBC had imposed requirements for Mustaq and Ishret to own a specific minimum proportion of MMSCPL's issued and paid up

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403 Transcript, 9 November 2020 at p 109, lines 20–23.

404 Transcript, 9 November 2020 at p 110, lines 1–4.

405 DCS 780 at paras 568–569.

406 AB Vol 6 at p 3892.

share capital of MMSCPL, which proportion could only be achieved via the 11 December 2001 Allotment.[407] The short answer to this, however, was that these letters did not exist at the time of the 11 December 2001 Allotment.

303 In any event, as Chee pointed out in his report, even if it were shown that MMSCPL had need of additional funds as at 11 December 2001, there was no reason why the shares in the 2001 allotment were offered only to Mustaq. If the 11 December 2001 Allotment was truly needed in order to raise funds, "the new shares should have been offered to all shareholders for subscription in the same proportion as their shareholdings at the time so that no shareholders would be disadvantaged by having their interests diluted".[408]

304 For completeness, I noted that Chee had suggested in his report that if MMSCPL required additional funds, it should not have extended substantial loans to its directors and affiliated companies during FY2001.[409] However, under cross-examination, Chee accepted that recovering these loans would not impact the equity position, and that MMSCPL was in fact benefitting from this relationship with its related companies (*eg*, the related companies provided corporate guarantees and charged their real property as security for banking facilities granted to MMSCPL).[410] In the circumstances, in determining whether there was a commercial reason for the 2001 allotment, I did not place weight on this portion of Chee's evidence.

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407 DCS 1158 at paras 444–445; DCS 780 at paras 572–573.

408 Chee's Expert Report at p 13 para 2.1.37.

409 Chee's First Report at para 2.1.35.

410 DCS 780 at para 575; Transcript, 9 November 2020 at p 129, line 17 to p 130, line 1.

(III) COLLARD'S EVIDENCE

305 Turning to Collard's evidence, Collard stated in his Expert Report that the 11 December 2001 Allotment was not needed in the commercial interests of MMSCPL because as at that date, MMSCPL was generating profits with EBITDA (adjusted for excess directors' remuneration) of $16.2 million; the funds required to pay for the building of the Mustafa Centre extension and warehouse project had already been arranged with a bank; MMSCPL had paid out $5.4 million in directors' fees in 2001 (as compared to $4.4 million in 2000); and amounts due from directors had risen from $3.4 million in June 2000 to $14.2 million in 2001.[411]

306 As they did with Chee, the defendants similarly sought to suggest during Collard's cross-examination that the 11 December 2001 Allotment was commercially justified because of OCBC's requirement for the company's net asset to be not less than $80,000,000. As seen above (at [300]), this suggestion was really based on a letter from OCBC dated 22 October 2002.[412] Collard's evidence was that while he could "see how the banking facility has developed over time" (based on the same banking documents Chee was referred to), the financial covenant of $80 million did not "look as though it existed before October 2002".[413] The defendants tried to suggest that it was "reasonable to assume" that the credit facilities in their offer letter of 19 May 2001, just prior to the June 2001 accounts, "would be something… that would continue to be

411 Collard's Expert Report at para 2.3.4.

412 Transcript, 5 November 2020 at p 155, line 25 to p 156, line 23; TB Vol 13 at p 8855 (see para 8(b)).

413 Transcript, 5 November 2020 at p 157, lines 17–21.

negotiated between the bank and the company". Collard's response exposed the fallacy in this suggestion:[414]

> … I think the $80 million comes from the 2002 balance sheet. … if the bankers were looking at the balance sheet of this company for formalising loan arrangements in October 2002, they would not have relied on a balance sheet which was 16 to 17 months old. They would have said in October 2002, "Let's see your draft accounts for the year to 30 June 2002". The balance sheet, the net book value, says $80 million. That's where the $80 million came from.

307 Collard also testified that if it was so crucial to OCBC that MMSCPL's net asset value as of June 2002 reach at least $80 million, then "there were various things [MMSCPL] could have to done to achieve that", such as the directors' forgoing their directors' fees. Even if one of the ways of achieving that was to "inject $4.34 million in terms of new equity, it still begs the question: why was it done at par?"[415] In this connection, while Collard accepted that the injection of $4,340,000 by Mustaq did occur and that it did bring the net asset level to $80 million, he made the following important observation:[416]

> …I would be curious to know why you could not do that by issuing, say, 1 million shares at $4.34 each … what I was mystified by was why 4.34 million shares, which is a separate issue. If the company needed $4.34 million, fine. *But why a disproportionate amount of shares? Why was the share price not linked to the value of the company?*
>
> [emphasis added]

308 Indeed, as Collard pointed out:[417]

> (I)f you had issued, for instance, 1 million shares at $4.34, you would have had, at the bottom of the balance sheet you would have had an extra $1 million of share capital but then you

414 Transcript, 5 November 2020 at p 161, line 8 to p 162, line 2.

415 Transcript, 5 November 2020 at p 170, line 18 to p 171, line 16.

416 Transcript, 5 November 2020 at p 168, lines 17–24.

417 Transcript, 5 November 2020 at p 171, lines 20–25.

> would have had $3.4 million of share premium account, which the bank would have been happy with.

(3) The dominant purpose of the 11 December 2001 Allotment

309 In sum, therefore, the defendants' attempt to demonstrate MMSCPL's need for funds was based on assumption and speculation. Even if I were to ignore the objections to the speculative nature of their case, the highest at which they could pitch their case was this: the 11 December 2001 Allotment did, as a matter of fact, bring in $4.34 million of new equity for MMSCPL. This did not actually demonstrate that MMSCPL was *in need of funds* at the material time. Even more damningly, what the defendants could not explain were the two points which Chee and Collard raised, and which troubled me the most: even assuming the company *needed* the injection of $4.34 million as at 11 December 2001, why did it need to issue the shares at par, and only to Mustaq? The defendants' failure to come up with any coherent explanation gave the lie to their story about the allotment being a genuine fund-raising exercise.

310 I have reproduced earlier (at [246] and [248]) the relevant passages from the High Court's judgment in *The Wellness Group*. As the High Court noted in its judgment, two strong indicators that a rights issue is actually intended to dilute non-subscribing shareholders would be the absence of a commercial reason for the rights issue and a low issue price. There was enough evidence of both indicators in this case to establish a *prima facie* case that the dominant purpose of the 11 December 2001 Allotment was to dilute Samsuddin's and the Mustafa estate's shareholding still further, while increasing Mustafa's shareholding.

311 Indeed, as Collard highlighted in his report, the 11 December 2001 Allotment gave Mustaq a 61.25% shareholding in MMSCPL – and thereby

made him a controlling shareholder with all the benefits that accompanied the ownership of a controlling interest. These include, *inter alia*, the power to elect company directors and appoint officers, to declare and distribute dividends, and to sell or acquire assets. In contrast, whereas prior to 11 December 2001 Mustafa and Samsuddin could (at least in theory) still overturn decisions by Mustaq if they had each other's support and Ishret's, post the 2001 allotment, neither the Mustafa estate nor Samsuddin was able to overturn any decision made by Mustaq, even with assistance from all the other shareholders.[418]

312 As for the value of their shareholding, the value of Mustaq's total shareholding increased by $27 million.[419] The size of this increase in value was certainly disproportionate when viewed against the amount of consideration paid by Mustaq for the additional shares ($4.34 million). In contrast, the Mustafa Estate and Samsuddin suffered reductions in the values of their shareholdings to the tune of $2.6 million each.

313 The substantial differences in Mustaq's, Samsuddin's and the Mustafa estate's shareholding positions before and after 11 December 2001 may be seen from the table below.

Name	Number of shares held in MMSCPL before 11 December 2001 allotment	Proportion	Number of shares held in MMSCPL following 11 December 2001 allotment	Proportion

418 Collard's Expert Report at para 5.3.2.2.

419 Collard's Expert Report at paras 2.1.2 and 5.3.2.5.

Mustaq	3,831,170	42.57%	8,171,170	61.25%
Samsuddin	2,016,993	22.41%	2,016,993	15.12%
The Mustafa estate	1,986,170	22.07%	1,986,170	14.89%
Ishret	1,165,667	12.95%	1,165,667	8.74%
Total	9,000,000	100%	13,340,000	100%

(4) Summary of findings in respect of 11 December 2001 Allotment

314 To sum up, I found that both sets of plaintiffs were able to establish at least a *prima facie* case that the 11 December 2001 Allotment was carried out in a manner which breached the MMSCPL Constitution (including Article 7); it was carried out at an undervalue and for no commercial reason; its dominant purpose was to dilute the Mustafa estate's and Samsuddin's shareholdings while benefiting Mustaq's shareholding position. In the circumstances, there was at least a *prima facie* case of a "visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" (*Sakae (CA*) at [81]).

315 In the interests of completeness, I should add that in coming to the above conclusions about the 11 December 2001 Allotment, I did not take into consideration the Suit 780 plaintiffs' allegation that MMSCPL had provided financial assistance to Mustaq for the purpose of the allotment. In the main, the Suit 780 plaintiffs relied on evidence of MMSCPL having extended substantial

interest-free loans to Mustaq and Ishret.[420] However, even accepting that loans were extended to them at the time of the said allotment, there was no evidence that these loans were then applied towards the acquisition of the shares in the 11 December 2001 Allotment.[421]

316 I also add that whilst the defendants sought to castigate the Suit 1158 plaintiffs' conduct in impugning only the 5 January 1995 and the 11 December 2001 Allotments out of all the share allotments conducted over the years, I did not find anything anomalous or untoward about the Suit 1158 plaintiffs' decision. As they pointed out, the 5 January 1995 and the 11 December 2001 Allotments were the two allotments where the new shares were issued to Mustaq alone and which resulted in the dilution of Mustafa's and subsequently the Mustafa Estate's shares. The Suit 1158 plaintiffs' decision to focus on these two allotments for the purposes of their oppression claims was entirely reasonable and did not in my view suggest any sort of ulterior motive or bad faith.

The plaintiffs' allegations of breaches of fiduciary and other duties by the first, second and fifth defendants vis-à-vis the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment

317 To recap: I found that the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment were both oppressive in the sense of being a "visible departure from the standards of fair dealing and a violation of the conditions of fair play" which Mustafa (and subsequently his estate) and Samsuddin were entitled to expect as shareholders.

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420 PCS 780 at para 537.

421 DCS 780 at paras 577–582.

318 In addition, both sets of plaintiffs took the position that Mustaq had – either by himself and/or with Ishret and/or Iqbal – acted so as to procure the 5 January 1995 Share Allotment. It was alleged that Mustaq and Ishret had, in carrying out this allotment, breached their fiduciary and other duties as directors of MMSCPL, while Iqbal had breached his duties as company secretary.[422] Both sets of plaintiffs also claimed that Mustaq had acted by himself and/or in concert with Ishret and/or Iqbal and/or Shama and/or Osama to bring about the 11 December 2001 Share Allotment.[423] It was alleged that all five defendants were in breach of their duties as directors in respect of the 11 December 2001 Allotment (and Iqbal in breach of his duties as company secretary). Relying on authorities such as *Ng Sing King and others v PSA International Pte Ltd and others* [2005] 2 SLR(R) 56 ("*Ng Sing King*"), the plaintiffs claimed that these breaches of duties constituted another instance of the oppression of Mustafa's and Samsuddin's (and subsequently their estates') rights as shareholders of MMSCPL, and therefore another reason to set aside the two share allotments.[424]

319 I will first deal with the allegations against Mustaq, Ishret and Iqbal.

320 I found that the evidence available established at least a *prima facie* case of Mustaq, Ishret and Iqbal participating in these two oppressive share allotments and having accordingly breached the fiduciary and other duties they owed to the company as directors (and in Iqbal's case, the duties he owed as company secretary). Mustaq and Ishret were directors of MMSCPL at the time of both the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment. Iqbal became a director of MMSCPL on 3 September 2001. He was

422 SOC 1158 at paras 41A-D, 45; SOC 780 at para 58.

423 SOC 1158 at para 48; SOC 780 at para 38(b).

424 PCS 1158 at paras 677–680, 790; PCS 780 at paras 93 and 96.

the company secretary at the time of both the 5 January 1995 and the 11 December 2001 allotments. To be clear, insofar as Iqbal was concerned, only the Suit 1158 plaintiffs claimed that Iqbal had worked together with Mustaq and Ishret to bring about the 5 January 1995 allotment and that he breached his duties as company secretary in respect of this 1995 allotment;[425] whereas both sets of plaintiffs claimed that Iqbal (as well as the third defendant Shama and the fourth defendant Osama) worked with Mustaq and Ishret and breached their duties as directors in respect of the 11 December 2001 allotment. I will deal with the allegations against Shama and Osama later in these written grounds.

321 The duties borne by Mustaq, Ishret and Iqbal as directors of MMSCPL should not be a matter of controversy. As the CA noted in *Sakae (CA)* (at [134]), "(s)ection 157(1) of the Companies Act provides that "[a] director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office". In the context of the present allegations of minority oppression, the focus was on the duty to act honestly. In *Sakae (CA)*, the CA elaborated on this and on the scope of a director's fiduciary duties (at [135]):

> 314 …The duty under s 157(1) to "act honestly" enshrines in statute a director's common law duty to act bona fide in the best interests of the company: see *Ho Kang Peng v Scintronic Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [35] and *Townsing Henry George* at [50]…
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> 315 Although a company director is a quintessential example of a fiduciary (see *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134, not all the duties which he owes his company are fiduciary duties. Fiduciary duties in the classic sense encompass the two distinct rules proscribing a fiduciary from making a profit out of his fiduciary position (namely, the no-profit rule) and putting himself in a position where his own interests and his duty to his principal are in conflict (namely, the no-conflict rule): see *Bray v Ford* [1896] AC 44 and *Chan v Zacharia* (1984) 154 CLR 178…

[425] SOC 1158 at paras 41A–41D.

322 In respect of the issuance of the shares at par both in January 1995 and December 2001, it would be useful too to recall the judgment of the English High Court in *Sunrise Radio*, where the court highlighted (at [79]) that the power to allot shares was a fiduciary one: in deciding the price at which shares were to be allotted, directors had a duty to act even-handedly and fairly in considering what price could and should be extracted from those willing and able to subscribe to a share offer, and should not unthinkingly issue shares at par. The impact of this duty became all the more acute "if the board members, or those in a position to control or influence them, stand to benefit from the exercise of the power in a particular way" (at [95]).

323 As for the duties borne as Iqbal as company secretary, these too should not be a matter of controversy. In *Re Kumagai Zenecon Construction Pte Ltd; Kumagai Gumi Co Ltd v Kumagai-Zenecon Construction Pte Ltd and others* [1994] 2 SLR(R) 970 ("*Kumagai Zenecon*"), the High Court held (at [86]) that it agreed entirely with the proposition that:

> …a shareholder has the right to expect that the administrative affairs of the company are managed in a regular and honest manner and that the company secretary acts responsibly when performing his duties. It is unacceptable that a company secretary should act in a partisan manner, accepting instructions from a particular group of the company's shareholders or directors.

324 In *Kumagai Zenecon*, the High Court noted that the sixth respondent – one Jason Lim – had, in his capacity as company secretary, prepared and filed documents such as a notice of resolution and a return of allotment of shares, in circumstances where there was doubt about whether the relevant meeting had been held and/or whether the relevant resolution had been properly passed. Observing that Lim "[did] not seem to have any regard for the procedural, as well as the substantive propriety of what was done in relation to the company's

business", the High Court held (at [85]) that Lim's conduct was "rather disturbing". Lim's conduct in filing invalid documents and his subsequent conduct in justifying them was regarded by the court as "part and parcel of the oppressive conduct in the transactions that the documents purported to sanction" (at [87]).

325 In respect of Mustaq and Ishret, the defence did not seriously dispute that both were involved in the conduct of the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment. I have found that these allotments were conducted in breach of the MMSCPL Constitution; that they were done at an undervalue and for no commercial reason; and that the dominant purpose was to dilute the Mustafa estate's and Samsuddin's shareholdings while increasing Mustaq's shareholding. Both allotments also augmented the couple's combined shareholding position and their resulting control of the company. In the circumstances, there was at least a *prima facie* case that Mustaq and Ishret had, by their conduct of the two share allotments, breached their directors' duties (as described above in *Sakae (CA)* and *Sunrise Radio*).

326 As for Iqbal, he pleaded in his defence in both Suit 1158 and Suit 780 that he was not a shareholder of MMSCPL and also not a director at the time of the 5 January 1995 Allotment, and that he was "not involved" in either allotment.[426] However, as noted above, he was indisputably the company secretary at the time of both allotments, and concurrently a director at the time of the 2001 allotment. The duties he had as company secretary could not be a matter of controversy: Ayaz gave evidence about this in his AEIC,[427] which was

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426 S 1158 Defence at para 70; Defence of the 3rd to 5th defendants (Amendment No. 1) for S 780 at para 3.

427 Ayaz 1158 AEIC at paras 347– 348.

not refuted; Iqbal himself did not testify. At the very least, these duties would have included the preparation and lodgement of documents with ACRA to give notice of resolutions passed by the shareholders – such as those purportedly authorising the allotment of shares to Mustaq in January 1995 and December 2001. Being so responsible in his capacity as company secretary, I did not think it could be seriously disputed that Iqbal would have been well aware of the terms on which both allotments were carried out. It could further be inferred that the knowledge gleaned from the responsibilities he had as company secretary would also have informed the performance of his duties as a director at the time of the 11 December 2001 Share Allotment. Yet, on the evidence available, he did nothing to ensure that the conduct of these share allotments complied with the provisions of the MMSCPL Constitution, including Article 7 and Article 57. Instead of telling Mustafa (and later the Mustafa estate) and/or Samsuddin about the breaches and the depredations on their shareholdings, as Ayaz put it, he chose to help his sister and brother-in-law. In the circumstances, I found that there was a *prima facie* case that Iqbal had breached his duties as company secretary in respect of the conduct of both the 1995 and the 2001 allotments, as well as his duties as director in respect of the conduct of the 2001 allotment.

327 Having reviewed the evidence adduced, I was also satisfied that in respect of the breaches of duties complained of, there was a real injury suffered by Mustafa and Samsuddin (and subsequently their estates) which was clearly distinct from the injury suffered by the company (see *Ng Sing King* at [166], also *Sakae (CA)* at [116]): namely, the dilution of their respective shareholding in the company and as a corollary, the erosion of their voting power.

328 For the reasons set out above, I agreed with the plaintiffs that the breaches of directors' duties by Mustaq, Ishret and Iqbal (and in Iqbal's case, his duties as company secretary as well) constituted oppressive behaviour which

amounted to another reason to set aside the 5 January 1995 and the 11 December 2001 allotments.

The plaintiffs' allegations of breaches of fiduciary and other duties by the third and fourth defendants vis-à-vis the 11 December 2001 Share Allotment

329 In respect of the third defendant Shama and the fourth defendant Osama, both of them were not directors of MMSCPL at the time of the 5 January 1995 Share Allotment.

330 As for the 11 December 2001 Share Allotment, while Shama and Osama were appointed as directors of MMSCPL in February 2001, I did not find that there was any real evidence of their participation in the oppressive conduct of this allotment. There was also very little said in the plaintiffs' closing submissions about the roles played by Shama and Osama in relation to the 11 December 2001 allotment. For example, although the Suit 780 plaintiffs pleaded in their statement of claim that Mustaq acted "by himself and/or in concert with Ishret and/or Shama and/or Osama and/or Iqbal",[428] nothing was said in their witnesses' AEICs and/or in their closing submissions which elucidated the roles played by Shama and Osama. Similarly, in Suit 1158, Ayaz's AEIC merely repeated the brief statements in the statement of claim about Mustaq having worked "together with the [second] to [fifth] Defendants".[429]

331 While it was true that the plaintiffs only needed to make out a *prima facie* case of oppression vis-à-vis Shama and Osama, on the evidence adduced, it appeared to me the most that could be said about their roles in relation to the

428 SOC 780 at para 62.

429 Ayaz 1158 AEIC at para 402.

11 December 2001 allotment was that there was no evidence of their having tried to prevent it, or of their having tried – following their appointment as directors – to raise an alarm to the other shareholders regarding either this allotment or the earlier one of 5 January 1995.[430] I did not think that the absence of such evidence *per se* was enough for me to find Shama and Osama liable for oppressive conduct *vis-à-vis* the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment.

332 In arriving at the above finding, I considered the case of *Scottish Co-operative Wholesale Society Ltd v Meyer* [1959] 1 AC 324 ("*Scottish Co-operative Wholesale Society*"). I did not find that this case assisted the two sets of plaintiffs *vis-à-vis* Shama and Osama.

333 In *Scottish Co-operative Wholesale Society*, there was evidence clearly showing that the three directors who were the nominees of the society knew that the society (the majority shareholder) had decided that the company had served its purpose and should be liquidated if possible. They were aware of the society's conduct in adopting a policy of transferring the company's business to a new department within its own organisation and thereby forcing down the value of the company's shares. Despite being fully aware, these nominee directors maintained a uniform silence in the face of the company's progressive deterioration and did nothing to explain to the other shareholders the reasons for the deterioration. As Lord Denning highlighted in his judgment (at 367), this was a case where the nominee directors had plainly put their duty to the society above their duty to the company; and there was no question that in subordinating the company's interests to those of the society's, the nominee directors had

[430] PCS 1158 at para 797; Plaintiffs' 1158 Reply Closing Submissions ("PRS") at para 144.

conducted the company's affairs in a manner oppressive to the other shareholders. In contrast, in the present trial, there was no evidence of Shama's and Osama's participation in the two impugned allotments, much less of their knowledge of the circumstances of the two allotments.

Summary of decision in respect of the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment

334 Having found the 5 January 1995 and the 11 December 2001 Share Allotments to be oppressive of Mustafa's and Samsuddin's (and subsequently their estates') rights as shareholders, l also found that it was in order that the Suit 1158 and Suit 780 plaintiffs be granted the declarations and orders sought in respect of these two allotments: *ie*, declarations that these two allotments were null and void and of no effect, and orders that they be set aside (or to use the language of s 216(2)(*a*) of the Companies Act, "cancelled").

The 1991 to 1993 Allotments

335 I address next the 1991 and the 1993 Share Allotments which the Suit 780 plaintiffs alleged to be oppressive but which the Suit 1158 plaintiffs did not seek to impugn. These were the allotments of 27 June 1991, 16 January 1993 and 19 May 1993:

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%

336 Unlike the 5 January 1995 and the 11 December 2001 Share Allotments, Mustafa and Samsuddin were issued shares in the 1991 and the 1993 allotments. However, the Suit 780 plaintiffs contended that in breach of the provisions of Article 7 of the MMSCPL Constitution, Samsuddin was not given any notice nor offered the opportunity to subscribe for shares in proportion to the number of shares he then held; that there was no EOGM actually held in respect of each of these allotments;[431] and that even if EOGMs had been held, the quorum requirement under Article 68 of the MMSCPL Constitution would not have been satisfied.[432]

337 Further, the Suit 780 plaintiffs claimed that these allotments were not for any legitimate commercial purpose but appeared instead to be for the purpose of allowing Mustaq and Ishret to acquire more shares at an "extreme discount".[433] Although Samsuddin was said to have signed the directors' report

431 SOC 780 at para 45.

432 SOC 780 at para 45A.

433 PCS 780 at para 418.

in MMSCPL's audited financial statements for the relevant years, Fayyaz testified that Samsuddin did not appear to have been informed of the contents of the documents he was signing.[434] According to Fayyaz, if Samsuddin had been aware that the contents of these documents revealed any dilution of his shares (or for that matter, anything else not in his favour), he would have told Fayyaz – but in the case of the 1991 and the 1993 allotments, he did not say anything.[435]

338 There were some inconsistencies in the Suit 780 plaintiffs' evidence. However, adopting a minimal evaluation approach, I held that the evidence was enough to make out a *prima facie* case on the pleaded particulars of oppression. I first summarise below the evidence of each allotment which both sides referred to.

The 27 June 1991 Allotment

Documentary evidence

339 In respect of the 27 June 1991 Allotment, there was a Notice of Resolution in Form 11 registered with ACRA ("27 June 1991 Notice of Resolution"). This was signed by Mustaq. It stated that Mustaq, Samsuddin and Ishret had been allotted 300,000 ordinary shares while Mustafa had been allotted 400,000 shares, for $1 per share.[436] The Suit 780 plaintiffs did not dispute the authenticity of this document.[437]

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434 Transcript, 21 October 2020 at p 19, lines 15–17, p 20, lines 10–16 and p 29, lines 13–18.

435 Transcript, 22 October 2020 at p 51, lines 1–15 and p 52, lines 9–15.

436 PCS 780 at para 401; JCB Vol 3 at p 2503.

437 WongP's 8 December 2020 Letter at p 2 (row 24).

340 Second, there was a Return of Allotment of Shares in Form 24 which stated that these shares were paid for in cash. *Per* this form, Mustafa was stated to have received 400,000 shares while Mustaq, Samsuddin and Ishret each received 300,000 shares.[438]

341 Third, there was a document dated 11 June 1991 giving notice of an EOGM to be held on 27 June 1991 ("11 June 1991 Notice of EOGM").[439] The plaintiffs disputed the authenticity of this document.[440]

342 Fourth, there was a document said to be a shareholders' resolution in relation to the 27 June 1991 Allotment ("27 June 1991 EOGM Minutes"). In this document, it was stated that Mustaq had chaired the EOGM on 27 June 1991, and that Mustaq, Samsuddin, Mustafa and Ishret had unanimously passed the resolution to authorise the 27 June 1991 Allotment.[441] This document was ostensibly signed off by both Mustaq and Samsuddin. The plaintiffs disputed the authenticity of this document.[442] It should be noted that for the purposes of the trial, the defendants admitted that no physical EOGM was actually held: instead, documents were circulated to the directors for their signature.[443]

438 PCS 780 at para 402; AB Vol 5 at pp 3294–3296 (see page 3295).

439 PCS 780 at para 407; JCB Vol 3 at p 2501.

440 WongP's 8 December 2020 Letter at p 2 (row 23).

441 JCB Vol 3 at p 2505; Exhibit 780-D8.

442 WongP's 8 December 2020 Letter at p 3 (row 25).

443 Defence 780 at para 64; DCS 780 at para 112; DCS 1158 at para 107.

Fayyaz's evidence

343 Fayyaz explained that neither Mustaq nor Samsuddin had given him any explanation about the 27 June 1991 Allotment at the time of the allotment in 1991.[444]

344 When referred to the AFS for the year ended 30 June 1991,[445] Fayyaz said he "can't confirm" whether it was Samsuddin and Mustaq's signatures on the accounts.[446] He added that while the signature stated "Samsuddin", and it "seem[ed] like" Samsuddin's signature, anyone could have signed it.[447] Even if it was Samsuddin's signature, however, Fayyaz said that this was done without "explaining the contents and division of the shares" as Samsuddin was in "his full senses" and would never have signed this document had he known his shareholding was being diluted.[448] When referred to the 27 June 1991 EOGM Minutes,[449] and asked whether the signature appeared to be that of Samsuddin's as well as Mustaq's, Fayyaz said "[i]t seems like that".[450] I note that Fayyaz did not agree that there was such a meeting on 27 June 1991 or that the document was explained to Samsuddin, or that Samsuddin knew that his shares in MMSCPL would be diluted, as Samsuddin would "certainly have informed" Fayyaz of this.[451]

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444 Transcript, 21 October 2020 at p 14, lines 9–12.

445 JCB Vol 1 at pp 335–351.

446 Transcript, 22 October 2020 at p 43, line 23 to p 44, line 1.

447 Transcript, 22 October 2020 at p 45, lines 12–21.

448 Transcript, 22 October 2020 at p 46, line 9 to p 47, line 2.

449 JCB Vol 3 at p 2505.

450 Transcript, 22 October 2020 at p 48, lines 17–23.

451 Fayyaz 780 AEIC at para 156.

The plaintiffs' submissions

345 Picking up on the defendants' admission that no physical meetings were ever held and that documents would simply be circulated for signature,[452] the Suit 780 plaintiffs submitted *inter alia* that this meant there was actually no reason for the creation of the 27 June 1991 EOGM Minutes. The only logical explanation for the creation of these EOGM Minutes must surely be, then, that the defendants wanted – disingenuously – to make it look like Samsuddin knew of and agreed to the 27 June 1991 Allotment, when in fact he did not.[453]

346 Moreover, the Suit 780 plaintiffs submitted, the 27 June 1991 Allotment was commercially unfair and ought to be set aside for that reason in any event.[454] In breach of Article 7 of the MMSCPL Constitution, no Offer Notice was given to Samsuddin, and the 27 June 1991 Allotment proceeded without his knowledge or consent. Even if Samsuddin could be said to have agreed to the 27 June 1991 Allotment by reason of his signature on the company's audited financial statements for FY 1991, the requirements of Article 7 of the MMSCPL Constitution and s 161 of the Companies Act were not complied with because there was no quorum under Article 68 of the MMSCPL Constitution, nor was there any prior approval of the company in general meeting.[455]

347 Based on the evidence adduced (including Chee's expert evidence), the 27 June 1991 Allotment was also not in the commercial interests of MMSCPL:

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452 PCS 780 at para 409; Transcript, 22 October 2020 at p 56, lines 22–25; Transcript, 14 October 2020 at p 26, line 22 to p 27, line 24.

453 PCS 780 at paras 411–412.

454 PCS 780 at paras 415–419.

455 PCS 780 at paras 415–417.

rather, it was carried out for the purpose of allowing Mustaq and Ishret to acquire more shares at an undervalue.[456]

The defendants' submissions

348 The defendants, on their part, claimed that Mustaq and Samsuddin had in fact signed the 27 June 1991 EOGM Minutes: in cross-examination, Fayyaz had agreed that it "seems like" the signatures were those of Mustaq and Samsuddin.[457] Samsuddin had also signed the audited financial statements for the financial years 1991[458] and 1992:[459] it should be inferred that he must thereby have seen information about the 27 June 1991 Allotment.

349 As for Chee's evidence, the defendants contended that Chee had actually agreed with them that the 27 June 1991 Allotment was required because otherwise, MMSCPL's cash would have been negative or in overdraft: it would have been prudent to raise additional funds through share allotments.[460]

My findings

350 As I said earlier, there were some inconsistencies in the evidence led by the Suit 780 plaintiffs' evidence. For example, when referred to the audited financial statements for the financial year 1991,[461] Fayyaz had stated that if Samsuddin had been told his share was being diluted, he would "have never

456 PCS 780 at paras 418–419.

457 Transcript, 22 October 2020 at p 47, line 23 to p 48, line 23; DCS 780 at para 520.

458 DCS 780 at para 521.

459 DCS 780 at para 522; JCB Vol 1 at p 356.

460 DCS 780 at para 523.

461 JCB Vol 1 at p 337.

signed the document"[462] This statement appeared inconsistent with other parts of Fayyaz's testimony, where he stated that if Samsuddin had been "given a proper explanation as to why he had to sign the documents", Samsuddin "would have definitely signed" – even if his share was being diluted (*eg*, "if the reason given to [Samsuddin] would have stated that it is for the benefit of the company").[463]

351 However, notwithstanding the presence of some inconsistencies in the plaintiffs' evidence, I accepted that on a minimal evaluation approach (*per Relfo* at [20]), the evidence was enough for the Suit 780 plaintiffs to make out a *prima facie* case of oppression vis-à-vis the 27 June 1991 Allotment.

352 First, there was indisputably no evidence of an Offer Notice being sent to Samsuddin or Mustafa – nor was there evidence of a Special Resolution dispensing with the requirement for such a notice – as required under Articles 7(a) and (b) of the MMSCPL Constitution.[464]

353 Second, as the Suit 780 plaintiffs pointed out, since there was no physical EOGM held on 27 June 1991, it was odd that the defendants should have created a set of minutes of EOGM which purported to record Mustaq's chairmanship of the EOGM on 27 June 1991. A possible inference to be drawn from this odd behaviour was that the defendants wanted to make it look like there had been an actual meeting which Samsuddin had attended and at which he had agreed to the proposed share allotment.

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462 Transcript, 22 October 2020 at p 46, line 9 to p 47, line 2.

463 Transcript, 22 October 2020 at p 52, lines 1–15.

464 PCS 780 at para 507(c).

354 Third, even assuming it was Samsuddin who had signed the audited financial statements for FY 1991, I accepted Fayyaz's evidence that Samsuddin "would have signed anything that Mustaq asked him to given their relationship and the fact that he could not read or understand English".[465] Samsuddin's illiteracy in the English language was not disputed; and his trust in Mustaq was attested to not only by Fayyaz but also by other witnesses such as Asia. Further, even if Samsuddin had come to know of the 27 June 1991 Allotment when he signed the audited financial statements for the financial year 1991, this did *not* show that he was given notice of the 27 June 1991 Allotment *before* it happened.

355 Lastly, although Chee did agree that without the 27 June 1991 Allotment, MMSCPL's cash and cash equivalents would have been negative or in overdraft, and although he agreed it would have been prudent to raise additional funds through share allotments,[466] he also made an important point: none of this explained why the shares in the 27 June 1991 Allotment were issued at a significant undervalue ($1), compared to their fair value of $27.30 to $33.10,[467] or why the shares were not offered to the shareholders in the same proportion as their shareholdings at the time.[468]

356 In this connection, it should be remembered that although Samsuddin did receive shares in the 27 June 1991 Allotment, the 300,000 shares he received were not in proportion to his shareholding at the time (30%); and his percentage shareholding following the 27 June 1991 Allotment fell from 30% to 26.09%. Conversely, Ishret – who had not held any shares prior to 27 June 1991 –

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465 Fayyaz 780 AEIC at para 157.

466 Chee's First Report at para 2.1.9.

467 Chee's First Report at para 2.2.4.

468 Chee's First Report at para 2.1.9.

received the same number of shares as Samsuddin (300,000) and became a 13.04% shareholder, literally overnight. Although Mustaq's own percentage shareholding decreased from 51% to 35.22% as a result of the 27 June 1991 Allotment, his combined shareholding with his wife Ishret was still more than 48%.

357 Additionally, although Chee agreed in cross-examination that MMSCPL's capital expenditure in 1992 was $29.5 million and that this was about five times its equity ($5.92 million),[469] he also highlighted that it was not necessarily the case that the equity would be insufficient to fund the capital expenditure. As he put it, it "depends on the situation": there were times when the banks were prepared to finance the development for almost 100% or close to 100%, such that the capital outlay by the company "may not be significant".[470] Chee also accepted that while it was "always good to have capital to…make the company stronger, to make the bank happier", *the question was whether it was "needed or not"*, and whether it was *"really necessary at the expense of certain shareholders*".[471] Tellingly, this was a question that the defendants had no answer to.

358 For the reasons set out above, I accepted that there was at least a *prima facie* case that the 27 June 1991 Allotment was done in breach of the MMSCPL Constitution; that it was done at an undervalue; and that it was not in MMSCPL's commercial interests.

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469 Transcript, 9 November 2020 at p 45, lines 3–8; Exhibit 780-D19.

470 Transcript, 9 November 2020 at p 45, line 20 to p 47, line 2.

471 Transcript, 9 November 2020 at p 47, lines 6–11.

The 16 January 1993 Allotment and the 19 May 1993 Allotment

359 I address next the two share allotments in 1993. I first summarise the evidence which both sides referred to.

Documentary evidence

360 First, there was a notice of an EOGM to be held on 16 January 1993, dated 31 December 1992 ("31 December 1992 Notice of EOGM"),[472] and a notice of an EOGM to be held on 19 May 1993, dated 3 May 1993 ("3 May 1993 Notice of EOGM").[473] The plaintiffs disputed the authenticity of these documents.[474]

361 Second, there was a Notice of Resolution in Form 11 dated 16 January 1993 ("16 January 1993 Notice of Resolution"). Appended to this notice was a document stated to be the minutes of the meeting on 16 January 1993 ("16 January 1993 EOGM Minutes").[475] The 16 January 1993 EOGM Minutes, which were signed by Mustaq and Ishret, and stated that Mustaq had been allotted 340,200 shares, Samsuddin had been allotted 252,000 shares, Mustafa had been allotted 247,800 shares, and Ishret had been allotted 126,000 shares. There was also a Notice of Resolution in Form 11 dated 19 May 1993 ("19 May 1993 Notice of Resolution"). Similarly, a document stated to be the minutes of the meeting on 19 May 1993 ("19 May 1993 EOGM Minutes") was appended to this notice.[476]

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472 JCB Vol 3 at p 2512.

473 JCB Vol 3 at p 2531.

474 WongP's 8 December 2020 Letter at p 3 (rows 29 and 32).

475 JCB Vol 3 at pp 2520–2521; Exhibit 780-D9.

476 JCB Vol 3 at pp 2539–2540.

362 Although the plaintiffs did not dispute the authenticity of the 19 May 1993 Notice of Resolution, they appeared to dispute the authenticity of the 19 May 1993 EOGM Minutes themselves.[477]

363 Lastly, there was a Statement Containing Particulars of Shares Allotted Otherwise than for Cash in Form 25, dated 19 May 1993 ("19 May 1993 Form 25").[478] The plaintiffs did not dispute the authenticity of this document.[479]

Fayyaz's evidence

364 As for MMSCPL's audited financial statements for 30 June 1993,[480] which showed the altered shareholding position following the 1993 Allotments,[481] Fayyaz testified that the signature stated to be Samsuddin's in these financial statements "looks like" Samsuddin's signature but that he could not confirm.[482] Fayyaz reiterated that even if Samsuddin had signed the audited financial statements, he would have done so without having been informed of their contents.[483]

The plaintiffs' submissions

365 The Suit 780 plaintiffs submitted that the 1993 Share Allotments should be set aside for the following reasons. First, the documentary records showed only Mustaq and Ishret signing off on the 16 January 1993 Notice of Resolution

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477 JCB Vol 3 at p 2533; Exhibit 780-D10; WongP's 8 December 2020 Letter at p 3 (row 33).

478 JCB Vol 3 at pp 2535–2537.

479 WongP's 8 December 2020 Letter at p 3 (row 35).

480 JCB Vol 1 at p 373.

481 JCB Vol 1 at p 376.

482 JCB Vol 1 at pp 378–379; Transcript, 22 October 2020 at p 49, lines 15–16.

483 Transcript, 22 October 2020 at p 50, lines 23–25.

and the 19 May 1993 EOGM Minutes. This showed that Samsuddin had not given his approval to the 1993 Allotments. In fact, there was no evidence that Samsuddin had attended any EOGMs or that he was even aware of these allotments.[484]

366 As for the defendants' reliance on Samsuddin's purported signature on the 1993 audited financial statements, this was misconceived as the financial statements did not make it clear that Samsuddin's shares had been diluted.[485]

367 In addition, there was no evidence that Samsuddin was actually offered the opportunity to subscribe for the shares, as required under Article 7 of the MMSCPL Constitution. Even if he had signed the 1993 audited financial statements, this did not show that the MMSCPL Constitution had been complied with.

368 In any event, according to the Suit 780 plaintiffs, the 1993 Allotments were not justified for a commercial purpose, as there was no requirement for new capital at the time, and the shares were also issued at a significant undervalue.[486]

The defendants' submissions

369 The defendants, for their part, relied on Mustaq's and Ishret's signatures on the 16 January 1993 EOGM Minutes and the 19 May 1993 EOGM Minutes as evidence that the requisite resolutions had been passed to authorise both allotments. As for Samsuddin, he must have known of the allotments because

484 PCS 780 at paras 436–438.

485 PCS 780 at paras 429–435.

486 PCS 780 at paras 439–446.

he had signed the 1993 audited financial statements which contained information about both allotments. Moreover, so the defendants argued, the Suit 780 plaintiffs' expert witness Chee had accepted that this increase in share capital was good for MMSCPL.[487]

My findings

370 As with the 27 June 1991 Allotment, I found that there were some inconsistencies in the Suit 780 plaintiffs' evidence on the 1993 Allotments. For example, the Suit 780 plaintiffs accepted the authenticity of the 16 January 1993 Notice of Resolution and the 19 May 1993 Notice of Resolution – both of which had the minutes of the meetings appended. Despite having apparently accepted the authenticity of these documents as annexed to the Notices of Resolution filed with ACRA, the plaintiffs *also* separately challenged the authenticity of the 16 January 1993 EOGM Minutes and the 19 May 1993 EOGM Minutes.

371 That said, it did appear to be true that no Offer Notice was given to Samsuddin in respect of the 1993 Share Allotments – which was contrary to the requirements of Article 7 of the MMSCPL Constitution.[488] There was no evidence of Samsuddin having actually known of the allotments *and* waived the right to an Offer Notice. Even if he had signed the audited financial statements for the financial year 1993, there was no evidence that he would have realised from signing these financial statements that his shareholding position had been altered for the worse due to the 1993 Share Allotments. Even if he had somehow come to know of the 1993 Allotments as a result of signing these financial

487 DCS 780 at paras 524–527.

488 PCS 780 at para 436(a).

statements for the financial year 1993, this did not show compliance with Article 7 of the MMSCPL Constitution.[489]

372 Additionally, as Chee highlighted in his expert report, the shares in both these 1993 Allotments – being issued at par – were issued at an undervalue, since the fair value per share was $34.40 to $42.30 as of 16 January 1993, and $44.00 to $52.40 as at 19 May 1993.[490] It was Chee's evidence (which he maintained under cross-examination) that the 1993 Allotments did not result in a significant increase in MMSCPL's funds, given that 81.9% of the consideration was not received in cash. Moreover, MMSPCL actually paid out dividends amounting to $1,977,780 during that year. This evidence suggested that MMSCPL had excess funds available for distribution to its shareholders and militated against the defendants' assertion that the 1993 Allotments were justified on the basis of MMSCPL's need for additional funds at that time.

373 Lastly, Chee pointed out that even assuming MMSCPL had needed additional funds at that time, there was no reason why the new shares could not have been offered to all shareholders for subscription in proportion to their shareholdings.[491] In this connection, although Samsuddin did receive shares in the 1993 Allotments, the shares he received were again not in proportion to his shareholding at the time; and his percentage shareholding following the 1993 Allotments fell further, from 26.09% to 25.75%. Although Mustaq's percentage shareholding decreased from 35.22% to 34.01% following the 1993 Allotments, Ishret's percentage shareholding rose from 13.04% to 14.88%; and the couple's combined shareholding stayed at over 48%.

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489 PCS 780 at para 436(b).

490 Chee's First Report at paras 2.2.3–2.2.4.

491 Chee's First Report at paras 2.1.13–2.1.15.

374 In cross-examination, the defendants suggested to Chee that the dividends paid out by MMSCPL were used by the shareholders to subscribe for the further shares.[492] Chee's point, however, was that even if this were so, the company's capital position would have been neutral as a result of the allotments:[493]

> Q: But you accept that the equity did increase, correct?
>
> A: Actually, it is the neutralised position…because when you pay a dividend, the equity of the company reduce, okay, because it's deducted from the reserve, the revenue reserve, and when you recapitalise it by putting back the money that pay out by way of dividend, then it becomes cash come back again, so it is actually a neutral effect.

375 In light of the evidence set out above, I accepted that there was at least a *prima facie* case that the 1993 Share Allotments were carried out in breach of the MMSCPL Constitution; that they were done at an undervalue; and that there was no genuine commercial reason for them.

Claims not made out against the third to fifth defendants

376 For reasons similar to those set out in [336] to [375] above, I also found that Mustaq and Ishret breached the fiduciary and other duties they owed as directors to MMSCPL in bringing about the 27 June 1991, the 16 January 1993 and the 19 May 1993 Share Allotments.

377 In their statement of claim, the Suit 780 plaintiffs pleaded that Shama, Osama and/or Iqbal had also exercised their powers as MMSCPL directors in a manner which was oppressive and unfairly prejudicial to the Samsuddin Estate by reason of the matters pleaded from paragraphs 36 to 97E of the statement of

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492 PCS 780 at para 442.

493 Transcript, 9 November 2020 at p 50, lines 3–12.

claim. This would include the allegations relating to the 1991 and 1993 Allotments.[494]

378 On the evidence available, the Suit 780 plaintiffs were unable to establish that Shama, Osama and Iqbal should similarly be held liable for engaging in oppressive conduct *vis-à-vis* the 1991 and 1993 Allotments. As noted earlier, Shama and Osama only became directors of MMSCPL in February 2001. Iqbal was appointed as company secretary on 17 January 1994 and as director on 3 September 2001. In relation to the 1991 and 1993 Allotments, the highest at which the Suit 780 plaintiffs could pitch their case against Shama, Osama and Iqbal seemed to be that they should have found out about earlier breaches of duty by other directors when they themselves became directors – and that they should then have raised the alarm. Having regard to the evidence available, I did not think this was enough - even on a p*rima facie* basis – for me to find that Shama, Osama and Iqbal were responsible as well for oppressive conduct *vis-à-vis* the 1991 and 1993 Allotments.

Whether the 1991 and 1993 Allotments should be set aside

379 While I accepted that the Suit 780 plaintiffs had a *prima facie* case for asserting oppressive conduct by Mustaq and Ishret vis-à-vis the 1991 and the 1993 Share Allotments, this did not mean that the Suit 780 plaintiffs must automatically be given the declarations and orders they sought in respect of these allotments. This was because the Suit 1158 plaintiffs had made known their objections to the Suit 780 plaintiffs being granted a declaration that the 27 June 1991 Allotment was null and void and of no effect and/or an order setting

494 SOC 780 at para 38(b); *see* paras 42–45B.

aside this allotment.[495] As the Suit 1158 plaintiffs pointed out, the 27 June 1991 Share Allotment actually *increased* Mustafa's MMSCPL shareholding: he went from 19% to 25.7%.[496] Obviously, a declaration that the 27 June 1991 Share Allotment was null and void and/or an order setting it aside would be highly detrimental to the Suit 1158 plaintiffs' interests.

380 I said earlier (at [93]) that the question of whether evidence led in one suit could stand as evidence in the other suits in a joint trial of multiple suits was a different question from that of whether – in such a joint trial – the parties in one suit could obtain reliefs which adversely affected the interests of parties in another suit when the latter were not joined as parties in the former's action. As I said, the first question would be one of procedure; the second question would be a question concerning parties' substantive rights.

381 Having reviewed the caselaw cited by the parties in their further submissions on this second question, I was of the view the Suit 1158 plaintiffs were right when they said the Suit 780 plaintiffs should have joined them as parties in Suit 780 if they wanted to seek reliefs which would adversely affect the Suit 1158 plaintiffs' interests.[497] I agreed with the Suit 1158 plaintiffs that in principle, it must be wrong for a court hearing an action to make orders which directly affect the rights of a non-party and which purport to bind that non-party. In this regard, I found the decisions in *Avanti Offshore Pte Ltd v Bab Al Khail General Trading* [2020] SGHC 50 ("*Avanti*"), *Chickabo Pty Ltd v Zephere Pty Ltd* [2019] VSC 580 ("*Chickabo*") and *John Alexander's Clubs Pty Limited v White City Tennis Club Limited* (2010) 266 ALR 462 ("*JACS*") to be helpful.

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495 Plaintiffs' Further Submissions ("PFS") for S 1158 and S 9 dated 8 July 2021 ("PFS 1158") at paras 73–74.

496 PFS 1158 at para 59.

497 PFS 1158 at paras 71–73.

382 In *Avanti*, the liquidators of Avanti Offshore Pte Ltd ("the liquidators"), who were the applicant in that case, sought *inter alia* declarations relating to the validity of certain debit notes issued to the applicant's subsidiary PT Palm. Noting that PT Palm had not been joined as a party even though its interests were clearly and directly affected by the declaration pertaining to the debit notes, the High Court declined to grant the declarations sought (at [71] of *Avanti*). This was despite both the applicant and the respondent highlighting that PT Palm had consented to submit to the findings of this court, ostensibly implying that PT Palm therefore did not need to be joined as a party. The court held (at [71]) that PT Palm's consent to be bound by the decision of the court was insufficient as PT Palm could conceivably resile from this consent. There was no legal basis to hold PT Palm to its consent, except for possibly some form of estoppel or other representation-based doctrine as between PT Palm and the parties. The court could not by its order hold PT Palm to the supposed consent: hence, no order made by the court could be expressed to extend to PT Palm, nor could it have the effect of doing so.

383 In similar vein, the Supreme Court of Victoria in *Chickabo* held that where a court was invited to make, or proposed to make orders that would directly affect the rights or liabilities of a non-party, that non-party was a necessary party and ought to be joined to the proceeding (at [44]). The failure to join a party directly affected was in effect a denial of procedural fairness and natural justice and would usually result in the setting aside of any judgment or order" (at [41]).

384 In this connection, I rejected the Suit 780 plaintiffs' argument that it was the Suit 1158 plaintiffs who should have applied to be joined as parties in Suit 780 if they were of the view that the reliefs sought in that suit might adversely

affect their interests.[498] As the Supreme Court of Victoria held in *Chickabo* (at [47]):

> A non-party has no duty to seek to be joined, and they do not need to explain why it is that they have not sought this. In this regard, the non-party's knowledge or notice of the proceeding is entirely irrelevant. The plaintiff must properly constitute their suit, and it is at their peril to not do so.

385 In *JACS*, a case cited by the court in *Chickabo*, a declaration of constructive trust was granted over a piece of land in proceedings to which a company holding an unregistered mortgage over the land had not been joined as a party. On appeal, the Australian High Court held that the company, as the affected non-party, was entitled as of right to have the declaration of constructive trust set aside – even though the company had known of the proceedings but had not applied to be joined as a party as it had simply thought the proceeding would fail.

386 For the reasons set out above, I agreed with the Suit 1158 plaintiffs that the 27 June 1991 Share Allotment should not be declared null and void or set aside.

387 As for the 1993 Allotments, setting them aside in Suit 780 would produce an anomalous – indeed, untenable – situation 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 – even though we were concerned with the same shares in the same company and the same set of shareholders. With respect, I did not find that the Suit 780 plaintiffs had addressed this conundrum adequately in their further submissions. At the end of the day, a declaration is a discretionary remedy, and the grant of a declaration

498 PFS 780 at paras 103–104.

must be justified by the circumstances of the case (per the High Court in *Avanti* at [67(c)]). I found that the Suit 780 plaintiffs were unable to satisfy me that I should grant a declaration pronouncing the 1993 Allotments null and void and of no effect. The range of reliefs provided for under s 216(2) of the Companies Act are also entirely at the court's discretion; and in this case, I found that the Suit 780 plaintiffs had not satisfied me that I should grant an order setting aside the 1993 allotments.

388 For the reasons explained above, I declined to set aside the 27 June 1991 Allotment, the 16 January 1993 Allotment and the 19 May 1993 Allotment.

The 9 April 1996 Allotment and the 24 February 1997 Allotment

389 As for the 9 April 1996 and the 24 February 1997 Share Allotments, these were also challenged by the Suit 780 plaintiffs but not by the Suit 1158 plaintiffs. All the four shareholders of MMSCPL (Mustaq, Ishret, Samsuddin and Mustafa) were allotted shares in these two allotments, in proportion to the registered shareholding of each shareholder following the 5 January 1995 Allotment, such that their percentage shareholding positions remained the same: Mustaq, 42.57%; Ishret, 12.95%; Samsuddin, 22.07%; Mustafa, 22.41%.

The evidence

390 For the 9 April 1996 and the 24 February 1997 Share Allotments, both sides referred to the following documents.

(a) 9 April 1996 Allotment:

(i) There was a notice of an EOGM to be held on 9 April 1996, dated 23 March 1996 (the "23 March 1996 Notice of

EOGM").[499] The plaintiffs disputed the authenticity of this document.[500]

(ii) Second, there was a document stated to be the minutes of the EOGM on 9 April 1996 ("9 April 1996 EOGM Minutes"), and ostensibly signed by Mustaq and Ishret.[501] The plaintiffs disputed the authenticity of this document.[502]

(iii) Third, there was a Notice of Resolution in Form 11 dated 9 April 1996, with the 9 April 1996 EOGM Minutes appended ("9 April 1996 Notice of Resolution").[503] The plaintiffs did not dispute the authenticity of this document.[504]

(b) 24 February 1997 Allotment:

(i) First, there was a notice of an EOGM to be held on 24 February 1997, dated 8 February 1997 ("8 February 1997 Notice of EOGM").[505] The plaintiffs disputed the authenticity of this document.[506]

(ii) Second, there was a document stated to be the minutes of the EOGM on 24 February 1997 ("24 February 1997 EOGM

499 JCB Vol 3 at p 2574.

500 WongP's 8 December 2020 Letter at p 5 (row 49).

501 JCB Vol 3 at p 2579; Exhibit 780-D14.

502 WongP's 8 December 2020 Letter at p 5 (row 50).

503 JCB Vol 3 at pp 2576–2577.

504 WongP's 8 December 2020 Letter at p 5 (row 51).

505 JCB Vol 3 at p 2585.

506 WongP's 8 December 2020 Letter at p 6 (row 54).

Minutes"), and ostensibly signed by Mustaq and Ishret.[507] The plaintiffs disputed the authenticity of this document.[508]

(iii) Third, there was the Notice of Resolution in Form 11 dated 24 February 1997 ("24 February 1997 Notice of Resolution").[509] The plaintiffs did not dispute the authenticity of this document.[510]

Chee's evidence

391 Chee did not give any evidence on the pricing and the commercial purpose (if any) of the 9 April 1996 and the 24 February 1997 Share Allotments in his expert report, as he explained that he was not instructed to carry out any work in relation to these two allotments.[511] He noted, however, that the shares were allotted to the shareholders according to their shareholdings immediately preceding the allotments, and that certain shareholders would have already been disadvantaged by the earlier share allotments where the shares were not allotted in proportion to the existing shareholders' shareholdings.[512]

The parties' submissions

392 The plaintiffs submitted that the power of MMSCPL to allot new shares was exercised improperly as Samsuddin was unaware of, and did not consent to, these two allotments. Both the 9 April 1996 Notice of Resolution and the 24

507 JCB Vol 3 at p 2593; Exhibit 780-D15.

508 WongP's 8 December 2020 Letter at p 6 (row 55).

509 JCB Vol 3 at p 2591.

510 WongP's 8 December 2020 Letter at p 6 (row 56).

511 Chee's First Report at para 2.1.25.

512 Chee's First Report at para 2.1.25.

February 1997 Notice of Resolution only bore Mustaq's signature, while the 9 April 1996 EOGM Minutes and the 24 February 1997 EOGM Minutes only bore Mustaq and Ishret's signatures.[513] Further, even if the meetings had been held, there would not have been any quorum at the meetings because at the material time, Mustaq and Ishret held only 55.6% of the shares in MMSCPL, which was far below the 75% needed under Article 68 of the MMSCPL Constitution.[514]

393 The defendants submitted that the shares allotted were in proportion to the respective shareholdings of the shareholders following the 5 January 1995 Allotment. They also reiterated their argument that the previous share allotments were not wrongful.[515]

My decision

394 In respect of the 9 April 1996 and the 24 February 1997 Share Allotments, I was of the view that even if I were to accept the Suit 780 plaintiffs' allegations as to the breaches of the MMSCPL Constitution (*eg*, in the lack of an Offer Notice, the absence of any meetings or discussions etc), these allegations *per se* were not enough for me to find the two allotments oppressive of the Samsuddin Estate's rights as shareholders. It was not disputed that the shares allotted to each registered shareholder in these two allotments were *in proportion* to that shareholder's shareholding at that point in time: the 9 April 1996 and the 24 February 1997 Allotments did not dilute the Samsuddin Estate's shareholding from what it stood at just prior to 9 April 1996.[516] In this

513 PCS 780 at para 486.

514 PCS 780 at para 492.

515 DCS 780 at paras 553–555.

516 PCS 780 at para 485; DCS 780 at para 554.

context, the judgment of Millett J in *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760 ("*Charnley*") is instructive in its reminder of the distinction to be drawn between unlawful conduct and conduct amounting to commercial unfairness. The following passage from Millet J's judgment was cited and endorsed by our CA in *Ng Kek Wee v Sin City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*") (at [67]):

> An allegation that the acts complained of are unlawful or infringe the petitioner's legal rights is not a necessary averment in a s 27 petition [the equivalent of s 216 of our Companies Act]… (I)t is not a sufficient averment either. The petitioner must allege and prove that they are evidence or instances of the management of the company's affairs by the administrator in a manner which is unfairly prejudicial to the petitioner's interests. Unlawful conduct may be relied on for this purpose, and its unlawfulness may have a significant probative value, but it is not the essential factor on which the petitioner's cause of action depends.

395 In any event, even if I were to accept the argument that these two allotments were oppressive because they continued or confirmed the shareholding positions created by the oppressive 5 January 1995 Allotment,[517] the harm suffered by the Samsuddin Estate was sufficiently addressed by declaring the 5 January 1995 Allotment null and void and ordering it set aside or cancelled. Nothing more would be achieved by making similar orders in respect of the 9 April 1996 and the 24 February 1997 Allotments. In the circumstances, I declined to issue orders for the cancellation of the 9 April 1996 Allotment and the 24 February 1997 Allotment.

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517 PCS 780 at para 485.

The First Authorised Capital Increase and Second Authorised Capital Increase

396 The Suit 780 plaintiffs also made a number of allegations about the validity of the First Authorised Capital Increase on 17 January 1994 and the Second Authorised Capital Increase on 26 September 1997.[518] They contended that the invalidity of these two capital increases meant that the share allotments coming after them would also be invalid.[519] No such submissions were made by the Suit 1158 plaintiffs.

397 I have already explained my reasons for deciding to declare the 5 January 1995 and the 11 December 2001 Share Allotments void and of no effect and to order them cancelled. I have also explained my reasons for declining to issue similar declarations and orders in respect of the other share allotments challenged by the Suit 780 plaintiffs. Having noted that the Suit 780 plaintiffs did not actually plead any specific claim for relief in respect of these two capital increases, I did not find it necessary to pronounce any findings or to issue any separate declarations or orders in respect of the 17 January 1994 and the 26 September 1997 capital increases.

Other allegations of oppressive behaviour pleaded by both the Suit 1158 and Suit 780 plaintiffs

398 Apart from the allegations of oppression arising from the conduct of the share allotments, both the Suit 1158 and the Suit 780 plaintiffs made multiple other allegations of oppressive behaviour which were common to both suits. These were grouped under the general rubric of misappropriation of MMSCPL

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518 SOC 780 at paras 46–48A and 58C–58F.

519 PCS 780 at paras 91(a)(viii) and 493.

funds: namely, the taking of unsecured and interest-free loans by Mustaq, Ishret and Iqbal; the creation of allegedly sham BID invoices; the falsification of applications to MOM in relation to work passes for MMSCPL employees; and the non-payment of dividends to shareholders while substantial directors' fees were being paid in the same periods to Mustaq and Ishret.

399 To be clear, while these instances of wrongdoing by the defendants were said to constitute breaches of the directors' duties they owed to MMSCPL, the plaintiffs did not rely on the alleged unlawfulness of the defendants' conduct to found their cause of action *per se*: rather, they relied on the unlawful conduct as evidence of the manner in which the first to the fifth defendants had allegedly conducted the company's affairs for their own benefit and in disregard of the minority shareholders, *ie*, Mustafa, Samsuddin, and subsequent to their deaths, their respective estates (*Charnley* at 784; *Ng Kek Wee* at [69]).

400 On the evidence adduced, I found that both sets of plaintiffs were able to make out a *prima facie* case in respect of the allegations relating to the taking of unsecured and interest-free loans; the falsification of MOM applications; and the non-payment of dividends while substantial directors' fees were being paid out. I set out below my findings and reasoning in respect of each of these matters.

The unsecured and interest-free loans

401 The plaintiffs pleaded that between 2000 and 2015, the first to fifth defendants (Mustaq, Ishret, Shama, Osama and Iqbal) utilised for their own benefit sums taken from MMSCPL under the guise of unsecured and interest-free loans, which were not in MMSCPL's commercial interests.[520] For

[520] SOC 1158 at paras 62–64; SOC 780 at paras 70–72.

completeness, I noted that in the Suit 780 plaintiffs' statement of claim, they initially said that the loans were taken between 2000 and 2018, but only pleaded particulars relating to loans taken from 2000 to 2015.[521] I therefore considered the period from 2000 to 2015.

The evidence

402 It was not disputed that the audited financial statements of MMSCPL showed the following amounts to be owed from the directors to MMSCPL in the period between 2000 and 2015:[522]

Year End	**Amount due from Director(s) ($)**
30 June 2000[523]	3,359,162
30 June 2001[524]	14,217,978
30 June 2002[525]	11,076,331
30 June 2003[526]	896,550
30 June 2004[527]	911,943
30 June 2005[528]	1,370,691

521 SOC 780 at para 70.

522 Ayaz 1158 AEIC at paras 406–409; Fayyaz 780 AEIC at para 194; Transcript, 16 October 2020 at p 48, lines 18–25; Exhibit 1158-D3.

523 JCB Vol 1 at p 621.

524 JCB Vol 1 at p 694.

525 JCB Vol 1 at p 784.

526 JCB Vol 2 at p 877.

527 JCB Vol 2 at p 967.

528 JCB Vol 2 at p 1052.

30 June 2006[529]	1,569,108
30 June 2007[530]	3,206,895
30 June 2008[531]	1,742,353
30 June 2009[532]	1,707,325
30 June 2010[533]	2,206,058
30 June 2011[534]	2,202,230
30 June 2012[535]	11,935,009
30 June 2013[536]	31,410,946
30 June 2014[537]	30,010,750
30 June 2015[538]	21,338,406

403 It was not disputed that the loans were taken by Mustaq, Ishret and Iqbal; and that no amounts were shown to be owing from Shama and Osama. It was also not disputed that the loans were unsecured and interest-free.

529 JCB Vol 2 at p 1141.

530 JCB Vol 2 at p 1234.

531 JCB Vol 2 at p 1345.

532 JCB Vol 2 at p 1441.

533 JCB Vol 2 at p 1547.

534 JCB Vol 2 at p 1651.

535 JCB Vol 2 at p 1761.

536 JCB Vol 3 at p 1872.

537 JCB Vol 3 at p 1927.

538 JCB Vol 3 at p 1985.

404 Prior to the trial, the defendants had disclosed – pursuant to an order for specific discovery[539] – documents purporting to be MMSCPL's general ledgers for the years 2006 (which came to one page) and 2012 to 2019. The defendants claimed that save for the one page produced in respect of the 2006 general ledger, all the general ledger records for the period before 2012 were no longer available, having already been disposed of. The plaintiffs did not accept the authenticity of the purported general ledgers produced by the defendants; and as the defendants called no witnesses at trial, these general ledgers were not admitted into evidence.

The parties' submissions

405 The Suit 1158 plaintiffs submitted[540] that based on the company's audited financial statements it could not be disputed that Mustaq, Ishret and Iqbal had taken unsecured and interest-free loans from MMSCPL. These loans were clearly not in MMSCPL's interests: MMSCPL did not earn or receive anything for the monies loaned to these three defendants; and the outstanding sums owed by these three defendants were not only very substantial, they generally increased over time. Further, the Suit 1158 plaintiffs highlighted that contrary to the defendants' allegations, there was no evidence that Mustafa, Samsuddin and the plaintiffs themselves knew of, personally participated in and benefited from the practice of taking loans from MMSCPL. While the plaintiffs disputed the authenticity of the purported general ledgers which the defendants had produced for 2006 and 2012 to 2019, they also contended that in any event, none of these general ledgers demonstrated that Mustafa, Samsuddin and/or the plaintiffs knew of and participated in the practice of taking such directors' loans.

539 See HC/ORC 5200/2019 for HC/RA 161/2019.

540 PCS 1158 at paras 805–870.

406 As for Shama and Osama, the Suit 1158 plaintiffs contended that even though they were not shown to have taken any directors' loans, they were nevertheless "complicit" in the taking of loans by the other three defendants, because they were directors of MMSCPL during the relevant period, and the loans would have had to be approved by the directors. It was also argued that the general ledgers produced by the defendants appeared to show that Shama and Osama "benefited from the loans even though they did not take them".[541]

407 As for the Suit 780 plaintiffs, they submitted[542] that the unsecured and interest-free loans were not in MMSCPL's commercial interests; and that in taking these loans, the first to fifth defendants had, *inter alia*, breached their fiduciary duties as directors of MMSCPL. These loans included payments by MMSCPL for Mustaq's personal expenses (such as credit card payments) at a time when MMSCPL was itself incurring significant finance costs from bank loans and other interest-bearing borrowings, as well as the opportunity cost from the use of funds loaned to directors.

408 The defendants, for their part, submitted that the taking of these directors' loans was not improper: MMSCPL was an exempt private company and entitled to lend money to its directors. The defendants also argued that in any event, the loans were not oppressive to the plaintiffs, because Mustafa, Samsuddin and the Samsuddin Estate had (allegedly) also taken loans from MMSCPL. Moreover, the Mustafa and the estates (and their family members) benefitted from the loans taken under Mustaq's name, and had previously never objected to this practice.[543]

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541 PCS 1158 at paras 854–855.

542 PCS 780 at paras 812–828.

543 DCS 1158 at paras 467–501; DCS 780 at paras 613–647.

My findings

(1) Whether it is improper for a director to take loans from the company for his personal use

409 As to the defendants' argument that MMSCPL was an exempt private company and entitled to lend money to its directors, I should make it clear that I did not disagree that in the case of an exempt private company, it would not be improper for a director to take a loan from the company simply because it was for his personal use (see *Chow Kwok Ching v Chow Kwok Chi and others and other suits* [2008] 4 SLR(R) 577 ("*Chow Kwok Ching*") (at [69]). However, this did not mean that the taking of unsecured and interest-free loans by directors of an exempt private company would *never* amount to evidence of oppressive conduct for the purposes of a s 216 action.

410 In *Chow Kwok Ching*, where the plaintiff and the defendants were the brothers and co-directors of companies started by their father, the High Court held (at [69]–[70]) that although there was evidence that their parents had a practice of getting the companies to pay their personal expenses and to make direct loans to them, this "old way of using the companies' funds as if they were the personal funds of the shareholders and directors could not continue" after the parents' deaths. The court pointed out that the three brothers were not in the same position as their parents had been, and there was the additional consideration of the other interests in the companies (namely, their parents' estates and any creditors of the estates, as well as the interest of their sister). As such, the defendants were not entitled to treat the companies as a ready source of cash in the same way their parents had done. Instead, the brothers – as directors – "had a duty to meet and discuss the policy on loans and only take loans that had been properly authorised". There was no evidence that the

directors had ever done so. In the circumstances, the High Court held (at [70]) that the two the defendants' taking of numerous unsecured and interest-free loans from the companies constituted evidence of oppression or disregard of the plaintiff's minority interest.

411 What *Chow Kwok Ching* demonstrates, therefore, is that in considering whether the taking of loans by a director constitutes evidence of oppression of minority rights, the court will look at all the circumstances in which the loans were taken by the directors, including the existence of any agreed policy and practice as to the terms on which the loans would be given and repaid.

412 As an aside, I noted that the defendants claimed that the plaintiffs had painted a misleading picture of the loans taken. According to the defendants, while there were amounts due from the directors to MMSCPL, there were also amounts due from MMSCPL to the directors; the plaintiffs were said to have focused "selectively" on the period after 2000.

413 I did not think the plaintiffs sought in in any way to mislead me. The plaintiffs did not deny that the financial statements showed amounts owing from MMSCPL to the directors in the period from 1990 to 1999.[544] This was acknowledged, for example, in Chee's First Report. However, even if there had been amounts owing from MMSCPL to the directors in this earlier period, it did not preclude the possibility of the defendants breaching their duties as directors from 2000 onwards through the taking of large unsecured and interest-free loans. As for the contention that the plaintiffs had "selectively" focused on the period after 2000, this seemed to me to be a spurious complaint. If the plaintiffs had evidence of the defendants' conduct post-2000 which they believed

544 Exhibit 1158-D3.

amounted to breaches of the latter's duties as directors, I did not see why it should be considered untoward of them to focus their claims on the period post-2000. As Ayaz explained in re-examination, he had selected the period from 2000 to 2015 because he was not given the accounts from 1990 to 2000; and in the year 2017 and 2018, he had already "filed a case against them so we couldn't ask them".[545]

(2) The defendants' allegation that Mustafa, Samsuddin and their estates/family members had also taken loans from MMSCPL

414 As with the defendants in *Chow Kwok Ching*, so too the defendants in the present case failed to produce any evidence that the directors of MMSCPL had ever got together and explicitly set out the conditions for loans.

415 Instead, the defendants argued that Mustafa, Samsuddin and their family members had also taken loans from MMSCPL.[546] I understood this as really an attempt by the defendants to show that Mustafa, Samsuddin and subsequently, the plaintiffs themselves had agreed to a practice within MMSCPL of the taking of unsecured and interest-free loans by the directors.

416 This argument was based primarily on the general ledgers produced by the defendants in specific discovery, which their counsel then used to cross-examine the plaintiffs. As I noted earlier, since the plaintiffs did not accept the authenticity of these general ledgers and none of the defendants gave evidence, these general ledgers were not actually proved and admitted into evidence. In any event, the Suit 1158 plaintiffs denied that the general ledgers showed

545 Transcript, 20 October 2020 at p 16, line 19 to p 17, line 10.

546 DCS 1158 at para 477; DCS 780 at para 622.

Mustafa and Samsuddin to have been aware of and to have participated in the taking of directors' loans from MMSCPL.

417 As for the Suit 780 plaintiffs, they did not deny that some loans had been taken over the years by Samsuddin and/or the Samsuddin estate. In Fayyaz's AEIC[547], he acknowledged that the general ledgers did appear to show that Samsuddin and the Samsuddin estate had taken loans from MMSCPL. However, it should be highlighted that insofar as Fayyaz was prepared to agree that the general ledgers showed Samsuddin and the Samsuddin estate taking loans from MMSCPL, these were apparently loans taken from 2013 onwards. These were not directors' loans, since Samsuddin had already stepped down as a director on 14 July 2003. Fayyaz's evidence – which was not refuted – was that these loans were given by MMSCPL to Samsuddin, and later on his estate, to allow them to "pay for living expenses in Singapore and in India"; and that the money had to be spent among his four brothers and sisters and their families – in all, some sixty people.[548] The amounts of the loans which Fayyaz acknowledged having taken were also much smaller than the amounts of directors' loans recorded under Mustaq's, Ishret's and Iqbal's names. For example, Fayyaz stated that he took a $50,000 loan for his daughter's wedding and a $165,000 loan for a down-payment for a property in India.[549] In his expert report, Chee noted that the amount due from Samsuddin and/or the Samsuddin Estate for the period from FY2012 to FY2018 ranged between $1.1 million and $2 million each year, whereas in comparison, the amount due from the directors

547 Fayyaz 780 AEIC at para 199.

548 Fayyaz 780 AEIC at para 199.

549 Fayyaz 780 AEIC at paras 207–208.

was "much higher" and ranged between S$3.7 million and S$31.4 million during the same period.[550]

418 In short, Fayyaz's admissions (such as they were) were not enough to substantiate the defendants' allegation that Mustafa, Samsuddin, and the plaintiffs had all known of and accepted a general practice of the directors taking substantial, unsecured and interest-free loans from MMSCPL.

419 Further, even if I were to accept that Mustafa and/or Samsuddin and/or their estates had taken some loans from the company in the past, the defendants failed to offer any coherent explanation as to why this should disentitle the Mustafa and Samsuddin estates from complaining about the loans taken by the defendants. In *Chow Kwok Ching*, the High Court rejected the argument that the plaintiff was not entitled to complain about the loans taken by the defendants simply because he himself had a large debit balance on his account: the court held that the plaintiff's debit balance was entirely irrelevant because it had been outstanding for many years and the loans it represented had been authorised by the father when he was alive. In the present case, the amount of any loans allegedly taken by Mustafa and/or Samsuddin and/or their estates was indisputably very much less than the massive directors' loans taken by the defendants themselves. Even more fundamentally, there was no suggestion that any of their loans were unauthorised or that they were concealed from the defendants. As with the plaintiff in *Chow Kwok Ching*, therefore, the two sets of plaintiffs in this case were not precluded from complaining about the directors' loans taken by Mustaq, Ishret and Iqbal.

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550 Chee's First Report at para 3.2.6.

(3) The defendants' allegation that the plaintiffs enjoyed other benefits from MMSCPL by virtue of being family members of Samsuddin and Mustafa

420 Aside from their allegation that Mustafa, Samsuddin and the plaintiffs had also taken loans from MMSCPL, the defendants claimed that the plaintiffs had also enjoyed other benefits from the company by virtue of their being Mustafa's and Samsuddin's family members. The defendants' case was that there existed a longstanding practice of the plaintiffs and their family members taking money from MMSCPL for their personal expenses; and pursuant to this (alleged) practice, the sums taken by the plaintiffs and their families would be recorded under Mustaq's director's account in MMSCPL's general ledger, *ie*, these were reflected as loans owing to MMSCPL from Mustaq.[551]

421 For example, the defendants suggested to Ayaz in cross-examination that his personal expenses, as well as his family's household expenses, were charged to Mustaq's account. The defendants referred him to expense records for April 2015 which showed a total expenditure of $103,508.89,[552] and a cheque payment for this amount made out to MMSCPL for those expenses, from MMSCPL itself.[553] According to the defendants, the breakdown of the expenses[554] showed that Ayaz's household expenses were $7,264 for April 2015, and that based on the general ledger, this amount was part of the total amount of $103,508.89 debited from Mustaq's account.[555]

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551 DCS 1158 at paras 479–492; DCS 780 at paras 631–638.

552 TB Vol 10 at p 7239.

553 TB Vol 10 at p 7240; Transcript, 19 October 2020 at p 65, line 22 to p 66, line 2.

554 TB Vol 10 at p 7237; *compare with* p 7175; Transcript, 19 October 2020 at p 69, line 14 to p 70, line 6.

555 JCB Vol 3 at p 2245 (see entry dated 28 May 2015).

422 As another example, the defendants suggested to Fayyaz during cross-examination that the payments for his car, road tax and motor insurance, as well as the utilities payments for his residence, were charged to Mustaq's account in MMSCPL.[556]

423 In my view, the defendants' narrative about the benefits received by the plaintiffs did not assist their attempt to resist the plaintiffs' claims about their directors' loans being evidence of oppression. In the first place, even if I were to accept that some of the expenses incurred by the plaintiffs were recorded under Mustaq's account in the general ledger and formed part of the loan amounts owing by Mustaq to MMSCPL, these alleged expenses appeared to be only a very small part of the huge loan amounts owing by Mustaq to MMSCPL.[557] For example, in March and April 2015, the expenses incurred by Fayyaz, Asrar and Zafar came up to $103,508.89,[558] and this sum was charged to Mustaq's director's account on 28 May 2015.[559] However, the total amount owing from the directors to MMSCPL as at 30 June 2015 was $21,338,406.

424 Further, there was no evidence that the plaintiffs were aware that the various expenses were charged to Mustaq's account and paid out of the loans he took from the company. On the contrary, both Ayaz and Fayyaz gave evidence that as far as they were concerned, the payment of their household expenses formed part of their salary packages.[560]

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556 Transcript, 23 October 2020 at p 77, line 1 to p 78, line 18.

557 PRS 780 at para 531.

558 TB Vol 10 at pp 7229–7239; AB Vol 15 at pp 11452–11453.

559 JCB Vol 3 at p 2245 (see entry dated 28 May 2015 for $103,508.89).

560 PRS 780 at paras 534–535; Transcript, 19 October 2020, p 62 line 18 to p 63 line 3.

425 At the end of the day, even if it were true that at least some of the plaintiffs' personal and/or household expenses had been charged to Mustaq's account in MMSCPL and paid for by the loans he took, there was no basis for saying that the plaintiffs must be understood thereby to have known of and agreed to the defendants taking large, unsecured and interest-free loans from the company.

(4) Loans to directors did not benefit MMSCPL

426 From the case run by the defendants at trial, it was plain that they did not (and could not) deny that the substantial directors' loans taken by Mustaq, Ishret and Iqbal were for their personal use – though it was submitted that in Mustaq's case, he also used the loans to pay for at least some of the personal and household expenses of Mustafa, Samsuddin and their families.

427 As Chee pointed out in his expert report, there was no evidence that the loans benefited MMSCPL in any way.[561] Indeed, Chee concluded that on the contrary, the loans made to the directors were not in MMSCPL's interests. As he pointed out, while the directors were able to get large, unsecured and interest-free loans from the company for their personal use,[562] this was "at MMSCPL's expense" because in the same period, the company had "significant bank loans and other interest-bearing borrowings":

> MMSCPL was burdened with finance costs ranging between S$2.2 million to S$9.1 million annually from FY2000 to FY2018.The loans provided to the directors would have contributed to these finance costs. Additionally, MMSCPL did not recover the loans even when it was in need of funds, choosing instead to obtain funds through share allotments not in proportion to their shareholdings and issued at a deep discount to their Fair Value. MMSCPL's other shareholders

561 Chee's First Report at para 2.3.19.

562 Chee's First Report at paras 2.3.20–2.3.21.

> (apart from Mustaq) were consequently disadvantaged by having their interests in MMSCPL diluted due to the shares issued

(5) Summary of findings on unsecured and interest-free directors' loans taken by Mustaq, Ishret and Iqbal

428 To sum up, therefore: the evidence showed, indisputably, that in the period between 2000 and 2015, substantial directors' loans were taken by Mustaq, Ishret and Iqbal. These loans were for their personal benefit: 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. There was no record of the directors having discussed and agreed on the conditions for such loans. The loans were taken on an unsecured and interest-free basis. During the same period, the company had to bear the finance costs resulting from bank loans and other interest-bearing borrowings. There was no evidence of any active steps taken to ensure prompt or regular repayment of the loans. As the Suit 1158 plaintiffs put it in their written submissions, these directors were basically "using MMSCPL as their own piggy bank".[563] Even if Mustafa, Samsuddin, and/or their respective estates had been given loans by MMSCPL and/or had received help from Mustaq in the payment of some of their personal or household expenses, there was no evidence that they had thereby come to know of and agree to the substantial unsecured and interest-free loans being taken by Mustaq, Ishret and Iqbal.

429 Given the circumstances of the directors' loans, I agreed with the plaintiffs that in respect of their conduct vis-à-vis the taking of the unsecured

563 PCS 1158 at para 864.

and interest-free loans, Mustaq, Ishret and Iqbal were in breach of their duty as directors to act honestly and *bona fide* in the best interests of MMSCPL and to avoid putting their interests ahead of MMSCPL's. In *Kong Thai Sawmills (Miri) Sdn Bhd, Re: Kong Thai Sawmills (Miri) Sdn Bhd v Ling Beng Sung* [1978] 2 MLJ 227, Lord Wilberforce held (at 232) that improper drawings by way of loans were material as evidence of oppression and disregard of a minority shareholder's interests. I agreed with the plaintiffs that the wrongdoing by Mustaq, Ishret and Iqbal constituted evidence of these defendants conducting the affairs of MMSCPL in a manner that was oppressive and in disregard of the interests of the minority shareholders.

(6) Claims not made out against the third and fourth defendant

430 As I noted earlier, Shama and Osama did not take unsecured and interest-free directors' loans. In fact, Osama was not even a director of the company in the decade between 10 February 2004 and 24 December 2014. Insofar as the two sets of plaintiffs appeared to be claiming that Shama and Osama failed to take action to prevent the loans being taken by the other defendants,[564] I reiterate the observations I made earlier (at [330]–[333]) regarding the absence of evidence on Shama's and Osama's knowledge and their actions. There was no evidence, for example, that Shama and Osama had the means for discovering the extent and nature of the loans taken by the other three defendants.

431 In the circumstances, I did not accept that the plaintiffs were able to establish a *prima facie* case of wrongdoing by Shama and Osama which could

564 SOC 780 at para 72.

amount to evidence of their acting in oppression and/or disregard of the minority shareholders.

The falsification of MOM applications

432 I next address the plaintiffs' claims concerning the falsification of work pass applications made by MMSCPL to MOM in relation to MMSCPL employees working for Kebabs N Curries, Mustafa's Café, Handi Restaurant and Catering, and/or MMSCPL itself.[565] The first three entities were restaurants which were wholly owned by MMSCPL.[566] In gist, the plaintiffs alleged that since April 2009, Mustaq had procured or caused MMSCPL to overstate the salaries of its employees in the work pass applications: the differences between the salaries declared to MOM and the actual salaries paid to the workers would then be collected from the workers every month by an MMSCPL Human Resources ("HR") manager named Ghouse ("Ghouse"), and later on, by one Raj Patro ("Patro") who operated an employment agency named Pat & Hoff Consultants ("Pat & Hoff"). According to the plaintiffs, the monies collected back in this manner would then be passed, directly or indirectly, to Mustaq and/or applied as directed by him and/or used by him for his own benefit.[567] The plaintiffs referred to this as the "Cashback Scheme".

433 The defendants' pleaded case in respect of the falsified MOM applications and the Cashback Scheme was that they knew nothing about these matters.[568] According to the defendants, Ghouse was the person who handled applications to MOM for work passes in relation to employees working for

565 SOC 1158 at paras 68–73; SOC 780 at paras 76–79.

566 Ayaz 1158 AEIC at para 70.

567 PCS 780 at para 1003.

568 DCS 1158 at paras 515–687; DCS 780 at paras 660–838.

MMSCPL, while Patro handled the work pass applications in relation to employees working for Kebabs N Curries, Mustafa's Café and Handi Restaurant. The defendants claimed that Ghouse and Patro did not report to them: according to the defendants, they had no contact with either man and no reason to suspect that falsified applications had been made to MOM.[569]. In fact, the defendants claimed that the allegations about the falsified MOM applications and the Cashback Scheme were really a concerted effort by Rajesh (the consultant engaged by the two sets of plaintiffs) and one Arvind Sharma ("Arvind", the former general manager of Kebabs N Curries) to manufacture and collect false evidence in support of the plaintiffs' litigation against Mustaq.[570]

The evidence led by the plaintiffs

434 The plaintiffs called a number of witnesses to give evidence on the falsified MOM applications and the Cashback Scheme. As seen from the list below, apart from Rajesh, the other witnesses were all former MMSCPL employees:

(a) Ashish Singh ("Ashish") worked at Kebabs N Curries from around 9 May 2014 to 12 July 2018.[571]

(b) Abdul Raziq ("Raziq") worked as a restaurant captain at Kebabs N Curries from around October 2011 to 8 June 2018.[572]

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569 Defence 1158 at paras 120–121; Defence 780 at paras 118–119.

570 DCS 1158 at para 641.

571 AEIC of Ashish Singh in Suit 1158 dated 20 August 2020 ("Ashish 1158 AEIC") at para 1.

572 AEIC of Abdul Raziq in Suit 1158 dated 20 August 2020 ("Raziq 1158 AEIC") at para 1.

(c) Tarun Sharma ("Tarun") worked as a restaurant supervisor at MMSCPL from 21 December 2011 to 14 July 2018.[573]

(d) Anees Ahmad ("Anees") worked as a sales executive at the watch department and then the electronics department of MMSCPL from 20 April 2009 to 8 June 2018.[574]

(e) Arvind Sharma ("Arvind") was the general manager of Kebabs and Curries from August 2013 until he was fired on 31 May 2018.[575]

(f) Mohit worked at Kebabs N Curries from around 26 November 2011 to 18 September 2018.[576]

(g) Abdul Haq Siddique ("Siddique") was a Senior Sales Executive in MPL from around 1 October 2011 to 25 June 2018, and the brother-in-law of Ayaz.[577]

(h) Rajesh was the consultant first hired by Ayaz in 2016 to investigate the affairs of the Mustafa Estate (see [37] above). Around early 2018, Rajesh was also asked by Fayyaz to investigate the affairs of MMSCPL.[578]

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573 AEIC of Tarun Sharma in Suit 1158 dated 20 August 2020 ("Tarun 1158 AEIC") at para 1.

574 AEIC of Anees Ahmad in Suit 1158 dated 20 August 2020 ("Anees 1158 AEIC") at para 1.

575 AEIC of Arvind Sharma in Suit 1158 dated 20 August 2020 ("Arvind 1158 AEIC") at paras 1, 31.

576 AEIC of Mohit in Suit 780 dated 13 August 2020 ("Mohit 780 AEIC") at para 1.

577 AEIC of Abdul Haq Siddique in Suit 780 dated 17 August 2020 ("Siddique 780 AEIC") at para 1.

578 AEIC of Rajesh in Suit 780 dated 21 August 2020 ("Rajesh 780 AEIC") at para 22.

435 I examine in some detail below the evidence of Ashish Singh, as his account of events reflected broadly the accounts given by the other former MMSCPL employees.

(1) Ashish Singh's evidence

(A) ASHISH JOINED MMSCPL IN MAY 2014

436 Ashish's evidence was that he joined MMSCPL in May 2014, after coming into contact with Patro in April 2014 and paying the latter an agent's fee of $6,500 cash (in instalments) to help him obtain employment in Singapore.[579]

437 When Ashish first joined MMSCPL, he attended a staff briefing on 9 May 2014 for about 15 to 20 new staff. This briefing was given by Patro, who told the new staff that if any government agencies asked them whether they "give any cash-back", they had to "deny it completely".[580] At trial, Ashish clarified the actual words used by Patro at the 9 May 2014 briefing:[581]

> A: [Patro] was indicating towards cash-back but he did not use the word "cash-back" directly, but he was implying cash-back.
>
> Ct: Can you clarify what exactly was said at the first briefing?
>
> A: In the briefing, it was told to us that whatever salary comes in your account you mention that to be your actual salary, nothing else.

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579 Transcript, 29 October 2020 at p 117, line 24 to p 118, line 14.

580 AEIC of Ashish Singh in Suit 780 dated 12 August 2020 ("Ashish 780 AEIC") at para 9; Transcript, 29 October 2020 at p 119, lines 1–8.

581 Transcript, 29 October 2020 at p 121, line 23 to p 122, line 5.

438 According to Ashish, his monthly salary – as declared in his employment contract – was $2,500.[582] In or around August 2014, he started receiving monthly allowances as well, which amounted to $210. In 2016 his monthly salary was increased to $2,520.[583] He initially received his salary in cash vouchers which he had to encash for his salary, but started receiving his salary in his bank account from January 2015.[584]

439 In Ashish's third month of employment, *ie*, around August 2014, he attended a meeting at the HR office with Ghouse, the HR manager of MMSCPL, where Ashish was informed he would have to "pay a sum to HR", being the "total outstanding, inclusive of the sums owed for the first two months".[585] Ashish then calculated that despite his official salary of $2,500, his actual salary was $1,600 to $1,800. The amount of "cashback" he was required to pay (and therefore his actual monthly salary) would fluctuate as it depended on factors such as annual leave and allowances or incentives that he was entitled to, and whether he had worked on public holidays or any off-days. When he checked with his colleagues in Kebabs N Curries, he was told that this "cashback" payment was "the requirement for all foreign workers, other than the immediate family members of the boss". He therefore complied and paid the "cashbacks" as required.[586]

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582 Ashish 780 AEIC at para 10.

583 Ashish 780 AEIC at p 230 (Statutory declaration dated 17 May 2017).

584 Transcript, 29 October 2020 at p 124, lines 1–5.

585 Ashish 780 AEIC at para 12.

586 Asish 780 AEIC at paras 12–13.

(B) PROCEDURE FOR COLLECTION OF CASHBACKS

440 The procedure for the collection of cashbacks occurred every month. Ashish explained in his AEIC that usually the foreign workers would get phone calls from the HR department for them to attend at the HR office one by one. On each occasion, Ghouse and one Ms Nafisah ("Nafisah") would inform them of the "outstanding" amount they had to "return".[587]

441 In his AEIC, Ashish exhibited a photograph of a document[588] which Ghouse would refer to during those meetings. Ashish explained that he had taken this photograph sometime in 2015 while he was in the HR office to pay the "cashback" and while Nafisah was pre-occupied with some other papers.[589] Ashish explained that the left-hand column recorded the employees' badge number.[590] In cross-examination, he agreed that his badge number was not reflected on that handwritten document, but explained that this was "because there were around 80 to 100 S Pass holders who were coming pay [*sic*] the cash back".[591] There were also some entries indicating negative amounts, which Ashish explained meant that the staff in question had paid their "cashback" in advance of receiving their salary.[592] As for why some of the "new balance" amounts (the amounts the employees had to return to HR for the current month) were negative, Ashish explained that sometimes, his annual leave pay was

587 Ashish 780 AEIC at para 14.

588 Ashish 780 AEIC at para 15: the screenshot is found at p 17 of the AEIC.

589 Transcript, 29 October 2020 at p 156, lines 11–18 and p 157, line 22 to p 158, line 7.

590 Ashish 780 AEIC at para 15.

591 Transcript, 29 October 2020 at p 158, lines 13–16.

592 Transcript, 29 October 2020 at p 159, lines 17–25.

reflected as $775, which increased his net salary, and "that's why when they calculate they do not have to pay them back".[593]

(C) AMOUNT OF CASHBACK COLLECTED EACH MONTH

442 Ashish testified that the amount he had to pay back to MMSCPL would differ from month to month.[594] Although he had stated in his Suit 780 AEIC that the "cashback" was around $700 to $900 per month,[595] at trial he explained that he did not always have to give $700 every month: the amount could be around $300 to $500, or it could even go to zero in the months of December and January when he had his annual leave.[596] He also stated that there were months where he did not pay back any cash or where he paid less than $100[597] (*eg* $84 in February 2015)[598]. While Ashish's payslips showed that his monthly gross salary, or his "regular pay", remained the same, at $2,520 per month, his "net pay" differed each month.[599]

443 In his AEIC for Suit 1158, Ashish stated that from July 2014 to October 2017, he paid an average monthly amount ranging between $300 and $800 as "cashback".[600] He accepted that in a letter sent by his solicitors on 26 June 2018

593 Transcript, 29 October 2020 at p 161, lines 3–7.

594 Transcript, 29 October 2020 at p 128, lines 8–16.

595 Ashish 780 AEIC at para 12.

596 Transcript, 29 October 2020 at p 129, lines 10–22.

597 Transcript, 29 October 2020 at p 131, lines 17–22.

598 AB Vol 13 at pp 10064–10065; Transcript, 29 October 2020 at p 133, lines 14–16.

599 Transcript, 29 October 2020 at p 146, lines 6–9; 780-3PBD at pp 90, 92, 94, 96, 98 (Ashish Singh's payslips for June, July, October, November and December 2015).

600 Ashish 1158 AEIC at para 31; Transcript, 29 October 2020 at p 152, lines 6–13.

to MOM[601], the cashback amount had been erroneously stated as $600 per month."[602]

(D) GATHERING EVIDENCE FROM AUGUST 2014

444 Ashish was unhappy he had to pay cashbacks every month. In August 2014, he shared his frustrations with Arvind, who told him that if Ashish intended to challenge this, he would need a lot of evidence. Around this time, Ashish started making recordings of the meetings he attended in the HR office for the payment of the "cashbacks", and he provided these recordings to Arvind.[603]

445 From around March 2016, Patro began coming to the Handi Restaurant to collect "cashbacks", while Ghouse continued to collect cashbacks for any outstanding amounts owed.[604] Ashish continued to record the meetings he attended with these men for the purpose of paying the "cashbacks". On his evidence, the payment of these "cashbacks" was not something that the staff were allowed to disregard or evade. For example, in a conversation with Patro on 10 June 2016, Ashish informed Patro that he did not have enough money to pay the "cashbacks" in full at that point and that he would pay the remainder the next time. Patro's response to him was: "Don't get into this next time next time otherwise next time will get your salary on hold…I am not joking".[605]

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601 Ashish 780 AEIC at pp 299–300.

602 Transcript, 29 October 2020 at p 153, lines 19–20.

603 Ashish 780 AEIC at paras 19–20.

604 Ashish 780 AEIC at para 21.

605 AB Vol 13 at pp 9645–9646.

(E) EVENTS IN 2017

(I) APRIL TO MAY 2017

446 As another example, in a meeting on 20 April 2017 with Patro and one Chef Ayub ("Ayub"),[606] Patro told Ashish that Ashish would receive a fine of $50 if he did not pay the "cashback" that he owed.[607] During this conversation, Ashish had also asked for a loan of $10,000 from the company, which request Patro had rejected. Patro suggested that the sum could be given as a salary advance instead.[608]

447 After the above conversation with Patro, Ashish spoke to the HR directors of MMSCPL – Stephen and Lee – to ask for a loan.[609] In that conversation, Ashish had suggested to Stephen that he (Ashish) should stop paying the "cashbacks" each month so that he could use the money for himself first, before returning the amount after four or five months. Ashish requested that Stephen speak to "the boss" – *ie*, Mustaq – about this suggestion. According to Ashish, Stephen's response to his suggestion and his reference to the "cashback" payments was:[610]

> I can't talk to the Boss on this 'cause I am not involved in this money thing. I am not involved and I don't want to know anything about this money because I am not involved.

448 Eventually, Stephen approved a loan of $2,000, but Ashish ultimately did not accept it.[611]

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606 AB Vol 13 at pp 10133–10137.

607 Transcript, 29 October 2020 at p 171, lines 19–23; Ashish 780 AEIC at para 27.

608 Transcript, 29 October 2020 at p 174, lines 12–23.

609 Ashish 780 AEIC at paras 23, 29; AB Vol 13 at pp 10128–10132.

610 AB Vol 13 at p 10131.

611 Ashish 780 AEIC at para 31.

449 Around the time he spoke to Stephen and Lee, Ashish also made a statutory declaration on 17 May 2017.[612] At trial, he explained that he had done so[613] –

> for my own safety to say that whatever I'm stating is all truth, nothing but the truth, that I wanted to ensure that tomorrow I do not deny what exactly happened to me".

450 According to Ashish, he had decided on his own to make this statutory declaration but "had taken suggestions" from "friends who were in India".[614] In cross-examination, Ashish explained that at that time (*ie*, earlier in 2017), he had decided to make this statutory declaration and to provide the evidence he had collected to Rajesh, instead of making a police report, because he and the other staff had been "threatened" since "day one": they had been "told that [they] will be fired from [their] job and also told that [they] will never get another job in Singapore ever" should they bring the "cashback" matter to light. As he was responsible for his family, he had "no other choice but to continue working in MMSCPL".[615]

(II) NOVEMBER 2017: ANNOUNCEMENT OF THE END OF THE CASHBACK SCHEME

451 Ashish said that on 10 November 2017, while he was working at Kebabs N Curries, he saw Mustaq and one Saleem (Iqbal's son-in-law) come into the restaurant to speak with Ayub. The following day (11 November 2017), Ayub called for a meeting where he informed the staff that the "boss", meaning

612 Ashish 780 AEIC at para 32 and pp 230–236; Exhibit 780-P3.

613 Transcript, 29 October 2020 at p 196, lines 17–22.

614 Transcript, 29 October 2020 at p 197, lines 12–13.

615 Transcript, 29 October 2020 at p 204, lines 3–12.

Mustaq, had told him that the foreign employees would no longer have to pay cashbacks to the management.[616]

452 At trial, Ashish testified that he believed Mustaq and the other directors of MMSCPL were aware of the "cashback" practice and that an end had been put to it in 2017 after Mustaq spoke with Chef Ayub. Ashish agreed that he had not actually heard the conversation between Mustaq and Ayub on 10 November 2017. What he could say was that he had watched Mustaq speaking to Ayub, and the following day Ayub had announced at the staff briefing that "Boss" (*ie*, Mustaq) had said there would be no more "cashback" payments.[617]

(F) EVENTS IN 2018

(I) MAY 2018: ARVIND'S TERMINATION AND NON-RENEWAL OF S PASSES

453 On 28 May 2018, however, the HR office put up a notice stating that all existing S-Pass holders would not be renewed by MMSCPL, *ie*, their employment would terminate on the last day stated on their S-Passes (the "28 May 2018 Notice").[618] Ashish and some other staff approached Arvind that same day to air their frustrations, and asked Arvind to speak to the management on their behalf. Nine of the foreign staff, including Ashish, signed a handwritten letter for Arvind to convey to management; and in this letter, reference was made to their having had their work passes renewed in the past when they were "paying back part of [their] salary", as well as to Ayub's previous announcement about the (supposed) end to such payments.[619] Some of Ashish's colleagues also wrote emails to management expressing their frustration.

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616 Ashish 780 AEIC at paras 33–34.

617 Transcript, 29 October 2020 at p 195, lines 5–13.

618 Ashish 780 AEIC at para 35 and p 237.

619 Ashish 780 AEIC at paras 37–38 and p 238.

454 Unfortunately, Arvind himself had his employment terminated around 31 May 2018; and Ashish and his colleagues received no response from management to their handwritten letter and emails.[620]

(II) JUNE 2018: REPORTING THE CASHBACK SCHEME TO THE AUTHORITIES

455 On 1 June 2018 Ashish made a complaint to MOM through their "isubmit" system. That same day, however, Patro conducted a staff briefing to tell the staff "the tiger is back" (apparently referring to himself), and that those who wanted to go and complain to MOM could do so as he "knows how to handle it".[621]

456 On 4 June 2018, Ashish made a second statutory declaration[622] to "add some more points". He explained that he did so because Arvind had been fired on 31 May 2018 and he himself was "scared" as "Patro used to come and threaten us".[623] When asked by the defendants' counsel if he knew that the statutory declaration did not prove anything, he explained:[624]

> For me, this is a kind of an affidavit and it is for my own sake I have prepared this for myself.

457 About a week after Patro's briefing of 1 June 2018, those of Ashish's colleagues who had sent emails to management had their employment terminated. Ashish himself received a threatening and abusive call from Patro that same day.[625] On 9 June 2018, Ashish – with Arvind's assistance – lodged a

620 Ashish 780 AEIC at para 39.

621 Ashish 780 AEIC at para 40.

622 Ashish 780 AEIC at pp 241–247.

623 Transcript, 29 October 2020 at p 202, lines 20–23.

624 Transcript, 29 October 2020 at p 203, lines 8–9.

625 Ashish 780 AEIC at para 41.

police report concerning the Cashback Scheme.[626] At that time, he knew that there was a dispute going on in Mustafa's family.[627] However, he explained that he had gone to the police to report the Cashback Scheme on 9 June 2018 because:[628]

> …I was scared at that point of time because I was given threats of being kidnapped by Mr Raj Patro and Raj Patro told me that he would even kidnap my family. He was able to tell me my home address in India and constant threat of kidnapping my family if I proceed with giving the recordings to the police. So I was very scared at that point of time.

458 On 10 June 2018, Ashish wrote a letter to MOM explaining the Cashback Scheme.[629] In this letter (which he said Arvind helped him with in terms of correcting the grammar[630]), he stated that Mustaq and Shama's husband were benefiting from the Cashback Scheme. In cross-examination, he accepted that he did not have "strong proof" that Mustaq and Shama's husband were the ones ultimately benefiting from the cash-back.[631]

459 On 10 July 2018, Ashish attended an interview with MOM.[632] Shortly after that, he was fired from MMSCPL on 12 July 2018.[633] By that point, he felt he had no other choice but to "carry forward with [his] complaint".[634]

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626 Ashish 780 AEIC at pp 239–240.

627 Transcript, 29 October 2020 at p 201, lines 22–24.

628 Transcript, 29 October 2020 at p 163, line 18 to p 164, line 1; *see* Ashish 780 AEIC at pp 239–240.

629 Ashish 780 AEIC at para 43 and pp 257–261.

630 Transcript, 29 October 2020 at p 205, line 17.

631 Transcript, 29 October 2020 at p 209, lines 22–24.

632 Ashish 780 AEIC at para 46.

633 Ashish 780 AEIC at para 47 and pp 249–250.

634 Transcript, 29 October 2020 at p 168, lines 12–14.

460 On 2 August 2018,[635] Ashish sent an email to the High Commissioner of India in Singapore. In this email he attached a document titled "Modus operandi and some facts in regards to cash back" which he said he had drafted himself and in which he set out his account of the system of cashback collections at MMSCPL.[636]

(2) Similar evidence from other former employees

461 The following other former MMSCPL employees (Raziq, Tarun, Anees, Mohit and Siddique) gave evidence which was broadly similar to Ashish's, in terms of their experiences with the "Cashback Scheme". Broadly, they too gave evidence of Ghouse and Patro collecting from them the "cashback" payments every month. These amounts would vary depending on factors such as whether the employee in question had taken off days during the month and whether the "declared salary" had increased.[637] They also gave evidence of having tried to gather evidence of the "cashback" collections: for example, Tarun gave evidence that he had made audio recordings of the occasions when he was summoned to the HR office to make his payments, and that he had also downloaded CCTV footage from the office which he had handed over to Rajesh. When asked why they had handed over the evidence collected to Arvind and/or Rajesh instead of making police reports, these witnesses testified that they were "living in constant fear" due to the threats of losing their jobs, and "did not have the courage to approach the authorities without enough evidence and proof" (*per*

635 Ashish 780 AEIC at pp 251–253 (email) and 254–271 (attachments to the email).

636 Ashish 780 AEIC at pp 266–270; Transcript, 29 October 2020 at p 210, line 17 to p 211, line 3.

637 Raziq 780 AEIC at para 7.

Tarun).[638] As Anees put it, he was "scared" of being fired – and as it turned out, he – like the others – was fired when eventually he did complain[639].

462 These other witnesses also gave evidence of having been told by Ayub on 11 November 2017 that Mustaq had told him the foreign employees would no longer need to pay "cashbacks" to management. In May 2018, however, they found out *via* a notice on the MMSCPL notice-board that all S-Passes would no longer be renewed.[640] Their subsequent handwritten letter and emails to management went unanswered. Instead, one by one, they were fired.

(3) Arvind Sharma's evidence

463 Arvind first joined MMSCPL in August 2013 as the general manager of MMSCPL's Food & Beverage Department. He was in charge of the operations of Kebabs N Curries, Handi Restaurant and Mustafa Café.[641] Around 50 staff reported to him, including Ashish, Tarun and Raziq.[642]

(A) AUGUST 2014: ASHISH TOLD ARVIND ABOUT THE CASHBACK SCHEME

464 Sometime in August 2014, Arvind was informed by Ashish of the Cashback Scheme.[643] Arvind explained that he had heard about the Cashback Scheme even before August 2014 – in fact, somewhere around the start of 2014. He had not taken steps to investigate at that juncture because he had been told

638 Transcript, 30 October 2020, p 142 lines 13–18.

639 Transcript, 2 November 2020, p 28 line 12 to p 29 line 4.

640 Raziq 780 AEIC at paras 18–19; Anees 780 AEIC at paras 16–17.

641 AEIC of Arvind Sharma in Suit 780 dated 12 August 2020 ("Arvind 780 AEIC") at para 6.

642 Transcript, 2 November 2020 at p 160, lines 19–25.

643 Arvind 780 AEIC at para 8.

by Saleem that he should simply take care of the operations; and as he was new to the company, he had to perform well.[644]

465 When Arvind was approached by Ashish in 2014, he told the latter that he "assumed that the instructions came from the top".[645] While Arvind thought the Cashback Scheme was illegal, he did not report this to the authorities at the time as "in a big company, you do need evidences, without evidences you cannot prove anything". Moreover, Arvind himself was "not the victim" of the Cashback Scheme: it was the other employees who "were the victims, so they had to go and report to the authorities".[646]

466 Arvind also told Ashish that he needed to have concrete evidence and that it would be better to have a group of people raise this concern to the boss, Mustaq.[647] Arvind explained that he "assumed" that Mustaq knew and that he "wanted these guys to speak to him because you should always speak to the boss if there's something wrong in the company".[648] He also explained that he had asked other S-Pass holders why they did not complain to MOM, and had realised that there was an "atmosphere of fear instilled in their mind".[649]

(B) EVENTS FROM MARCH 2016

467 Around March 2016, Patro took over the collection of the cashbacks.[650]

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644 Transcript, 2 November 2020 at p 172, lines 7–9.

645 Arvind 1158 AEIC at para 10.

646 Transcript, 2 November 2020 at p 177, line 19 to p 178, line 8.

647 Arvind 780 AEIC at para 9.

648 Transcript, 2 November 2020 at p 180, lines 14–16.

649 Transcript, 2 November 2020 at p 181, line 9 to p 182, line 3.

650 Arvind 1158 AEIC at para 12.

468 Around July or August 2016, Tarun approached Arvind; and as Ashish had done, he too told Arvind that he was upset with the Cashback Scheme.[651] Arvind told Tarun that he should collect evidence, report it to MOM and speak to the boss.[652]

469 Around September 2016,[653] when reviewing CCTV footage of Handi Restaurant, Arvind saw Patro collecting cash from the foreign employees. He then asked Tarun to save the CCTV recordings in a thumb drive.[654] He explained that he asked Tarun to do so, rather than doing it himself, because "[e]vidences were of no use to me, I was not the victim, so I told him to collect the evidence".[655] Arvind also explained that he did not go to the authorities himself with the CCTV evidence as he was not part of the "cashback" scheme, and it was for the victims of the "cashback" scheme to come forward to inform the authorities about this practice.[656]

470 Arvind stated that he also did not say anything to Mustaq about the Cashback Scheme at this juncture because it was "common knowledge" that Mustaq was involved in the Cashback Scheme, along with the HR department, Saleem and Raj Patro.[657] He explained that by "common knowledge", he meant that:[658]

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651 Arvind 1158 AEIC at para 11; Transcript, 2 November 2020 at p 194, lines 1–21.

652 Transcript, 2 November 2020 at p 194, line 24 to p 195, line 4.

653 Transcript, 3 November 2020 at p 19, line 23.

654 Arvind 1158 AEIC at paras 14–15.

655 Transcript, 3 November 2020 at p 17, lines 7–10.

656 Transcript, 3 November 2020 at p 18, line 25 to p 19, line 15.

657 Transcript, 3 November 2020 at p 22, lines 12–24.

658 Transcript, 3 November 2020 at p 24, lines 5–9.

> … everyone knew about this and people used to talk about it, so it has to come through the management only. The top knew what was happening because it used to happen last 10, 15 years, that was what people used to say.

(C) ARVIND'S MEETING WITH RAJESH IN 2016

471 Sometime around late 2016, Arvind visited Rajesh at his office, as he had come to know that Rajesh was investigating the affairs of MMSCPL. He informed Rajesh about the Cashback Scheme;[659] and in December 2016, he brought Tarun and Ashish to Rajesh's office, where they explained the Cashback Scheme to Rajesh.[660] Subsequently, Arvind also assisted to collate recordings from the staff and passed them to Rajesh.[661]

(D) EVENTS FROM NOVEMBER 2017

472 In November 2017, word spread among the staff that some members of Mustaq's family "planned to file a litigation suit" against Mustaq and MMSCPL, and that one of the issues was the Cashback Scheme. On 9 November 2017, Patro called Arvind and Ayub to the office at Handi Restaurant and asked them to sign a letter stating that MMSCPL, Mustaq and Patro had not taken any monthly deductions from the staff's salaries.[662] Arvind signed this letter as he was "scared" for his job: he knew "that Raj Patro was very powerful there"[663] and "was very close to Saleem".[664]

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659 Arvind 1158 AEIC at para 16; Transcript 2 November 2020 at p 196, lines 3–5 and p 201.

660 Transcript, 2 November 2020 at p 202, lines 1–11.

661 Transcript, 3 November 2020 at p 27 lines 11 to 25, p 29 line 7 to p 31 line 9.

662 Arvind 780 AEIC at paras 14–15.

663 Transcript, 3 November 2020 at p 54, lines 13–16.

664 Transcript, 3 November 2020 at p 55, lines 9–10.

473 After signing the letter, he tried to ask Saleem and Patro to return him the letter, but his request was denied.[665] On the evening of 9 November 2017, Arvind sent an email to Mustaq and Saleem in which he raised the subject of the Cashback Scheme for the first time.[666] He wanted to inform Mustaq about what Saleem and Patro had done; and he wanted Mustaq to intervene to get the letter back for him.[667] According to Arvind, he knew that Mustaq was part of the Cashback Scheme, but he felt that there was "no choice left" except to "write to the top boss": it "had to be black and white".[668] That same day, Saleem replied to Arvind's email without copying Mustaq.[669] In the email, Saleem claimed, *inter alia*, that as far as he was aware, there was "no such activity taking place" (*ie*, no cashback activity).[670]

474 On 10 November 2017, Arvind replied to Saleem's email reiterating that the letter he had signed at Patro's behest "shall be considered as null and void and shall be returned back to [him]".[671]

475 Arvind also gave evidence that Ayub too had previously tendered his resignation. On the night of 10 November 2017, however, Ayub called Arvind and stated that Mustaq and Saleem had spoken to him (Ayub) and asked him to take back his resignation, saying that his salary would be increased and that the

665 Arvind 780 AEIC at para 18.

666 Transcript, 3 November 2020 at p 63, lines 3–20; Arvind 780 AEIC at para 19 and pp 14–15.

667 Transcript, 3 November 2020 at p 64, lines 14–25.

668 Transcript, 3 November 2020 at p 68, lines 12–15.

669 Arvind 780 AEIC at para 20 and p 17.

670 Transcript, 3 November 2020 at p 76, lines 7–11.

671 Arvind 780 AEIC at para 22 and p 20.

Cashback Scheme would be stopped.[672] Based on his conversation with Ayub (which he recorded), Arvind "understood that boss [*ie,* Mustaq] knew everything about the cash-back".[673] According to Ayub, when Mustaq was asked about the cash-backs, rather than denying this practice existed, Mustaq had said "Brother one thing is there that you guys are PR" and asked Ayub "did you use to return back the money?" and "When did you return back?"[674]. Arvind testified that these responses by Mustaq were a "confirmation of Mr Mustaq's involvement because he has not told Ayub that they're not taking cash-back".[675]

476 On 11 November 2017, Ayub informed the staff at Kebabs N Curries that HR would no longer be collecting cashbacks.[676] On the same day, Saleem told Arvind that the signing of the letter on 9 November 2017 was a "fake exercise" to see whose side he was on, and that the letter was with one Shadab. Arvind was concerned as he had previously been led to believe that the letter was with MMSCPL's management. He proceeded to file a police report that day.[677]

477 On 18 November 2017, still concerned about the letter, Arvind drafted a joint statutory declaration with Ayub, so that "we can state the facts that this is what happened with us".[678] In cross-examination, Arvind denied that he had made this statutory declaration for the purpose of having it used as evidence in

672 Arvind 780 AEIC at para 23.

673 Transcript, 3 November 2020 at p 91, lines 2–3.

674 Arvind 780 AEIC at p 22.

675 Transcript, 3 November 2020 at p 90, lines 6–8.

676 Arvind 780 AEIC at paras 23–24.

677 Arvind 780 AEIC at para 25 and pp 25–28.

678 Arvind 780 AEIC at para 27 and pp 29–32; Transcript, 3 November 2020 at p 99, lines 9–12; Exhibit 780-P18.

Suit 1158 and/or Suit 780.[679] According to Arvind, the statutory declaration was a record "let's say for someone complains to Ministry of Manpower or any other authority".[680]

(E) EVENTS FROM MAY 2018

478 Around 28 May 2018, Arvind was informed by the staff about the 28 May 2018 Notice. Some of them said they had been told that if they resumed paying "cashbacks" to HR, their work passes would be renewed.[681] Nine of the foreign employees then signed a handwritten letter setting out their pleas and gave it to Arvind so that he could raise the issue to management.[682] Unfortunately, Arvind himself was fired shortly thereafter, on 31 May 2018.[683]

479 After 31 May 2018, Arvind continued to be involved in the complaints and various documents that other employees were sending to the authorities because he himself had suffered wrongful termination of his employment, and he wanted to help the other ex-employees with their complaints.[684]

(4) Rajesh's evidence

480 Apart from the other former MMSCPL employees, the plaintiffs also led evidence from Rajesh about the Cashback Scheme. In this connection, Rajesh gave evidence about his tele-conversations with Mustaq.[685] There were a total

679 Transcript, 3 November 2020 at p 100, lines 19–23.

680 Transcript, 3 November 2020 at p 102, lines 12–13.

681 Arvind 780 AEIC at para 28 and p 33.

682 Arvind 780 AEIC at paras 29–30.

683 Arvind 780 AEIC at para 31.

684 Transcript, 3 November 2020 at p 112, line 23 to p 113, line 8.

685 JCB Vol 6 at pp 5037–5059 (transcripts of the conversations).

of 33 calls between Mustaq and Rajesh from 31 January 2018 to 8 February 2018.[686]

481 On 5 February 2018, Rajesh had eight phone calls with Mustaq.[687] The first call started at 11.17am and lasted for 64 minutes, but the first 29 minutes of the call was not recorded, as Rajesh only started the recording from 11.46am onwards.[688] According to Rajesh, before he started the recording, Mustaq had "admitted that there was a cashback and how he was spending these monies": Mustaq "said there were a lot of money coming from the cashback and he has been using those money for the various expenses which are off the books".[689] Mustaq also stated that the money was "off hand", which Rajesh understood to mean the money was obtained illegally.[690]

482 Referring to the transcript of his conversation with Mustaq, Rajesh testified that when he confronted Mustaq with the "MOM" allegations, Mustaq knew what he (Rajesh) was talking about because there was an allegation in the Suit 1158 statement of claim concerning this MOM Cashback Scheme.[691] The relevant portions of the transcript are reproduced below:[692]

> Rajesh: In the same way, MOM money also came to you, which you spent for those expenses you took that decision for expenses.

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686 Rajesh 780 AEIC at para 67.

687 Rajesh 780 AEIC at para 79.

688 JCB Vol 6 at pp 5037–5059; Transcript, 27 October 2020 at p 9, line 19 to p 10, line 12.

689 Transcript, 27 October 2020 at p 13, line 19 to p 20, line 17.

690 Transcript, 27 October 2020 at p 15, line 24 to p 16, line 8.

691 Transcript, 27 October 2020 at p 20, line 14 to p 21, line 2.

692 JCB Vol 6 at p 5038.

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 you can 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:	This is all off hand, This, cannot discuss anything about this.

483 According to Rajesh, rather than demonstrating his ignorance of the Cashback Scheme, Mustaq's responses showed that Mustaq had been "caught off guard" and had not expected Rajesh to continue talking about the cashback "discussion": the moment that Mustaq realised he had "made a mistake of admission of this illegal money receiving and spending, he wanted to hold it back".[693]

My findings

(1) The existence of the Cashback Scheme

484 On the evidence adduced, I found that the two sets of plaintiffs were able to establish at least a *prima facie* case that MMSCPL work pass applications to MOM were falsified in order to facilitate the Cashback Scheme; that this was done with Mustaq's knowledge and at the very least acquiescence; and that Mustaq personally benefited from Cashback Scheme. My reasons were as follows.

485 First, the former MMSCPL employees called by the plaintiffs (Ashish, Raziq, Tarun, Anees, Mohit and Siddique) were consistent in testifying to their personal experience of the Cashback Scheme. Each of them gave evidence of

693 Transcript, 27 October 2020 at p 23, lines 21–25; p 27, lines 16–19.

how they had paid back to the company a portion of their declared salary every month. While the defendants made much of some inconsistencies in the witnesses' testimonies as to the exact amounts paid back each month ,[694] the existence of some inconsistencies on this point did not strike me as being either surprising or sinister, given that some years had passed since the events they were testifying about. The witnesses themselves had also explained that the monthly payments fluctuated in quantum, depending on factors such as the number of public holidays or off-days within a month on which the employee chose to work.[695] In the main, the witnesses were consistent on the procedure for the collection of the "cashbacks" and the personnel involved in the collection. It should also be highlighted that more than one witness had made audio recordings of the meetings at which the "cashbacks" were collected from them; and Tarun had downloaded CCTV footage as well.[696]

486 Having had the opportunity to observe these former employees in the witness stand where they were cross-examined at length, I concluded that these former employees were sincere and truthful witnesses. I rejected the defendants' suggestion that the Cashback Scheme was something they had concocted pursuant to a "plan" hatched by Rajesh and Arvind. First, the numerous audio recordings and the CCTV recording of the meetings where Ghouse and Patro collected the "cashbacks" from the employees showed that the Cashback Scheme was not a fabricated tale.

487 Further, the recordings revealed that the witnesses had started collecting evidence of the "cashback" payments at different times from each other – and

694 DCS 780 at paras 702–712.

695 Ashish 780 AEIC at para 12.

696 Ashish 780 AEIC at para 20; Tarun 780 AEIC at para 32.

that at least a few of them had started doing so before the commencement of proceedings by the plaintiffs in the two minority oppression suits. For example, Ashish began recording the meetings in the HR office around August 2014 (see [444] above), while Tarun began doing so around early 2017.[697] I did not find it at all believable that all these witnesses could have come together and conspired to fabricate evidence even before the commencement of the two minority oppression suits (and in Ashish's case, presumably even before Rajesh's appointment in 2016 as a consultant for the Mustafa and Samsuddin estates).

488 As to the various statutory declarations, I accepted the witnesses' consistent testimony that these were made both for their own protection as well as to record the truth. For example, Ashish explained that he signed his statutory declaration "for my own safety to say that whatever I'm stating is all truth, nothing but the truth, that I wanted to ensure that tomorrow I do not deny what exactly happened to me".[698] Raziq said he made a statutory declaration in May 2017 because if there was an inquiry by MOM officials, "we can show it to them that this is what happened".[699] He explained: "because it's all truth what I have said in my [statutory declaration] and I don't need any protection from truth".[700] The statutory declaration was also to "protect" him from the people involved in the cashback scheme, including Iqbal, Raj Patro, Ghouse, and Saleem[701] and the directors of MMSCPL, like Mustaq, Osama, Shama and Ishret.[702]

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697 Tarun 780 AEIC at para 32.

698 Transcript, 29 October 2020 at p 196, lines 17–22.

699 Transcript, 30 October 2020 at p 74, lines 12–19.

700 Transcript, 30 October 2020 at p 76, lines 19–20.

701 Transcript, 30 October 2020 at p 77, lines 21–25.

702 Transcript, 30 October 2020 at p 78, lines 5–16.

489 On the evidence before me, therefore, I did not think there was anything nefarious about the witnesses making these statutory declarations. The defendants argued that these statutory declarations would only expose the witnesses to potential criminal liability if they were found to contain false statements.[703] As Mohit pointed out, however, this was precisely the point of making the declaration: taking the "big step" of putting the information about the Cashback Scheme in a statutory declaration only proved the witnesses' commitment to telling the truth, on pain of criminal liability.

490 As to the various emails to MMSCPL management and complaints to the authorities, I did not accept the defendants' argument that these represented a coordinated attack against Mustaq and the other defendants, and/or a further attempt to manufacture false evidence to support the plaintiffs' claims.[704] I accepted that the witnesses had assisted one another in writing these emails and letters – for example, Arvind assisted Ashish in making grammatical corrections to his letter of 10 June 2018 to MOM and the High Commissioner of India,[705] while Raziq had received assistance from (*inter alia*) Anees, Gopal, and Arvind, in preparing his letter dated 30 May 2018 to the MMSCPL management.[706] The witnesses were able to explain that the assistance they received was editorial and related to issues like grammar, whereas the contents of these letters remained their own.[707] Aside from the defendants' accusations and speculation,

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703 DCS 1158 at para 644; DCS 780 at para 788.

704 DCS 780 at para 827.

705 Transcript, 29 October 2020 at p 163, lines 6–14.

706 Transcript, 30 October 2020 at p 87, line 8 to p 88, line 22.

707 Transcript, 29 October 2020 at p 163, lines 6–10 (Ashish); Transcript, 30 October 2020 at p 88, lines 21–22 (Raziq) and p 164, lines 11–14 (Tarun).

there was simply no evidence of a "concerted" effort among the witnesses to manufacture false evidence against the defendants.[708]

491 As to the delay by the witnesses in reporting the Cashback Scheme to the authorities, contrary to the defendants' suggestions,[709] I did not think there was anything strange or sinister about the witnesses trying to collect more evidence prior to reporting the matter. The witnesses had explained that they were very fearful of antagonising their employer and losing their jobs, especially when they had family members whom they were responsible for.[710] These were very natural and understandable fears: indeed, the fact that each of these former employees lost his job after speaking up to question or protest the Cashback Scheme showed that their fears about retaliation from their employer were completely warranted.

492 Further, although the defendants claimed that these witnesses had concocted their evidence about the Cashback Scheme in order to aid the plaintiffs in their lawsuits against Mustaq and his family members, I did not see any reason for the witnesses to do so. At the time witnesses such as Ashish and Tarun began collecting evidence of the "cashback" payments and then handing over such evidence to Rajesh and Arvind, they still had their jobs with MMSCPL: even if they had heard about Ayaz's interest in investigating MMSCPL's internal affairs, there was no reason for them to side with Ayaz against "the Boss" (Mustaq) on whom they depended for their employment. I agreed with the plaintiffs that these witnesses were individuals who had nothing

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708 DCS 780 at para 830.

709 DCS 1158 at paras 595–612; DCS 780 at paras 737–756.

710 Transcript, 30 October 2020 at p 134, lines 2–9, p 142, lines 2–18 (Tarun); Transcript, 2 November 2020 at p 28, line 12 to p 29, line 22 (Anees); Transcript, 30 October 2020 at p 73, lines 13–22 (Raziq).

to gain from coming forward to speak up about the Cashback Scheme – and everything to lose by standing up against this practice.[711]

493 I add that I also did not find anything suspicious about Rajesh himself continuing to investigate the Cashback Scheme instead of reporting it to the police. Rajesh testified that he had thought about whether to report the matter to the authorities, but after discussion with his staff, they had concluded that since they were "not the affected party", they should "still hold it unless authorities [call] us".[712] It should also be remembered that he was not, after all, hired by the ex-employees; it was not his job to vindicate them or to assist them in finding some recourse to their grievances. As he explained, investigation was the job he had been hired by *the plaintiffs* to do; and he "wanted to understand the process how this [referring to the Cashback Scheme] has been routed and see if they have any evidence".[713]

494 I was also not persuaded by the defendants' suggestion that Rajesh was trying to "use the threat of the report to authorities as a further pressure point on Mr Mustaq on behalf of the Mustafa estate".[714] There was no evidence that Rajesh had been instructed by the Suit 1158 plaintiffs to put "a further pressure point" on Mustaq "on behalf of the Mustafa estate", and there was no incentive for Rajesh to do so. Indeed, his evidence – which was uncontroverted – was that it was Mustaq who had approached him by calling him first; he did not even have Mustaq's phone number at the time.[715]

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711 PCS 1158 at paras 954–955.

712 Transcript. 27 October 2020 at p 96, lines 21–25.

713 Transcript, 27 October 2020 at p 88, line 14 to p 89, line 24; p 93, lines 1–7.

714 Transcript, 27 October 2020 at p 97, lines 1–8.

715 Transcript, 27 October 2020 at p 97, lines 1–24.

495 For completeness, I also add that although the defendants tried to suggest in cross-examination that the cash payments collected from MMSCPL employees actually represented repayment of salary advances by these employees[716] (*ie*, that these alleged cashback payments were actually repayments of loans by employees[717]), I rejected this suggestion. As the plaintiffs' counsel pointed out, this purported defence of "salary advance repayments" was never pleaded by the defendants.[718] In fact, as I noted in the course of the trial, it ran contrary to their pleaded defence that they knew nothing about the Cashback Scheme and had nothing to do with it.[719]

(2) Mustaq's involvement in the Cashback Scheme

496 Next, I found that the evidence adduced (which included the evidence of Rajesh's tele-conversations with the first defendant) was enough to give rise to an inference that Mustaq knew of, was involved in, and benefited from the Cashback Scheme.

497 At the outset, it should be made clear that none of the former employees of MMSCPL who gave evidence laid claim to having spoken with Mustaq about the Cashback Scheme or to having actually heard him speak about it with other persons such as Ghouse and Patro. However, I agreed with the plaintiffs that the following circumstantial evidence made it possible to infer Mustaq's knowledge of and involvement in the scheme.[720]

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716 Transcript, 29 October 2020 at p 179, lines 9–22.

717 Transcript, 29 October 2020 at p 180, lines 11–14.

718 Transcript, 29 October 2020 at p 182, line 13 to p 184, line 4.

719 Transcript, 29 October 2020 at p 185, line 24 to p 186, line 14 and p 187, lines 5–21.

720 PCS 1158 at paras 972–990; PCS 780 at paras 1104–1131.

498 First, with regard to the tele-conversations between Rajesh and Mustaq on 5 February 2018, Rajesh testified that in the earlier, unrecorded portion of his tele-conversation with Mustaq on 5 February 2018, Mustaq had admitted to collecting "cashbacks". In fact, Rajesh said it was this admission that led him to start recording the phone call. While the defendants denied Rajesh's evidence of what Mustaq had said, Mustaq himself – who would have been best placed to give his version of the phone call – did not take the witness stand.

499 As to the recorded portion of the tele-conversation, I agreed with the plaintiffs that if Mustaq was not involved in the Cashback Scheme and had no knowledge of it, he would have expressed surprise and asked Rajesh for further information about the latter's reference to "MOM money". Instead, he referred to the cashbacks as being "off hand", which Rajesh testified he understood to mean the "cashbacks" were obtained illegally – and he told Rajesh that they "*cannot discuss anything about this*".[721]

500 Second, when Ayaz confronted Ghouse over the telephone on 17 April 2017 regarding salary monies being collected from employees and given to "boss" (*ie*, Mustaq), the audio-recording of their conversation showed that Ghouse merely denied he was involved in the collection of salary monies from employees at Kebabs N Curries, which collection he claimed "the consultant" (apparently referring to Patro) was responsible for – but tellingly, Ghouse did not deny that he had been passing "boss" these monies.[722] Indeed, when Ayaz asked bluntly whether he was "giving directly boss", Ghouse affirmed "yeah yeah" and even added "*now it is became very less*".[723]

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721 Rajesh 780 AEIC at p 243 (Recording dated 5 February 2018).

722 Ayaz 1158 AEIC at para 454, AA-188 at p 2522.

723 Ayaz 1158 AEIC at AA-188 at p 2522.

501 Third, some of the ex-employees who gave evidence had emailed Mustaq personally to complain about the Cashback Scheme.[724] The serious nature of the allegations made about the Cashback Scheme in these emails, if false, would surely have prompted some response from Mustaq – but there was none.[725] In fact, when Saleem replied to Arvind's email of 9 November 2017 to deny any *personal* knowledge of the Cashback Scheme, Saleem conspicuously left Mustaq out of the email chain even though Arvind had originally included Mustaq in it.[726]

502 Fourth, multiple witnesses gave evidence that at the staff briefing on 11 November 2017, Ayub had informed the staff that the "Boss" – *ie*, Mustaq – had said cashbacks would no longer be collected:

(a) Ashish's evidence was that he saw Mustaq and Saleem speaking with Ayub the day before the staff briefing by Ayub. At the briefing, Ayub stated that the "boss", *ie*, Mustaq, had told him (Ayub) the foreign employees would no longer have to pay cashbacks.[727]

(b) Arvind's evidence was that Ayub told the staff on 11 November 2017 that the "boss" had told Ayub that the foreign employees would no longer have to pay cashbacks.[728] By "boss", he was referring to Mustaq.[729] Arvind also had a recording of his conversation with Ayub

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724 PCS 780 at para 1117; Raziq 780 AEIC at para 21; Anees 780 AEIC at para 18; Arvind 780 AEIC at para 19.

725 PCS 780 at para 1118.

726 Arvind 780 AEIC at para 20.

727 Ashish 780 AEIC at paras 33–34.

728 Arvind 780 AEIC at para 24.

729 Arvind 780 AEIC at para 9.

on 10 November 2017 in which the latter recounted his conversation with Mustaq that same day.[730]

(c) Raziq's evidence was that Ayub had told the staff on 11 November 2017 that the "boss", *ie*, Mustaq, had informed him they would no longer have to pay cashbacks.[731]

(d) Tarun was not present at the briefing of 11 November 2017, but his evidence was that Ayub had told him that Mustaq said they no longer had to pay cashbacks.[732]

503 The defendants did not adduce any evidence to refute these claims. Having regard to the circumstantial evidence available, I found that it was possible to infer Mustaq's knowledge of and involvement in the Cashback Scheme. Rajesh also gave evidence that in his tele-conversation with Mustaq, Mustaq had told him about using the "cashback" money to pay for certain expenses and donations.[733] This evidence remained unrefuted at the end of the trial, since the person probably best-placed to refute it – Mustaq – did not take the witness stand.

504 Further, from Rajesh's evidence about Mustaq having admitted using "cashback" money to pay for certain expenses and donations, as well as Ghouse's admission to Ayaz on 17 April 2017 about having passed "boss" (*ie*, Mustaq) the "cashback" money collected from the staff, it was possible to infer that the salary amounts collected back from staff in the illicit Cashback Scheme

730 DCS 780 at paras 695–700.

731 Raziq 780 AEIC at para 18.

732 Tarun 780 AEIC at para 37.

733 Transcript, 27 October 2020 at p 11, line 2 to p 13, line 23.

were taken by Mustaq for his own benefit. As the Suit 1158 plaintiffs put it, this was another instance of Mustaq procuring or causing MMSCPL "to make unauthorised and improper payments out of MMSCPL's funds for the purpose of enriching himself". [734]

(3) *Prima facie* case not made out against Ishret, Shama, Osama and Iqbal

505 On the other hand, I did not find that any of the above evidence implicated Ishret, Shama, Osama and Iqbal. In particular, I did not find it possible to say that the evidence showed them to have been involved in the Cashback Scheme.

506 In my view, therefore, in respect of the claims of falsified MOM applications and the Cashback Scheme, the plaintiffs were able to establish a *prima facie* case against Mustaq, but not against Ishret, Shama, Osama and Iqbal.

Payment of excessive directors' fees and non-payment of dividends

507 I next address the plaintiffs' allegation that the defendants acted oppressively by causing or allowing MMSCPL to not pay any dividends to the shareholders between 2001 and 2013 while paying Mustaq and Ishret substantial directors' fees during the same period. [735]

The parties' submissions and the applicable legal principles

508 The defendants conceded that no dividends were paid during the said period but argued that the plaintiffs had no grounds for complaint since the

734 PCS 1158 at para 934(d).

735 PCS 1158 at paras 998–1079; PCS 780 at paras 697–729.

decision to declare dividends was a commercial decision of the company, and shareholders had no right *per se* to receive dividends.[736] The plaintiffs needed to show, for the purposes of their oppression claims, that the non-payment of dividends was in bad faith and without justification: the defendants argued that they were unable to do so. Similarly, with regard to the payment of directors' fees to Mustaq and Ishret over the years, the defendants argued that this was a commercial decision for the company to make: the plaintiffs had not shown that the payment of directors' fees to Mustaq and Ishret was in bad faith and without justification.[737] In any event, so the defendants argued, Mustafa, Samsuddin and their respective estates had never objected to the non-payment of dividends and/or the payment of directors' fees to Mustaq and Ishret over the years from 1997 to 2013.

509 I should point out that the plaintiffs did not actually dispute that as a matter of general legal principle, directors have no obligation to declare dividends and shareholders correspondingly have no right to receive dividends. As the High Court noted in *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 ("*Lim Kok Wah*", at [145]), the failure to recommend or effect the declaration of dividends does not by itself amount to unfair conduct which is impeachable under s 216 of the Companies Act. The courts will generally intervene only in cases where the decision not to declare dividends is shown to be made in bad faith or for improper purposes (*per* the Singapore International Commercial Court ("SICC") in *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others* [2018] 5 SLR 1 ("*DyStar SICC*)", at [245]).

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736 DCS 1158 at paras 694–715; DCS 780 at paras 928–951.

737 DCS 1158 at paras 716–727; DCS 780 at paras 952–966.

510 In *DyStar SICC*, the court found that the refusal by the Longsheng Directors (the directors nominated by Longsheng, the parent company of the majority shareholder) to declare a dividend was "neither made in good faith nor reached on purely commercial grounds": on the evidence adduced, the court found that there was an improper motivation in denying Kiri (the minority shareholder) the benefits of its shareholding in the company DyStar, while simultaneously permitting Senda (the majority shareholder) unilaterally to extract benefits from DyStar (at [246]). The court rejected the directors' explanation that dividends were not declared because the company needed a "huge working capital", noting *inter alia* that the company had made large related party loans, paid substantial fees to Longsheng allegedly for services rendered, and approved a "Special Incentive Payment" of US$2 million to one of its directors in the same period. Against the backdrop of these events which took place around the same period, the court found that it was difficult to see the refusal to declare dividends as being *bona fide* (at [246]–[249]).

511 The above findings by the court in *Dystar* were upheld on appeal by the CA (*Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1).

512 In *Lim Kok Wah*, the High Court accepted (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 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.

513 On the facts of *Lim Kok Wah*, the court did not find the directors' refusal to declare dividends oppressive or commercially unfair. *Inter alia*, the court

noted (at [146]–[148]) that *the plaintiffs, who were alleging oppression, actually controlled the board of directors of the relevant companies*: if they had wanted to, they could have chosen "at any time" to pass the necessary resolutions to pay out dividends. As for the payment of additional fees to the two defendants, though these were substantially more than the other directors' fees, the court found that these additional fees were "not without reasonable justification": the plaintiffs did not dispute that there was a policy in the relevant companies for each company's managing director to be awarded 10% of the net profit for that year if the company earned a profit; and that this policy was to incentivise the managing director who played a vital role in running the company. Furthermore, the court pointed out that even though the plaintiffs controlled the board and could have voted down at any time the directors' fees paid to the two defendants, they chose to remain silent for an entire decade and to accept the companies' policies on dividends and remuneration of the two defendants. In such circumstances, the court was of the view that it should be slow to find that these policies had an oppressive effect, whether in any given year or over all the years.

514 In *Re Gee Hoe Chan Trading Co Pte Ltd* [1991] 2 SLR(R) 114 ("*Gee Hoe Chan*"), the court found on the evidence before it that the non-declaration of dividends amounted to oppression or disregard of the minority shareholders' interests, as it was clearly based on the wish of the majority shareholders and directors to punish the minority shareholders for having presumed to question the manner in which they were running the company (at [20]). The court noted that in the period when no dividends were being paid to shareholders, the company was actually profitable, and the majority shareholders were getting substantial directors' fees. Ironically, it was in the year when the company made a loss for the first time that the majority shareholders / directors decided to recommend a dividend – which led the court to remark (at [22]) that this "could not have been a coincidence that the dividend was only approved and paid by

the company after the [minority] had instituted these proceedings for relief" under s 216 of the Companies Act.

515 It was with the above legal principles in mind that I approached the evidence relating to the non-payment of dividends in this case.

The evidence from MMSCPL's audited financial statements

516 Much of the evidence relied on by the plaintiffs came from the audited financial statements for MMSCPL starting from 1990. The authenticity of these financial statements was not disputed.[738] Nor did the defendants dispute the quantum of directors' fees paid out from 2000 onwards.[739] I summarise the evidence in the table below, along with other key events that took place within the same period:

Date	**Mustaq's directors' fees ($)**	**Ishret's directors' fees ($)**	**Whether dividends were declared**
2001[740]	5,000,000	200,000	No[741]
14 July 2001	Mustafa died.		
3 September 2001	Iqbal was appointed as a director, and Osama and Shama were appointed as directors with effect from 14 February 2001.[742]		

738 Transcript, 16 October 2020 at p 54, lines 19–22 and p 101, lines 12–15.

739 Defence 1158 at para 123(d).

740 JCB Vol 1 at pp 684–719. The accompanying supplementary trading and profit and loss statement which does not form part of the audited financial statements is at pp 720–723.

741 Transcript, 19 October 2020 at p 11, lines 3–10; JCB Vol 1 at p 688 (note 11).

742 Transcript, 19 October 2020 at p 10, lines 8–18.

2002[743]	5,000,000	200,000	No[744]
14 July 2003	Samsuddin resigned as director.[745]		
2003[746]	3,000,000	400,000	No[747]
2004[748]	5,000,000	200,000	No
2005[749]	4,000,000	200,000	No
2006[750]	3,880,000	200,000	No
2007[751]	4,000,000	200,000	No
2008[752]	5,000,000	200,000	No
2009[753]	5,000,000	200,000	No
2010[754]	5,000,000	200,000	No

743 JCB Vol 1 at pp 774–812. The accompanying supplementary trading and profit and loss statement which does not form part of the audited financial statements is at pp 813–816.

744 JCB Vol 1 at p 778 (note 11); Transcript, 19 October 2020 at p 17, line 22 to p 18, line 8.

745 JCB Vol 2 at p 869; Transcript, 19 October 2020 at p 22, lines 4–10.

746 JCB Vol 2 at pp 868–908. The accompanying supplementary trading and profit and loss statement which does not form part of the audited financial statements is at pp 909–912.

747 JCB Vol 2 at p 871 (note 9).

748 JCB Vol 2 at p 945.

749 JCB Vol 2 at p 1034.

750 TB Vol 2 at p 1132.

751 TB Vol 2 at p 1225.

752 TB Vol 3 at p 1314.

753 TB Vol 3 at p 1407.

754 TB Vol 3 at p 1509.

2011[755]	5,000,000	200,000	No
April 2011	Samsuddin's death		
2012[756]	5,000,000	200,000	No
2013[757]	5,000,000	200,000	No
2014[758]	5,000,000	200,000	Yes[759]
2015[760]	5,000,000	200,000	Yes[761]

517 Ayaz gave evidence – and it was not disputed – that at each general meeting between 2001 and 2013, Mustaq and Ishret had passed shareholders' resolutions to approve the payment of the directors' fees to themselves and their family members (Shama, Osama and Iqbal) – while no dividends were declared by MMSCPL during that period.[762]

Chee's evidence

518 Expert evidence was led from Chee as well. *Per* his First Report, Chee found that from 2000 to 2018, there were "substantial profits available for distribution to MMSCPL's shareholders".[763] Based on MMSCPL's audited financial statements, the average directors' fees and remuneration per financial

755 TB Vol 3 at p 1614.

756 TB Vol 3 at p 1721.

757 TB Vol 3 at p 1833.

758 TB Vol 3 at p 1944.

759 TB Vol 3 at p 1946 (note 28).

760 TB Vol 3 at p 2001.

761 TB Vol 3 at p 2003 (note 27).

762 Ayaz 1158 AEIC at paras 441–442.

763 Chee's First Report at para 2.4.2.

year represented 34.4% of MMSCPL's adjusted net profit after tax, and came to a total of $95.7 million over the 19 years. In contrast, the total dividends declared during the same period came to only $18 million.[764]

519 Although Samsuddin had received a yearly directors' fee of $200,000 each year between 2000 to 2002, this represented only 3.9% of the total directors' fees and remuneration of $15.3 million for the period from FY2000 to FY2002: the rest was paid to the Mustaq, Ishret and their family members.[765] Chee opined that by paying out substantial directors' fees in lieu of dividends, this could benefit certain directors disproportionally at the expense of other shareholders.[766]

520 Chee also highlighted that dividends were eventually declared from FY2014 to FY2017, amounting to $18 million in total. What was noteworthy was that Mustaq spread out the dividend payments into monthly payments. According to the defendants' pleadings,[767] this was done to meet the financial demands of the plaintiffs and other beneficiaries of the Samsuddin Estate without disrupting MMSCPL's cash flow and/or compromising MSCPL's interests.[768] However, Chee pointed out that MMSCPL's net cash and bank balances ranged between $74.6 million and $134.2 million during this period: the dividends represented only a small fraction (2.9% to 5.4%) of MMSCPL's net cash and bank balances in this period and were less than the fluctuation in the cash and bank balances from year to year. In the same period, MMSCPL's

764 Chee's First Report at paras 2.4.5–2.4.6.

765 Chee's First Report at para 2.4.8.

766 Chee's First Report at para 2.4.9.

767 Defence 1158 at para 134(a); Defence 780 at para 159..

768 Chee's First Report at para 2.5.1.

unpledged fixed deposits ranged between $24.8 million and $96.1 million, which was another indication that the company was holding excess cash not needed for its business activities.[769] In light of this evidence, Chee opined that the effect of paying the dividends in a lump sum - as opposed to paying over 12 months – was likely to be minimal and would not have a disruptive effect on MMSCPL's cash flow.

My findings

521 On the basis of the evidence adduced, I found that Mustaq and Ishret conducted themselves oppressively by causing MMSCPL to pay no dividends to the shareholders for a period of more than a dozen years, while concurrently paying themselves substantial directors' fees. My reasons were as follows.

522 Between 2001 and 2013, Mustaq received annual director's fees ranging from $3 million to $5 million, while Ishret received annual director's fees ranging from $200,000 to $400,000. The couple's combined annual directors' fees ranged from being more than a third of MMSCPL's net profits to being nearly two-thirds of the net profit figure.[770] In the same period, the Mustafa estate, Samsuddin, and later Samsuddin's estate received no dividends at all. The payment of dividends resumed only in 2014 (after more than a dozen years of no dividends). Tellingly, this was around the time when Ayaz and Fayyaz had started becoming more confrontational in asking questions about the way in which the company was being run and about the entitlements of the Mustafa and Samsuddin Estates as shareholders.[771] In *Gee Hoe Chan*, the High Court found that the directors' decision to recommend a dividend after the minority

769 Chee's First Report at paras 2.5.4–2.5.6.

770 Chee's First Report at para 2.4.5.

771 Fayyaz 780 AEIC at para 122.

shareholders instituted an oppression suit "could not have been a coincidence". In similar vein in the present case, I found that Mustaq's and Ishret's decision to start declaring dividends in 2014 – after Mustaq started encountering more questions and challenges from Ayaz and Fayyaz – could not have been a coincidence. Even then, the payment of the dividends declared was not done in one lump sum but was instead drawn out in a process of monthly instalments. I agreed with the plaintiffs that this process of monthly payments was clearly designed to hold them to ransom[772] and to drive home to them the importance of staying on Mustaq's good side.

523 The defendants did not – indeed, could not – dispute the quantum of the directors' fees they paid themselves from 2001 to 2013 and the fact that no dividends were paid in the same period. Their pleaded defence was that MMSCPL's business was expanding rapidly during the material time, and Mustaq had decided it was in MMSCPL's interest to safeguard its monies for its business expansion; further, that *per* the 1973 Common Understanding, neither Mustafa, Samsuddin nor the plaintiffs had ever raised any issue as to Mustaq's or Ishret's directors' fees or the non-declaration of dividends.[773] In this connection, the defendants claimed that the decision to issue dividends to the Mustafa and Samsuddin estates from 2014 was made in response to the plaintiffs' increasing demands for more "gratuitous" financial benefits, and not in recognition of the estates' rights as shareholders of MMSCPL.[774]

524 Insofar as the defendants' defence on this issue depended on the existence of the 1973 and the 2001 Common Understandings, which

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772 SOC 1158 at para 80.

773 Defence 1158 at paras 123–127; Defence 780 at paras 147–150.

774 Defence 1158 at para 128; Defence 780 at para 151.

purportedly made Mustaq the true owner of all shares in MMSCPL and the sole decision-maker in the company, this defence could not be sustained once I found that the pleaded account of the Common Understandings was simply a pack of lies.

525 The defendants sought to argue that Mustafa, Samsuddin and even the plaintiffs must have known about the directors' fees being paid to Mustaq and Ishret, and yet refrained from objecting over the years. This was denied by the plaintiffs.[775] I also did not find any evidence of Mustafa, Samsuddin and the plaintiffs having consciously decided to refrain from raising objections to the directors' fees being paid to Mustaq and his wife – unlike the plaintiffs in *Lim Kok Wah*, who actually controlled the board of directors and who could have voted down the defendants' directors' fees at any time, but chose to remain silent.

526 The defendants argued that Samsuddin himself was paid directors' fees of up to $200,000 each year between FY1990 and FY2002, and that Samsuddin had signed Annual General Meeting ("AGM") minutes approving the payment of these directors' fees.[776] It should be noted, in the first place, that insofar as the defendants purported to rely on the minutes of the AGM dated 23 April 1991[777] and 28 December 1994[778] (both ostensibly signed by Samsuddin and the latter ostensibly also signed by Mustafa), the authenticity of these documents was not admitted by the plaintiffs; and as the defendants did not give any evidence, these documents were not proven and thus not admitted into the

775 PCS 1158 at paras 1038–1040.

776 DCS 780 at para 955.

777 JCB Vol 3 at p 2499.

778 JCB Vol 3 at pp 2561–2562.

record of evidence.[779] In any event, even if Samsuddin had signed those two AGM minutes in 1991 (approving $300,000 in directors' fees for Mustaq and $100,000 for Samsuddin) and 1994 (approving $300,000 in directors' fees for Mustaq and $134,000 for Ishret), and even if Mustafa had signed the AGM minutes in 1994, Mustafa's and Samsuddin's signatures clearly did not appear on the subsequent AGM minutes. Mustafa and Samsuddin stepped down as directors on 11 March 1999 and 14 July 2003 respectively;[780] and the subsequent AGM minutes approving the payment of directors' fees to Mustaq and Ishret were signed only by Mustaq and Ishret themselves.

527 The defendants also tried to argue that Mustafa and the Mustafa Estate did not object to the non-payment of dividends over the years because Mustaq had all along been taking care of the plaintiffs and their family members.[781] However, as the Suit 1158 plaintiffs pointed out, this was never the defendants' pleaded defence: in their pleaded defence, the defendants had invoked the 1973 and 2001 Common Understandings as their basis for claiming that Mustaq could run MMSCPL as he pleased.[782]

528 The defendants then sought to argue that the decision not to declare dividends was commercially justified. Prior to 2013, MMSCPL had a current ratio of less than 1: according to the defendants, this indicated that the value of MMSCPL's current assets were insufficient to meet its current liabilities falling due within the next 12 months. The defendants also argued that Chee had agreed

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779 WongP's 8 December 2020 Letter at p 2 (row 22) and p 5 (row 43).

780 See, *eg*, JCB Vol 3 at pp 2597–2598 (May 1997), 2609–2610 (December 1997), 2618 (February 2000), 2622 (November 2000), 2628 (November 2001), 2636 (December 2002).

781 DCS 1158 at paras 710–713.

782 PRS 1158 at para 286.

"as a general proposition" that it was "not unreasonable" for the directors to refrain from declaring dividends between FY2000 and 2013. Further, according to the defendants, MMSCPL was actually experiencing negative cash flow for "many" of the years from 2000 to 2013.[783]

529 I did not accept these arguments. First, as Chee explained in cross-examination, the current ratio was an indication, but it did not mean that MMSCPL "cannot tide over" the next year.[784]

530 Second, it was incorrect to say that MMSCPL was experiencing negative cash flow for "many" of the years between 2000 and 2013: the table set out in the defendants' own submissions only showed a negative cash flow for the years 2000 to 2003.[785]

531 Third, while Chee had said in cross-examination that "as a general proposition", when there was a low current ratio and high gearing, it was not unreasonable for the directors to not declare dividends from 2000 to 2013, the defendants – in seeking to rely on his answer – plainly failed to note the context in which that answer was given. In fact, Chee stated:[786]

> I mean, if you strictly ask me on that angle, the answer is yes, *but I think the other question I have is, you know, the company has sufficient cash flow, especially if the amount due from directors and related companies are repaid, that will definitely improve further, right. So by not paying the shareholder dividend but paying Mustaq himself significant director fee, the director fee is another – it's a dividend to himself disguised as a director fee in that sense.*
>
> [emphasis added]

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783 DCS 780 at para 949.

784 PRS 780 at para 773; Transcript, 9 October 2020 at p 20, lines 5–14.

785 DCS 780 at para 949(d); PRS 780 at para 776.

786 Transcript, 9 November 2020 at p 145, line 12 to p 146, line 5.

532 Chee's reference to the amounts which were due from directors in the same period was an apt response. It will be recalled that between 2000 and 2013 (the period when no dividends were being declared), Mustaq, his wife and his brother-in-law were racking up huge directors' loans. As at 30 June 2013, the total amount of directors' loans stood at $31,410,946 (see above at [402]). In the same period, Mustaq and Ishret were also paying themselves substantial directors' fees, ranging from $3 million to $5 million annually for Mustaq and $200,000 to $400,000 annually for Ishret. For them to say that the company did not pay dividends in the same period because it had a low current ratio and high gearing was truly the height of hypocrisy. As Chee put it:[787]

> …the question here whether the directors has, you know, acted in a very balanced manner instead of self-interest… Mustaq paid himself significant amount of…directors' fee instead of paying a dividend. So deprive the rest of the shareholders from receiving dividend but he paid himself huge amount of directors' fees.

533 For the reasons set out above, I was satisfied that the Suit 1158 and the Suit 780 plaintiffs had at least a *prima facie* case against Mustaq and Ishret in respect of the allegation of non-payment of dividends versus payment of substantial directors' fees.

Allegations against Shama, Osama and Iqbal

534 However, I did not find the evidence sufficient to come to the same conclusion vis-à-vis Shama, Osama and Iqbal. It was Mustaq and Ishret who were responsible for passing shareholder resolutions to approve the payment of substantial directors' fees to themselves at the AGMs between 2001 and 2013.[788] Shama, Osama and Iqbal were not responsible for passing these resolutions. I

787 PCS 780 at para 721; Transcript, 9 November 2020 at p 141, lines 14–21.

788 See, *eg*, JCB Vol 3 at p 2638 (2003).

did not find that the plaintiffs had any real basis for claiming that they too should be held liable for oppressive conduct in this respect.

Sham BID invoices

535 I next address the plaintiffs' allegation with regard to the sham BID invoices. In this connection, I noted that in the Suit 780 plaintiffs' statement of claim, the allegation regarding the sham BID invoices was pleaded as a separate act of misappropriation from the allegation about Mustaq artificially raising the inventory level of MMSCPL to conceal his trading losses.[789] However, since the plaintiffs essentially took the position that the sham BID invoices were manufactured to inflate MMSCPL's inventory artificially, I did not *separately* consider the allegation about Mustaq artificially raising MMSCPL's inventory level.

The parties' submissions

536 Both sets of plaintiffs claimed that Mustaq had for some years concocted sham invoices to create the appearance that MMSCPL was indebted to BID, a company wholly owned and controlled by Mustaq and Ishret. The Suit 1158 plaintiffs alleged that this was done between 2004 and 2005,[790] whereas the Suit 780 plaintiffs alleged that it was done between 2000 and 2006.[791] In gist, the plaintiffs' case was that Mustaq had incurred substantial commodities/forex trading losses in his personal account. To cover those losses, Mustaq was alleged to have devised a scheme "for BID and/or other companies" to create and issue sham invoices ("Sham Invoices") to MMSCPL so as to allow him to

789 SOC 780 at paras 89–90; DCS 780 at para 880.

790 SOC 1158 at paras 65–67.

791 SOC 780 at paras 73–75.

siphon funds out of MMSCPL for his personal use. According to the plaintiffs, BID issued the Sham Invoices for goods purportedly supplied by BID to MMSCPL (with GST also being claimed as input tax in MMSCPL), when in reality, BID had not supplied any such goods to MMSCPL. Pursuant to these Sham Invoices, MMSCPL paid approximately $5 million to BID; and MMSCPL inventories were also fictitiously inflated through this process.

537 The plaintiffs' case relied on Fayyaz's evidence.[792] The defendants, for their part, denied the plaintiffs' allegations and submitted[793] that Fayyaz's testimony was wholly unreliable, and unsupported by any documentary evidence.

The evidence

538 Fayyaz has worked as a purchasing manager at MMSCPL since 1995. His AEIC evidence on the Sham Invoices may be summarised as follows.

539 In his Suit 1158 AEIC, Fayyaz gave the following version of events:[794]

(a) Between 2000 and 2006, Fayyaz was instructed by Mustaq to issue sales invoices from BID to MMSCPL in relation to electronic equipment.[795]

792 PCS 1158 at paras 871–932; PCS 780 at paras 927–955.

793 DCS 1158 at paras 502–514; DCS 780 at paras 648–659.

794 Fayyaz 1158 AEIC at para 3.

795 Fayyaz 1158 AEIC at para 4.

(b) Sometime in 2005, one Ms Usha Nair ("Usha"), who worked with Mustaq at MMSCPL, told Fayyaz that Mustaq had incurred more than $52 million in forex trading losses.[796]

(c) Fayyaz told Mustaq what he had heard from Usha. According to Fayyaz, Mustaq admitted to him having suffered substantial losses in forex trading accounts which he was operating personally. Mustaq did not give details of the exact amounts he had lost, but said he was worried that the banks that had lent money to MMSCPL would recall their loans.[797]

(d) Sometime in 2004 or 2005, Mustaq instructed Fayyaz to issue around 5 or 6 invoices, amounting to a total of $5 million, from BID to MMSCPL. No physical stock was supplied to MMSCPL under these invoices, but MMSCPL nevertheless paid monies to BID. Fayyaz claimed that this was to inflate MMSCPL's inventory level artificially, and to allow Mustaq to write off the value of the inventory every year to cover part of his losses.[798]

540 In his Suit 780 AEIC, Fayyaz alleged that BID was a vehicle used by Mustaq and Ishret to take money out of MMSCPL unlawfully, and that its key source of income was rental from its investment properties, which were purchased with money taken from MMSCPL.[799] Fayyaz then gave the following version of events in relation to the Sham Invoices:

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796 Fayyaz 1158 AEIC at para 5.

797 Fayyaz 1158 AEIC at para 6.

798 Fayyaz 1158 AEIC at paras 8–10.

799 Fayyaz 780 AEIC at para 86.

(a) Usha told Fayyaz of Mustaq's forex trading losses sometime in 2003 or 2004. Fayyaz told Mustaq what he had heard from Usha, whereupon Mustaq admitted he had suffered substantial losses in forex trading accounts which he was operating personally. While Mustaq did not tell Fayyaz the amount of monies that he had lost, he said he was worried that the banks that had lent money to MMSCPL would recall the loans.[800]

(b) Sometime in 2004 or 2005, Mustafa instructed Fayyaz to issue invoices purportedly for electronic equipment to be supplied from BID to MMSCPL. There were around five or six invoices issued, with a total amount of about $5 million. Fayyaz did not retain copies of these invoices.[801]

My findings

541 As noted earlier, the only evidence the two sets of plaintiffs had of the so-called Sham Invoices was Fayyaz's testimony. I found his evidence manifestly unreliable for the following reasons.

542 To begin with, Fayyaz's narrative as to the Sham Invoices was riddled with inconsistencies and inexplicable gaps. As the defendants submitted,[802] for example, his account of his alleged conversations with Usha and Mustaq was internally inconsistent. For example, in his Suit 1158 AEIC, he said he had spoken to Usha sometime in 2005, but in his Suit 780 AEIC, he said he had spoken to Usha sometime in 2003 or 2004. As another example, Fayyaz claimed

800 Fayyaz 780 AEIC at para 214.

801 Fayyaz 780 AEIC at para 218.

802 DCS 1158 at para 508.

that Mustaq had admitted suffering heavy losses on "forex trading accounts which [Mustaq] was operating personally". Yet, in the same conversation, Mustaq had allegedly also said he was worried that the banks that had lent money to MMSCPL would recall their loans.[803] As the defendants pointed out, the allegation as to Mustaq's worries about MMSCPL's bank loans appeared to be quite illogical, as there was no reason why the banks that had lent money to MMSCPL should recall their loans because of losses suffered by an MMSCPL director in his personal forex trading accounts.

543 It should also be noted that Fayyaz himself had claimed Mustaq was – allegedly – going to "try to solve his financial losses by selling off his gold business in India". Fayyaz even claimed that he had consequently believed the issue resolved.[804] This was inconsistent with Mustaq's subsequent – alleged – conduct in concocting sham transactions with BID to siphon funds out of MMSCPL for the purpose of paying off the same financial losses. It was also odd – to say the least – that Mustaq should have instructed *Fayyaz* to create false invoices *from BID* when Fayyaz was not working for BID at the material time (and indeed, had never worked for BID).

544 Quite apart from being rife with inconsistencies and gaps in logic, Fayyaz's testimony about the Sham Invoices was wholly unsubstantiated by any objective evidence. It was not disputed that there was no documentary evidence at all of the alleged sham transactions: no documentation, in particular, of the $5 million allegedly paid to BID pursuant to the Sham Invoices[805]; and no

803 Fayyaz 1158 AEIC at para 6.

804 Fayyaz 1158 AEIC at para 7.

805 DCS 1158 at para 506.

documentation either of the alleged "artificial inflation" of MMSCPL's inventory.

545 In fact, not only was there no documentary evidence corroborating Fayyaz's claims, what documentary evidence there appeared to be actually contradicted those claims. At trial, for example, Fayyaz was referred to BID's audited financial statements for the financial year ending 31 December 2005.[806] Based on the income statement,[807] BID's revenue in 2004 was $949,565 and the revenue for 2005 was $1,555,039. After deducting the costs of sales, the gross profit for 2004 was $114,971 while the gross profit for 2005 was $401,263. Fayyaz could offer no explanation as to how BID could have collected *$5 million* in revenue with low costs of sales when their revenue figures for 2004 and 2005 combined barely came up to $2.5 million and the gross profit was around $500,000.[808] His response was regrettably pure speculation:

> It's not necessary that the sham invoices are recorded. *Until we see the bank accounts, we cannot verify this. The money must have gone to the bank.*
>
> [emphasis added]

546 Even accepting the plaintiffs' submission that the authenticity of this BID financial statement was not proven,[809] the fact remained that Fayyaz admitted he could not verify whether BID had received the $5 million. This was despite his having asserted in his AEIC that his staff were the ones who had prepared the invoices and that he himself had personally handed these invoices

806 780-1DBD at pp 8–16.

807 780-1DBD at p 16.

808 Transcript, 22 October 2020 at p 123, lines 13–21.

809 PCS 1158 at para 886; PCS 780 at para 930.

to Mustaq.[810] Indeed, when pressed further on whether he had any evidence that $5 million was actually invoiced to MMSCPL from BID, Fayyaz said that it was Mustaq's accounts office that had "all the records" and that this was why the Suit 780 plaintiffs were "requesting for a forensic accountant from the court" to "go through the records".[811] Plainly, therefore, he was just speculating about what "the accounts" *would* show *if* a "forensic accountant" were appointed to go through them. In fact, the Suit 780 plaintiffs admitted as much in their closing submissions when they stated Fayyaz did not "have access to *the relevant books and records, if any, that would show* that MMSCPL had paid BID under the Sham Invoices for nothing in return" [emphasis added].[812]

547 I should also add that there was no documentary evidence of the alleged inflation of MMSCPL's inventory.[813] The plaintiffs argued that there was suspicious and unjustified provision for inventory obsolescence and/or write-off of inventories from FY2004 to FY2018, and that prior to 2005, there was no allowance for inventory obsolescence or write-offs of inventories. According to the plaintiffs, this gave credence to their claims that the MMSCPL accounts were being manipulated to cover up Mustaq's trading losses.[814] However, on the evidence available, it appeared that there were no write-offs of MMSCPL's inventory from 2004 to 2018, save in 2016 for a sum of $364,779.[815] Insofar as the plaintiffs were relying on the provisions for inventory obsolescence in

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810 Transcript, 22 October 2020 at p 124, lines 11–22; Fayyaz 780 AEIC at para 218; Fayyaz 1158 AEIC at para 8.

811 Transcript, 22 October 2020 at p 125, lines 10–12.

812 PCS 1158 at para 892.

813 DCS 1158 at para 511(a).

814 PCS 780 at paras 944–955.

815 DCS 1158 at para 511(b); JCB Vol 3 at p 2049 (note 26: "Cost of inventories written off"); PCS 780 at para 944.

MMSCPL's financial statements,[816] I accepted the defendants' submission that these were only *provisions*, and not actual write-offs: if the inventory was eventually sold, the proceeds from the sale would be recorded in MMSCPL's accounts.

548 As I found Fayyaz's evidence about the Sham Invoices to be manifestly unreliable, I held that the plaintiffs were not able to make out a *prima facie* case on their allegations regarding the Sham Invoices.

Other allegations of oppressive behaviour pleaded only by the Suit 780 plaintiffs

549 In respect of the remaining allegations of oppressive behaviour pleaded only by the Suit 780 plaintiffs, I agreed with the defendants that the evidence relied on by the Suit 780 plaintiffs was manifestly unreliable. I held that they were unable to establish a *prima facie* case in respect of following remaining allegations.

Unjustified issuance of bonds

The parties' submissions

550 The Suit 780 plaintiffs claimed that around 2013 to 2014, Mustaq had directed MMSCPL to issue 3-year bearer bonds for approximately $75 million.[817] According to the Suit 780 plaintiffs, this was done solely for the purpose of paying the Samsuddin Estate to prevent action being taken against Mustaq and was not in the commercial interests of MMSCPL. Mustaq had put the money received from these bonds into fixed deposit accounts generating a

816 *See eg* JCB Vol 3 at p 2156 (2018).

817 PCS 780 at paras 568–606.

maximum of 1.3% interest per annum, thereby causing MMSCPL to lose approximately $7.76 million (being the difference between interest paid on the bonds and interest earned on the fixed deposit accounts).

551 In denying the above claims, the defendants contended[818] that the plaintiffs had no documentary evidence for their allegations. The defendants asserted that the 3-year bearer bonds were issued for the purpose of financing MMSCPL's purchase of land in Kuala Lumpur for the development of Mustafa City KL, and not for any sinister purpose.

The evidence

(1) Fayyaz's evidence

552 In Fayyaz's AEIC, Fayyaz stated that he had spoken to Mustaq in 2013 about cashing out the interest of the Samsuddin Estate; and that thereafter, Mustaq had directed his staff – one Indu – to take steps to arrange for payment of $70 or $80 million.[819] Around 2013 to 2014, Mustaq caused MMSCPL to issue 3-year bearer bonds.[820] This was reflected in the notes in the financial statements for FY2014, which stated:[821]

> During the financial year, [MMSCPL] had 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 as face value.

553 According to Fayyaz, although MMSCPL prepared an Information Memorandum dated 21 November 2013 stating that the net proceeds from the

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818 DCS 780 at paras 921–927.

819 Fayyaz 780 AEIC at para 183.

820 Fayyaz 780 AEIC at para 184.

821 JCB Vol 3 at p 1930 (see para 15(d)).

bond issue would be used *inter alia* "for general corporate purposes including refinancing of existing borrowings and financing capital expenditure, potential acquisition and investment opportunities",[822] the proceeds were not used for this stated purpose. Instead, the monies were put into fixed deposit accounts generating a maximum of 1.3% interest per annum. Fayyaz pointed to evidence of the fixed deposits of MMSCPL, which had increased from $11,861,894 in 2013 to $88,229,780 in 2014: according to him, this corresponded to an increase of $76,367,886, which was approximately the same amount as the bond issue.[823] The financial statements for 2015 and 2016 stated that the cost of the bond issue in 2015 was $22,149 and $22,271 in 2016, and that the interest rates for fixed deposits ranged from 0.2% to 1.8%.[824] The fixed deposits of MMSCPL also decreased from $106,210,332 to $34,199,328 for the year ended 30 June 2017. This amounted to a decrease of $72,011,004, which was approximately the same as the monies received from the bond issue, and caused a loss to MMSCPL since the company had paid interest on the monies from the bond issue at 4.75%, but had only received interest of between 0.2% and 1.8%.[825]

(2) Chee's evidence

554 In Chee's First Report, Chee said that the proceeds from the bonds were not applied towards "general corporate purposes" but rather had been kept as idle cash in the form of fixed deposits. The only benefit derived by MMSCPL would be the interest income earned on the fixed deposits.[826]

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822 JCB Vol 5 at p 4174.

823 Fayyaz 780 AEIC at para 187.

824 Fayyaz 780 AEIC at para 188.

825 Fayyaz 780 AEIC at paras 189–190.

826 Chee's First Report at para 2.8.5.

555 In cross-examination, Chee said he did not know anything about the defendants' suggestion that the bonds were issued for the purpose of financing a Malaysian project called Mustafa City Master Planning. He accepted that if this were true, it could well affect his conclusion that the proceeds from the issuance of the bonds were "not put to productive use" in MMSCPL's business operations and/or that the expenses incurred in relation to the bonds exceeded the benefits derived by MMSCPL.[827]

My findings

556 I found that the Suit 780 plaintiffs did not have enough evidence to establish a *prima facie* case on the allegations regarding the unjustified issuance of the $75 million bonds. My reasons were as follows.

557 First, there was no evidence to support Fayyaz's story that the bond issue had come about because of his request to cash out the Samsuddin estate's interest. On its own, his story of how the bond issue came about as being odd, illogical and quite frankly, out of common sense. *Inter alia*, he did not explain how Mustaq had supposedly 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. Having claimed that Mustaq had come up with the figure of *"$70 million or $80 million*", Fayyaz also did not explain why Mustaq then arranged for issuance of bearer bonds valued at *$75 million*. For that matter, there appeared to be no logical explanation as to why – assuming Mustaq had wanted to accede to Fayyaz's request to cash out the Samsuddin estate's interest – he should have chosen the convoluted process of issuing the bonds, with all the documentation that such a process would require.

827 Chee's First Report at para 2.8.8; Transcript, 9 November 2020 at p 180, line 18 to p 181, line 2.

558 Second, when confronted with the defendants' assertion in cross-examination that the bonds were issued to finance a property transaction, Fayyaz gave various inconsistent answers.

559 In cross-examining Fayyaz, the defendants put it to him that 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 (the "KL Transaction").[828] The defendants referred to a memorandum of agreement dated 26 June 2013 between one Cheah Theam Kheng and MMSCPL (the "June 2013 Agreement").[829] The June 2013 Agreement stated, *inter alia*, that MMSCPL had agreed to purchase the land for RM 347,600,000, and had paid an earnest deposit of RM 6,952,000.[830] Around February 2014 (*ie*, three years before the bond maturity on 6 February 2017), MMSCPL issued the bearer bonds for a sum of $75 million.[831] The KL Transaction did not materialise and was terminated sometime around March 2014.[832] Subsequently, an action was commenced in the Kuala Lumpur High Court by MMSCPL and MPL to recover the earnest deposit paid.[833]

560 Fayyaz initially appeared to deny that the bond was issued for the purpose of financing the KL Transaction.[834] However, when shown the June 2013 Agreement, he did not dispute the existence of the KL Transaction. In fact,

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828 Transcript, 22 October 2020 at p 83, lines 8–13.

829 AB Vol 9 at pp 6371–6376.

830 AB Vol 9 at p 6372 (para 1).

831 JCB Vol 3 at pp 1929–1930 (para 15).

832 Transcript, 22 October 2020 at p 87, lines 4–9.

833 AB Vol 9 at pp 6631–6637 (Malay version) and pp 6639–6645 (English translation), *see* p 6641 at para 7; Transcript, 22 October 2020 at p 85, lines 6–22.

834 Transcript, 22 October 2020 at p 85, lines 2–22.

he admitted that he had heard about the KL Transaction, about its falling through and about MMSCPL having obtained judgment in the Malaysian proceedings. It was at this point that he came up with a new allegation: according to him, Mustaq had recovered the earnest deposit as a result of the "consent judgment" in the Malaysian proceedings, but had failed to give an account of the recovered monies to MMSCPL; and this amount was later "written off" in MMSCPL's accounts.[835] When the defendants' counsel suggested to him that this new allegation about the earnest deposit had nothing to do with his allegations regarding the unjustified issuance of the $75 million bearer bonds, he insisted that it was "related to the bond issue" and claimed that he had not mentioned it in his AEIC because the June 2013 Agreement and the Malaysian court papers were "recovered at the very last minute before the start of the trial.[836] On this last assertion, however, the defendants pointed out that the documents relating to the KL Transaction had been disclosed on 8 June 2020 (*ie*, four months prior to the start of the trial).[837] This was not disputed by counsel for the Suit 780 plaintiffs.

561 In short, I found Fayyaz's evidence about the allegedly unjustified bond issue to be inherently incredible and out of common sense. I did not think Chee's evidence assisted the Suit 780 plaintiffs' case either. As I noted earlier, Chee accepted under cross-examination that his conclusions about the bond issue could be affected by the defendants' explanation (*ie*, that it was for the purpose of financing the KL Transaction); and Fayyaz himself accepted in cross-examination the existence of the KL Transaction and the subsequent termination of the June 2013 Agreement.

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835 Transcript, 22 October 2020 at p 93, lines 2–13.

836 Transcript, 22 October 2020 at p 93, line 19 to p 94, line 5.

837 Transcript, 22 October 2020 at p 94, lines 12–14.

Unpaid credit sales from MMSCPL to related parties

The parties' submissions

562 I next address the Suit 780 plaintiffs' allegations regarding unpaid credit sales from MMSCPL to related parties. In gist, the Suit 780 plaintiffs claimed that since 2005, Mustaq (either by himself or with Ishret, Shama, Osama and/or Iqbal) had procured, caused or allowed MMSCPL to enter into transactions with related parties, pursuant to which MMSCPL would provide goods to these companies on credit terms without ever receiving any payment.[838] These related parties were said to be BID, Shams Gems, Ruby Impex, MPL and/or Mustaq (the "Related Parties"). Mustaq and Ishret were the sole registered shareholders of BID, while Shams Gems and Ruby Impex were partnerships jointly registered in the names of Mustaq's daughters, Shams and Bushra. Mustaq was the sole registered shareholder of MPL. According to the Suit 780 plaintiffs, the total value of the credit sales made to the Related Parties (the "Credit Sales Transactions") was $770,048,859, but the aggregate amount of the sales reflected to "related parties" in the audited financial statements of MMSCPL for the years 2005 to 2018 was $537,112,844. Therefore, so the Suit 780 plaintiffs claimed, a sum of $232,935,015 had not been captured in the audited financial statements of MMSCPL for 2005 to 2018, and had instead been wrongfully appropriated by Mustaq, Ishret, Shama, Osama and/or Iqbal. MMSCPL had also been deprived of the sum of $770,047,859.[839]

563 The plaintiffs relied[840] on the Credit Sales Register, a handwritten ledger recording the sales made on credit terms. According to the plaintiffs, the usual

838 SOC 780 at para 97A.

839 SOC 780 at paras 97A–97E.

840 PCS 780 at paras 607–696.

practice of MMSCPL was to record information of the payment details in the Credit Sales Register. The fact that no such information had been recorded in relation to the sales to the Related Parties indicated that the Related Parties had not repaid MMSCPL. This constituted evidence that the sums in question had been misappropriated.

564 The defendants, on the other hand, contended that the Credit Sales Register was unsatisfactory and unreliable evidence in showing whether Credit Sales Transactions had been paid for by the Related Parties.[841] Instead, it was evident on the face of the accounts receivables ledgers ("AR Ledger") disclosed by the defendants that the Credit Sales Transactions had been paid and accounted for.

The evidence

(1) Fayyaz's evidence

565 Fayyaz gave evidence that as a purchasing manager of MMSCPL, his main role was the purchase and sale of electronic goods on behalf of MMSCPL. MMSCPL sold goods to customers on credit terms, *ie*, customers would buy goods from MMSCPL and pay for them later.[842] Sales were recorded on the electronic system of MMSCPL, including sales on credit terms. MMSCPL also maintained a handwritten Credit Sales Register, which was kept in an unlocked drawer in the purchasing office. Credit sales to customers were recorded in the Credit Sales Register.[843] When a customer made part or full payment to MMSCPL, the accounts department of MMSCPL would notify the purchasing

841 DCS 780 at paras 896–920.

842 Fayyaz 780 Supplemental AEIC at paras 8, 10.

843 Fayyaz 780 Supplemental AEIC at paras 14–15.

office of the amount received and usually ask the purchasing officer for details such as the identity of the customer. The purchasing office would then check the records (including the Credit Sales Register) in order to respond to the accounts department, and would in turn update the Credit Sales Register with the relevant information.[844]

566 According to Fayyaz, he decided to check the Credit Sales Register sometime in late March 2020 or early April 2020 because it occurred to him that Mustaq had only declared the sale records for Ruby Impex and Shams Gems for the years 2013 or 2014, and not for the preceding years.[845] Fayyaz then realised that many large credit sales from MMSCPL to the Related Parties were recorded in the Credit Sales Register.[846] There were also other credit sales to Handi Restaurant (a sole proprietorship owned by MPL) and MAT.[847] According to Fayyaz, he also realised that some of the credit sales had not been paid for, because no payment details were recorded in the Credit Sales Register.[848]

(2) Chee's evidence

567 In Chee's report dated 21 September 2020 ("Chee's Third Report"), Chee said that from 1 January 2005 to 31 December 2018, sales were made by MMSCPL to the Related Parties, as well as MAT and Handi Restaurant.[849] He noted that the sales to related parties that were recorded in the Credit Sales Register from 2005 to 2018 exceeded that disclosed in MMSCPL's financial

844 Fayyaz 780 Supplemental AEIC at para 17.

845 Transcript, 26 October 2020 at p 55, lines 10–22.

846 Fayyaz 780 Supplemental AEIC at paras 24–25.

847 Fayyaz 780 Supplemental AEIC at paras 27–28.

848 Fayyaz 780 Supplemental AEIC at paras 29, 33.

849 Chee's Third Report at para 2.1.1 (*see* Supplementary AEIC of Chee Yoh Chuang for Suit 780 dated 21 September 2020 at Tab CYC-4).

statements for the same period by a sum of $230,313,087.14.[850] According to Chee, the sum of $230,313,087.14 "may represent" sales that were made but that were not taken into account in MMSCPL's financial statements, and the GST reported by MMSCPL during this period was "also likely" to have been incomplete or erroneous due to the unaccounted sales.[851] Chee opined that credit sales to Mustaq and the Related Parties (as well as MAT and Handi Restaurant) totalling more than $230,313,087.14 in value had not been accounted for.[852]

568 In his report of 5 October 2020 ("Chee's Fourth Report"),[853] which reviewed the AR Ledger disclosed by the defendants, Chee said that the AR Ledger did not seem to be a general ledger of MMSCPL and did not show the amount due to MMSCPL from each related party As such, he was unable to determine if the information in the AR Ledger was consistent with the audited figures shown in MMSCPL's financial statements. Further, as the relevant underlying documents had not been produced, he was unable to verify the reliability of the information in the AR Ledger.[854]

569 In response to the defendants' suggestion that credit notes had been issued in respect of credit sales to the related parties but were not recorded in the Credit Sales Register, Chee said that without reviewing MMSCPL's general ledger where the corresponding debts were recorded and the underlying documents, it was not possible for him to conclude that the credits listed in the

850 Chee's Third Report at para 2.3.2.

851 Chee's Third Report at para 2.3.4.

852 Chee's Third Report at para 2.5.2.

853 2nd Supplementary AEIC of Chee Yoh Chuang for Suit 780 dated 5 October 2020 at Tab CYC-5).

854 Chee's Fourth Report at para 2.1.3.

AR Ledger were payments received by MMSCPL and/or legitimate credit notes issued to the related parties.[855]

My findings

570 First, I agreed with the defendants that insofar as the plaintiffs' submissions and Fayyaz's supplemental AEIC related to credit sales to Handi Restaurant and MAT, these entities were not pleaded as Related Parties, and the plaintiffs' claims in relation to these entities could not be sustained.[856]

571 Second, I agreed with the defendants that for the following reasons, the Credit Sales Register was not a reliable record of whether payment had been made for the Credit Sales Transactions.

(a) At trial, Chee himself noted that the Credit Sales Register was not part of the general ledger system of MMSCPL. Fayyaz also admitted that he did not have a duty to recover the monies from the credit sales made to the Related Parties, and that it was ultimately the finance department that was responsible for keeping records of all the transactions.[857] This meant that the purchasing office where Fayyaz worked would not have the complete record of all payments made in respect of credit sales made by MMSCPL. As such, the Credit Sales Register maintained by the purchasing office could not represent the complete record of all payments made in respect of credit sales made by MMSCPL.[858]

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855 Chee's Fourth Report at paras 2.1.5–2.1.6.

856 DCS 780 at para 898.

857 Transcript, 26 October 2020 at p 61 line 8 to p 62 line 8.

858 DCS 780 at para 907.

(b) Moreover, as the defendants pointed out, the auditors had not issued any qualified opinion in respect of MMSCPL's financial statements over the years.[859] If the plaintiffs were right in claiming that $537,112,844 – more than half a billion dollars – of sales to related parties had been recorded in the financial statements for 2005 to 2018 and yet never paid for, there should have been a deficit of that amount in those financial statements – and one would have expected the auditors to have flagged this at least once over the course of 13 years.[860] As Chee accepted at trial, the auditors never did so.[861]

572 Third, the plaintiffs had postulated that given the difference of $232,935,015 between the total amount of credit sales recorded in the Credit Sales Register and the sales to related parties recorded in MMSCPL's financial statements for 2005 to 2018, the defendants must have misappropriated this difference. However, in cross-examination, Chee accepted that the fact that a sale might not have been classified as a related party transaction in the financial statements did not mean it had not been accounted for in the financial statements.[862] Chee also acknowledged that there were various credit notes that were not recorded in the Credit Sales Register, but were recorded in the AR Ledger.[863] Finally, Chee accepted in cross-examination that based on the documents he had reviewed (the Credit Sales Register, the AR Ledger and the

859 DCS 780 at para 68.

860 DCS 780 at para 912.

861 Transcript, 9 November 2020 at p 190, line 23 to p 191, line 4.

862 DCS 780 at para 915; Transcript, 9 November 2020 at p 189, lines 7–21.

863 Chee's Fourth Report at para 2.3.8; Transcript, 9 November 2020 at p 201, line 24 to p 202, line 5.

audited financial statements), he did not have enough information to form an opinion on whether the sales to the Related Parties had been accounted for.[864]

573 I should make it clear that I did take note of the fact that the defendants, in electing to submit no case, undertook to call no evidence, but then sought to rely on the AR Ledger in their written submissions.[865] However, even putting aside the AR Ledger, I was very doubtful of of the reliability of the Credit Sales Register which formed the lynchpin of the Suit 780 plaintiffs' case regarding the Related Parties' failure to pay for credit sales.

574 Given the state of the evidence relied on by the Suit 780 plaintiffs, I found that they were unable to establish a *prima facie* case that there was a discrepancy of $235,935,015 between the credit sales recorded in the Credit Sales Register and the credit sales to related parties recorded in MMSCPL's financial statements – or that this alleged discrepancy of $232,935,015 was misappropriated by the defendants.

Wrongful payment of salaries and CPF contributions to Mustaq's children

575 I next address the Suit 780 plaintiffs' claim that Mustaq had directed MMSCPL to pay salaries and CPF contributions to his children (specifically, Shams, Shama and Bushra), prior to their being employed by MMSCPL or any of its related companies.[866]

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864 Transcript, 9 November 2020 at p 200, lines 8–16.

865 DCS 780 at para 911.

866 SOC 780 at para 80.

The parties' submissions

576 The Suit 780 plaintiffs' case on this issue[867] was based on the MMSCPL payroll registers of Shams, Shama and Bushra, which purportedly showed that these three individuals had received monthly salary payments and CPF contributions while they were still in school and well before they started their employment with MMSCPL.

577 The defendants denied[868] that there was anything improper or unusual about these salary payments and CPF contributions. Shama was appointed as a director of MMSCPL on 14 February 2001: the payroll register showed she was also employed by MPL – and started receiving a salary from MPL – in November 2006. Similarly, the payroll registers showed that Bushra and Shams began receiving salary payments from MMSCPL in July 2008 and January 1998 respectively; and as they would have been 28 and 25 years respectively by that time, there was nothing unusual about their being employed by MMSCPL at that stage.

The evidence

578 In Fayyaz's AEIC, he alleged that Shama had become a director of MMSCPL only in 2001, and that Bushra was not employed in MMSCPL until late 2015 or early 2016. He did not believe that Shams was employed by MMSCPL as he had never seen her working in MMSCPL's premises.[869] Based on the payroll registers, Bushra – who was born in 1980 – had received from MMSCPL a monthly salary $5,000 and CPF contributions every month since

867 PCS 780 at paras 730–746.

868 DCS 780 at paras 839–841.

869 Fayyaz 780 AEIC at para 240.

January 1998, even though she would only have been 18 years old at that time. As for Shams, she was paid a monthly salary of $5,000 and CPF contributions from July 2008, despite never having worked in MMSCPL.[870]

My findings

579 On the evidence available, I held that the plaintiffs simply did not have enough evidence to make out a *prima facie* case on this issue.

580 First, I accepted the defendants' submission that Fayyaz was in fact mistaken as to the payroll registers. Based on the payroll registers, Bushra had been paid a salary in MMSCPL since July 2008, not January 1998 as Fayyaz claimed. Since Fayyaz himself acknowledged that she was born in 1980, she would have been 28 years old – not 18 – at the time she started receiving a salary from MMSCPL; and apart from Fayyaz's bare assertion that she did not work in MMSCPL until 2015 or 2016,[871] there was no evidence at all that she was not working in MMSCPL at the time she started receiving salary payments and CPF contributions at 28 years of age.

581 As for Shams, Fayyaz was again mistaken about what the payroll registers showed: in fact, Shams had been paid a salary since January 1998, and not July 2008.[872] This meant that Shams would have been 25 years old at the time she started receiving salary payments and CPF contributions; and again, apart from Fayyaz's bare assertion that he had never seen Shams working in

870 Fayyaz 780 AEIC at para 242.

871 Fayyaz 780 AEIC at para 241.

872 DCS 780 at paras 840(b)–(c).

MMSCPL's premises, there was no evidence that she was not working at the time she started receiving salary and CPF contributions.[873]

582 As for Shama, who became a director of MMSCPL in 2001, I accepted that the payroll register showed she had been employed by MPL and had been receiving a salary from MPL since November 2006. There was nothing untoward about her receiving this salary as an employee of MPL. There was no evidence to support Fayyaz's bare assertion in his AEIC that Shama only started playing an active role in MMSCPL around 2017.[874]

Transactions with Ruby Impex and Shams Gems

583 The plaintiffs alleged that between 8 January 2004 and 26 May 2017, Mustaq contracted on behalf of MMSCPL to sell gold to Ruby Impex and Shams Gems, being partnership firms jointly owned by his daughters, Shams and Bushra, by adding only a 0.5% margin without reference to market value, thereby causing MMSCPL to enter into contracts at a significant undervalue.[875]

The parties' submissions

584 According to the Suit 780 plaintiffs[876], it could not be disputed that MMSCPL had sold gold to Ruby Impex and Shams Gems at a markup of only 0.5%. This meant that MMSCPL had been deprived of the substantial profits it could have made had it sold the gold at the "usual" markup of 13.2% to 15.2%.

873 Fayyaz 780 AEIC at para 240.

874 Fayyaz 780 AEIC at para 241.

875 SOC 780 at para 85.

876 PCS 780 at paras 747–773.

585 In their submissions, the Suit 780 plaintiffs also claimed that Mustaq and the other defendants had failed to disclose the transactions between MMSCPL and Shams Gems and Ruby Impex, despite having an indirect interest in these companies as a result of their familial relationship with Shams and Bushra.[877]

586 The defendants, on the other hand, contended that the plaintiffs were unable to show that the sales of gold from MMSCPL to Shams Gems and Ruby Impex between 8 January 2004 and 26 May 2017 were all done at a "significant undervalue".[878] In any event, the defendants argued that if MMSCPL had indeed consistently sold gold to Ruby Impex and Shams Gems at a 0.5% markup, this would mean MMSCPL always made a guaranteed profit of 0.5% and would shield MMSCPL from the price fluctuations in the gold market.

The evidence

(1) Fayyaz's evidence

587 Fayyaz's evidence was that Shams and Bushra were the only partners in both Shams Gems and Ruby Impex. Both entities were registered on 14 January 2004 and dissolved in 26 May 2017 – just before the filing of Suit 1158.[879] Fayyaz adduced several invoices from MMSCPL to Ruby Impex and Shams Gems which he claimed showed that MMSCPL sold gold to Ruby Impex and Shams Gems at a markup of only 0.5%, without any consideration for the market price of gold[880]: for example, an invoice from UCO Bank to MMSCPL showing that MMSCPL purchased gold for $322,650 (excluding GST) on 4

877 PCS 780 at paras 764–771.

878 DCS 780 at paras 859–869.

879 Fayyaz 780 AEIC at paras 245–246.

880 Fayyaz 780 AEIC at para 249.

May 2011[881]; and an invoice dated 15 June 2011 showing that the gold was sold to Ruby Impex at $346,961.60 (excluding GST), *ie*, by a 0.5% markup.[882]

588 According to Fayyaz, the practice of imposing a standard 0.5% markup showed a disregard for fluctuations in the price of gold. It meant that when the price of gold rose, Shams Gem and Ruby Impex would get the benefit of the price increase – and that profits that should have been made by MMSCPL were instead made by Shams Gems and Ruby Impex.[883]

589 When asked to explain what he meant when he said Mustaq had never disclosed his interests in the transactions to the Samsuddin Estate,[884] Fayyaz said he meant that when MMSCPL sold gold to Ruby Impex and Shams Gems, there was no record found in the Credit Sales Register of those companies making actual payments to MMSCPL.[885]

(2) Chee's evidence

590 In Chee's First Report, Chee said that the markup of 0.5% appeared low and might not sufficiently compensate MMSCPL for the financial and other risks undertaken in respect of these transactions.[886] He also said that Mustaq and Ishret were deemed to have interests in Ruby Impex and Shams Gems due to their familial relationship with Bushra and Shams; that this put them in conflict with their duties as directors of MMSCPL; and that he had not seen any evidence

881 JCB Vol 5 at p 3727; Transcript, 20 October 2020 at p 44, lines 7–25.

882 Transcript, 20 October 2020 at p 45, line 19 to p 47, line 1; JCB Vol 5 at p 3726; Transcript, 22 October 2020 at p 47, lines 6–12.

883 Fayyaz 780 AEIC at para 253.

884 Fayyaz 780 AEIC at para 256.

885 Transcript, 23 October 2020 at p 139, lines 1–7.

886 Chee's First Report at para 2.7.7.

showing that they had declared or sent written notice to MMSCPL setting out this conflict.[887]

My findings

591 I found the evidence adduced by the plaintiffs insufficient to establish a *prima facie* case in respect of their allegations about Ruby Impex and Shams Gems. My reasons were as follows.

592 First, based on the invoices, I accepted that MMSCPL had sold gold to Shams Gems and Ruby Impex at a 0.5% markup. This was also not disputed by the defendants. However, the Suit 780 plaintiffs did not adduce evidence of what the usual percentage markup would be for the sale of gold, or of the usual "market value" of gold. In their closing submissions, the plaintiffs referred to an MMSCPL Information Memorandum dated 21 November 2013, which appeared to show a sales margin of 13.3% in 2011[888]: the plaintiffs sought to rely on this figure as the "usual mark-up for the year 2011".[889] However, as the defendants pointed out, there was no evidence that this sales margin referred to *gold specifically*. In fact, given the nature and contents of the Information Memorandum, it appeared to be me to be the case that this was the aggregate sales margin for all the different products sold by MMSCPL.[890]

593 I also agreed with the defendants that the fact that MMSCPL sold gold to Shams Gems and Ruby Impex at a 0.5% markup did not *per se* mean that the sale was at a "significant undervalue", or that profits that would have been made

887 Chee's First Report at para 2.7.11.

888 JCB Vol 5 at p 4161 (see second para: "The Group's sales margin of 13.2% in FY2012 was largely unchanged from 13.3% in FY2011…").

889 PCS 780 at paras 759–760.

890 DRS 780 at para 280.

by MMSCPL were diverted to Shams Gems and Ruby Impex. Chee accepted in cross-examination that if MMSCPL had sold gold to Shams Gems and Ruby Impex at a consistent 0.5% markup, MMSCPL would always have a 0.5% guaranteed profit, regardless of fluctuations in the market price of gold.[891] While Chee suggested that there were other risks such as interest cost associated with the sales to Ruby Impex and Shams Gems, he conceded that he did not quantify the interest cost – nor did he assess the risk – in the present case, as he did not have the necessary information.

594 Insofar as the plaintiffs' submissions were based on payment not having been received for the credit sales to Shams Gems and Ruby Impex, these submissions depended on the evidence purportedly to be found in the Credit Sales Register.[892] I rejected these submissions for the same reasons set out at [571] above.

595 Lastly, in relation to the Suit 780 plaintiffs' submission that Mustaq (and the other defendants) had a duty to but did not disclose the transactions between MMSCPL and Shames Gems/Ruby Impex,[893] as the defendants pointed out, this allegation of non-disclosure was never pleaded; and the plaintiffs should not be allowed to raise it belatedly in their closing submissions.[894]

Payment of consultancy fees from MMSCPL to Zero and One

596 I next address the Suit 780 plaintiffs' allegation regarding the payment of consultancy fees by Zero and One.

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891 DCS 780 at paras 862–863.

892 PCS 780 at paras 762–763.

893 PCS 780 at para 764.

894 DRS 780 at para 282; SOC 780 at para 85.

The parties' submissions

597 The plaintiffs pleaded that after registering Zero and One as a sole proprietorship on 1 February 2006, Mustaq had wrongfully caused MMSCPL to pay it substantial consultancy fees, even though according to the Suit 780 plaintiffs, MMSCPL "does not require substantial business consultancy services as its business has remained unchanged since its incorporation".[895] Moreover, the alleged employees of Zero and One were not in fact Zero and One employees providing consultancy services to MMSCPL; they were actually employees of MMSCPL; and the defendants had no evidence of any consultancy work done by Zero and One.

598 Allegations were also made about Rajena, with whom Mustaq was alleged to be in a relationship: according to the plaintiffs, Mustaq had used Zero and One as a "vehicle" to pay Rajena between $20,000 to $50,000 per month in consultancy fees; he had failed to cooperate with the police when Rajena was reported for wrongfully taking goods from MMSCPL; and he had caused MMSCPL to pay the rent for Rajena's accommodation.[896]

599 The defendants, for their part, submitted[897] that the plaintiffs' claims about Zero and One's business and the status of its employees were refuted by contemporaneous documentary evidence showing employer's CPF contributions by Zero and One to its employees, as well as the invoices from Zero and One to MMSCPL for the payment of monthly consultancy fees by MMSCPL. There was no evidence to bear out Fayyaz's claim that the Zero and

895 PCS 780 at paras 774–811.

896 SOC 780 at paras 81–84.

897 DCS 780 at paras 842–858.

One employees were really employees of MMSCPL. Fayyaz did not know who received the consultancy fees paid by MMSCPL to Zero and One, nor did he have any evidence to substantiate the allegation that these consultancy fees were paid to Mustaq personally. As for the allegations relating to Rajena, the plaintiffs had no evidence to show how much Rajena was paid or to support their allegation that MMSCPL was paying her rent. As for the incident concerning the alleged wrongful taking of goods by Rajena, this had already been internally dealt with by MMSCPL.

The evidence

(1) Fayyaz's evidence

600 Fayyaz stated that Zero and One had commenced business in January 2006; and that this coincided with a sharp increase in the total consultancy fees paid yearly by MMSCPL, from $60,000 in 2005 to $660,000 in 2006. Between 2013 and 2015, MMSCPL had paid just over $2 million each year in total consultancy fees; and between 2016 and 2018, the total amount of consultancy fees paid yearly was over $1 million. Yet, so Fayyaz claimed, save for one lone consultant, he had never seen any consultants come to the premises of MMSCPL, take documents, or speak to any employees.[898]

601 As for the invoices issued by Zero and One to MMSCPL from June 2011 to July 2019, Fayyaz claimed that the consultancy fees charged by Zero and One did not correspond exactly to the consultancy charges recorded in MMSCPL's financial statements. He was not aware of the reason for this difference, but contended that substantial consultancy charges were paid to Mustaq

[898] Fayyaz 780 AEIC at para 224.

personally.[899] He also pointed out that the invoices from Zero and One to MMSCPL were in sequential order, which suggested that Zero and One had no other customers: if it had, its invoices to MMSCPL would not be in running order because it would have issued invoices to these other customers.[900]

602 Fayyaz alleged, in addition, that Mustaq had used the money from Zero and One to pay Rajena between $20,000 to $50,000 per month.[901] Rajena had taken goods from MMSCPL without paying for them,[902] but instead of a police report being made, MMSCPL had merely gotten Rajena to pay $1,800 for these goods.[903]

(2) Chee's evidence

603 In Chee's First Report, Chee stated that due to the limited documents available for his review, he was unable to determine the reasons for the discrepancy between the tax invoices from Zero and One, and the consultancy fees recorded in MMSCPL's financial statements.[904] Chee opined that if the services that Zero and One provided were solely for running or managing the operations of MMSCPL, it "may not be" in MMSCPL's interest to pay for the services through Zero and One. However, Chee was unable to determine if Zero and One was a genuine consultancy business that had its own clients and could operate independently of MMSCPL.[905]

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899 Fayyaz 780 AEIC at para 227.

900 Fayyaz 780 AEIC at para 229.

901 Fayyaz 780 AEIC at paras 231–232.

902 Fayyaz 780 AEIC at para 234.

903 Fayyaz 780 AEIC at para 236.

904 Chee's First Report at para 2.6.4.

905 Chee's First Report at para 2.6.6.

604 In Chee's Second Report, he also stated that Mustaq had benefited from consultancy fees charged to MMSCPL through Zero and One, and that the consultancy fees amounted to $10.53 million between June 2011 and July 2019, although this likely did not reflect the full extent of the consultancy fees paid to Zero and One over the years.[906]

My findings

605 I was not persuaded by the plaintiffs' submissions.

606 To begin with, I rejected Fayyaz's evidence that MMSCPL had never hired any consultants at all. This was a bare assertion backed up by yet another bare assertion about not having personally seen consultants visit the MMSCPL premises. It should be noted too that contrary to Fayyaz's assertion that MMSCPL had never hired consultants, the evidence given in his own AEIC appeared to show that for the decade or so prior to Zero and One commencing business, MMSCPL had been paying consultancy fees yearly, ranging from $36,000 (2001) to $257,250 (1997).[907]

607 As for Fayyaz's contention that the consultancy fees invoiced by Zero and One did not correspond exactly to the consultancy charges recorded in the financial statements of MMSCPL, the obvious explanation for the differences would appear to be MMSCPL's appointment of other consultants besides Zero and One from 2011 to 2019. The entries in MMSCPL's general ledger indicated that payments had been made to other consultants besides Zero and One, such as one Yan Shiwu and one Lim Hwee Cheng.[908]

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906 Chee's Second Report at para 2.7.3.

907 Fayyaz 780 AEIC at para 223.

908 780-1DBD at pp 27–28.

608 I also did not accept Fayyaz's claim that the Zero and One consultancy fees paid by MMSCPL actually went to Mustaq. Fayyaz himself conceded that he had no such proof.[909]

609 Fayyaz claimed that the difference between the consultancy fees reflected in the financial statement and the fees paid out by MMSCPL in 2013 must have been taken by Mustaq because MMSCPL had no other consultants,[910] but when pressed, he admitted that he had no proof that the difference between the consultancy fees reflected in MMSCPL's financial statements and the fees paid to Zero and One was taken by Mustaq.[911] Indeed, as he himself conceded in cross-examination, his evidence really amounted to this:[912]

> The money has gone to the company, Zero and One. Who has taken the money, I have no idea.

610 As for Fayyaz's allegation that the employees of Zero and One were really MMSCPL employees, this allegation was made for the first time when Fayyaz took the witness stand. I noted that the plaintiffs disputed the authenticity of the letters from CPF to Zero and One showing the payment of CPF contributions to Zero and One's employees.[913] However, even putting aside the CPF letters, I noted Fayyaz's admission at trial that he actually had no knowledge of these individuals' employment contracts. In other words, he had no basis for his assertion in the witness stand that the individuals listed as Zero and One employees were really employed by MMSCPL.

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909 Transcript, 23 October 2020 at p 111, lines 16–21.

910 Transcript, 23 October 2020 at p 109, lines 14–20.

911 Transcript, 23 October 2020 at p 111, lines 16–21.

912 Transcript, 23 October 2020 at p 108, lines 2–3.

913 WongP's 8 December 2020 Letter at p 12 (row 112); *see* 780-1DBD at pp 40–110.

611 As for Chee, he admitted that he was not in a position even to confirm whether Zero and One was providing services to MMSCPL. He admitted that he was also not in a position to conclude that Mustaq had benefited from the consultancy fee paid to Zero and One, or that MMSCPL had sustained losses.[914] Further, based on the general ledger of MMSCPL, Chee accepted that MMSCPL had engaged other consultants besides Zero and One.[915] This directly refuted Fayyaz's allegation that MMSCPL had never hired consultants.[916]

612 As for the Suit 780 plaintiffs' allegations about Rajena, apart from Fayyaz's bare assertion, there was no evidence at all of how much Rajena was paid, nor was there any evidence that Mustaq had caused MMSCPL to pay her rent. In respect of the incident about the alleged wrongful taking of goods, it was apparent from the email of 6 December 2017 sent by Bernard Lim (the MMSCPL security manager) to the police that internal disciplinary action was taken against Rajena for taking goods from MMSCPL without paying; and this was corroborated by the 28 December 2017 invoice requiring Rajena to pay MMSCPL $1,800.[917]

613 In sum, I found that in respect of the Zero and One consultancy fees, the Suit 780 plaintiffs' case was really built on conjecture: they did not have enough evidence to make out a *prima facie* case.

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914 Transcript, 9 November 2020 at p 173 line 10 to p 175 line 19.

915 780-1DBD at pp 27–28.

916 Transcript, 9 November 2020 at p 170, lines 17–20.

917 DCS 780 at para 855.

Generating debit notes with zero amounts

614 I next address the Suit 780 plaintiffs' allegations regarding the generation of debit notes with zero amounts. In gist, the plaintiffs claimed that from January 2010 to May 2018, Mustaq "failed to adopt a proper accounting system for MMSCPL" and "caused debit notes of MMSCPL to be generated with the amount being zero" when there was "no commercial reason why debit notes should have zero amounts".[918]

The parties' submissions

615 The plaintiffs submitted[919] that MMSCPL had issued debit notes to sellers of goods for goods bought which were damaged or could not be used. Where debit notes for zero amounts were issued, the value of these damaged goods was not accounted for, and MMSCPL had in fact paid monies for goods it could not use. There was thus a possibility that monies were misappropriated from MMSCPL through the issuance of these debit notes with zero amounts; at the least, even if MMSCPL had recovered the monies for these damaged goods, the value of the goods was not accounted for.

616 The defendants accepted that debit notes with zero amounts were issued, but said there was no evidence to show that the debit notes were in any way improper, wrongful or oppressive.[920]

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[918] SOC 780 at para 86.

[919] PCS 780 at paras 829–844.

[920] DCS 780 at paras 870–871.

The evidence

617 The Suit 780 plaintiffs' case again relied on testimony from Fayyaz, who gave evidence that he had discovered MMSCPL had been issuing debit notes with zero amounts. This meant that a debit note entry was keyed into the records but there was no money returned to MMSCPL. According to Fayyaz, there was no reason for these debit notes.[921]

My findings

618 I agreed with the defendants that the plaintiffs had not shown why the debit notes with zero amounts were improper, wrongful or oppressive.

619 First, and most tellingly, in Fayyaz's own AEIC, he stated that "the real reason behind these debit notes will be revealed upon an investigation into the affairs of MMSCPL".[922] Plainly, his evidence at trial as to the purpose of the debit notes was really just speculation.

620 Second, the defendants suggested to Fayyaz in cross-examination that the debit notes with zero amounts were generated only for rental due to MMSCPL, to account for the numbering of the debit notes and to keep track of the rent paid to MMSCPL. The defendants suggested that this was subsequently accounted for when MMSCPL issued a letter to the relevant tenant for payment of the rent with the corresponding debit.[923] Further, these debit notes had been disclosed and made available to the auditors during MMSCPL's annual audit; and they had raised no issue with these debit notes.[924]

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921 Fayyaz 780 AEIC at paras 270–272; *see* debit notes at AB Vol 9 at pp 6667–6672.

922 Fayyaz 780 AEIC at para 272.

923 Indu AEIC dated 21 August 2020 for S 780 at paras 40–41.

924 Transcript, 23 October 2020 at p 153, lines 18–22.

621 Fayyaz disagreed with this explanation, as he claimed that once rent had been collected, the amount collected should have been written against the debit note.[925] He also claimed that MMSCPL's accounts should record not just the rental collected and the party from whom rental was collected, but should also reflect the debit note number or debit note details next to the rental details.[926] However, he admitted that he was not involved in the collection of rental,[927] and when pressed on whether he had personal knowledge of the rental collection process in MMSCPL, he eventually answered "I do not know".[928]

622 It should be noted, moreover, that there was no evidence of MMSCPL's auditors having raised any queries or concerns over the said debit notes.

623 In the circumstances, I concluded that in respect of the debit notes with zero amounts, the Suit 780 plaintiffs' case was again built on conjecture: they did not have enough evidence to make out a *prima facie* case that there was anything improper, wrongful or oppressive about these debit notes.

Siphoning off money to buy property in Cambodia

624 I next address the Suit 780 plaintiffs' allegations about Mustaq siphoning off MMSCPL funds to buy himself property in Cambodia. In gist, the Suit 780 plaintiffs claimed that between 2007 and 2016, Mustaq used funds from MMSCPL and the Related Companies to purchase properties in Cambodia in his personal name and/or that a company registered in his sole name, City Mart Co Ltd ("City Mart"). According to the plaintiffs, Mustaq then engaged in

925 Transcript, 23 October 2020 at p 154, lines 16–25.

926 Transcript, 23 October 2020 at p 156, lines 2–10.

927 Transcript, 23 October 2020 at p 155, lines 11–13.

928 Transcript, 23 October 2020 at p 158, line 23.

self-dealing by causing MMSCPL to pay him for a share of the properties purchased in Cambodia (the "Cambodian Properties").[929]

The parties' submissions

625 The plaintiffs submitted[930] that Mustaq had orally told Fayyaz about using MMSCPL funds to purchase land in Cambodia in his personal name; and that there was documentary evidence showing the purchase of the Cambodian Properties with MMSCPL's funds. The Suit 780 plaintiffs claimed that there was at least one other instance where Mustaq had used a corporate vehicle to purchase property in Cambodia. Moreover, the Cambodian Properties had formed part of the negotiations for settlement between the parties in these proceedings, as evidenced in an agreement written on a whiteboard and signed by Ayaz on behalf of the Suit 1158 plaintiffs around 13 April 2016.

626 The Suit 780 plaintiffs also sought to cast doubt on whether Mustaq had purchased MMSCPL's 19% share in City Mart at a fair value.

627 For their part, the defendants contended[931] that there was no documentary evidence of Mustaq using MMSCPL's monies to buy the Cambodian Properties, or of MMSCPL paying him for a share of the land. There was also nothing wrong with Mustaq's purchase of MMSCPL's 19% stake in City Mart, and no evidence that MMSCPL's monies had been used for this.

929 SOC 780 at para 87.

930 PCS 780 at paras 845–911.

931 DCS 780 at paras 872–878.

The evidence

(1) Fayyaz's evidence

628 In his AEIC, Fayyaz asserted that sometime in May or June 2007, Mustaq had told Fayyaz about his using MMSCPL funds to buy a large piece of land in Cambodia in his (Mustaq's) personal name. According to Fayyaz, Mustaq said that only permanent residents in Cambodia could purchase agricultural land, and that was why Mustaq (a permanent resident of Cambodia) had purchase the land in his own name even though the purchase was made with MMSCPL's funds.[932] Fayyaz claimed that following the commencement of Suit 780, he obtained a copy of a Cambodian company search which showed that Mustaq was the only director of a company – known as City Mart – registered in Cambodia. City Mart was incorporated on 19 April 2007, which was just before Mustaq had told Fayyaz about his purchase of the land in Cambodia.[933]

629 Fayyaz further pointed to documents disclosed by the defendants; namely, a Notice of EOGM for MMSCPL on 2 December 2015 ("2 December 2015 Notice")[934] and the Minutes of the EOGM on 2 December 2015 ("2 December 2015 EOGM Minutes"). The latter document stated that MMSCPL's 19% share in City Mart would be transferred at the book value of $25,932,771 to Mustaq, and that Mustaq had disclosed his interest in this transaction and would abstain from participating in passing the resolution.[935] Even then, the 2 December 2015 EOGM Minutes were signed only by Mustaq and Ishret. Fayyaz alleged that this meant Mustaq had caused MMSCPL to buy the said assets from

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932 Fayyaz 780 AEIC at paras 257–258.

933 Fayyaz 780 AEIC at para 259.

934 AB Vol 4 at p 3003.

935 Fayyaz 780 AEIC at para 262; AB Vol 4 at p 3004.

him without informing Fayyaz and other beneficiaries of the Samsuddin Estate and without obtaining their consent.[936] Mustaq then took this sum of $25,932,771 from MMSCPL, as reflected in the entry dated 31 December 2015 in MMSCPL's general ledger account.[937]

630 Based on MMSCPL's financial statement for 2015,[938] Fayyaz accepted that the book value of MMSCPL's 19% share in City Mart ($25,932,771) approximated the fair value of the investment.[939] However, he disagreed that $25,932,771 was the fair value of MMSCPL's City Mart shares, claiming that Mustaq had told him that the value of "this property" was more than US$325m.[940]

(2) Chee's evidence

631 In Chee's First Report, Chee stated that in FY2014, payments were made by MMSCPL to unknown payees based in Cambodia. While it was unclear what these payments were for, Chee noted that Mustaq had an interest in City Mart (a company registered in Cambodia), and that payments made by MMSCPL in FY2014 in relation to Cambodia were already recorded in Mustaq's account, even before the investment in City Mart was purportedly acquired by Mustaq in FY2016. This suggested that Mustaq "may have" already had an interest in City Mart prior to FY2016. In addition, Chee said it was uncertain if the City Mart

936 Fayyaz 780 AEIC at para 263.

937 Fayyaz 780 AEIC at para 264.

938 JCB Vol 3 at p 1983 (note 7).

939 Transcript, 26 October 2020 at p 23, lines 10–14.

940 Transcript, 26 October 2020 at p 25, lines 18–24; Fayyaz 780 AEIC at para 260.

shares were sold to Mustaq at fair value, as it did not appear that an independent valuation exercise was carried out.[941]

My findings

632 It must be highlighted first of all that the Suit 780 plaintiffs' pleadings in this regard were framed in a confused – and confusing – manner. In their statement of claim, the plaintiffs pleaded that Mustaq had engaged in self-dealing by causing MMSCPL to "pay him for a share of the properties purchased in Cambodia".[942] Read in the context of the preceding sentence, which referred to Mustaq using MMSCPL's or the Related Companies' funds to purchase "properties in Cambodia in Mustaq's personal name and/or City Mart Co Ltd", it was unclear whether the plaintiffs meant that Mustaq had engaged in self-dealing by causing MMSCPL to pay him for a share of the properties purchased in Cambodia in Mustaq's personal name, *or* by causing MMSCPL to pay him for a share of City Mart, *or* for both. As it turned out at trial, the Suit 780 plaintiffs did not seem to know what they meant either.

633 I address first the allegations in relation to the "properties purchased in Cambodia". This appeared to be a reference to the agricultural land purchased by Mustaq in Cambodia.[943] As the defendants pointed out, no evidence was adduced by the Suit 780 plaintiffs to show that Mustaq had used MMSCPL's or the Related Companies' funds to buy this land. Nor was there any evidence that Mustaq had then "caused" MMSCPL to pay him for a share of this agricultural land.[944] All that the plaintiffs had was Fayyaz's uncorroborated assertion of a

941 Chee's First Report at para 2.3.14(c).

942 SOC 780 at para 87.

943 Fayyaz 780 AEIC at para 258.

944 DCS 780 at para 874.

conversation between him and Mustaq in May or June 2007; and Fayyaz's evidence, as I explain below, was manifestly unreliable.[945]

634 As I noted above, from the manner in which the Suit 780 plaintiffs ran their case at trial, it was not clear whether they were in fact pursuing the allegations about "properties purchased in Cambodia". Fayyaz's evidence created more confusion, as he made numerous vague references to "the property" (see [630] above) without specifying exactly *what* property he was referring to – the agricultural land or City Mart. For example, in cross-examination,[946] when asked about the value of MMSCPL's 19% share in City Mart, his response was that the value of "*this property*" was more than US$325 million – which appeared to be a reference, not to City Mart, but to *the agricultural land* in Cambodia (as *per* his AEIC).[947]

635 As to Fayyaz's claim that Mustaq had told him the value of the land in Cambodia was more than US$325 million,[948] he conceded under cross-examination that this was in the context of Mustaq apparently alluding to an offer by someone to buy the land in Cambodia. In the end, Fayyaz accepted that this "deal" did not go through as no agreement was reached on payment terms.[949] Rather astonishingly, Fayyaz then claimed – for the first time – that Mustaq had actually told him at the time that the "book value" of "the property" was close to US$180 million.[950] When the defendants' counsel sought to refer Fayyaz to the value reflected in the audited accounts, he himself acknowledged that the

945 Fayyaz 780 AEIC at para 257.

946 Transcript, 26 October 2020 at p 24 line 4 to p 25 line 24.

947 Fayyaz 780 AEIC at para 260.

948 Transcript, 26 October 2020 at p 25, lines 18–24; Fayyaz 780 AEIC at para 260.

949 Transcript, 26 October 2020 at p 26, lines 24–25.

950 Transcript, 26 October 2020 at p 27, lines 5–6.

value reflected in the 2014 audited accounts was S$33 million – and that he did not know what this value had to do with the US$180 million figure he had come up with.[951]

636 I address next the Suit 780 plaintiffs' allegations in relation to City Mart. In this connection, regrettably, it was not at all clear what the plaintiffs were alleging. Based on the statement of claim, they appeared to be alleging that Mustaq had used MMSCPL's and the Related Companies' funds to purchase City Mart – and that Mustaq had then engaged in self-dealing by causing MMSCPL to pay him so that MMSCPL could acquire a share in City Mart. However, this was not the narrative the Suit 780 plaintiffs proceeded to present at trial – nor was it Fayyaz's narrative in his AEIC. Instead, Fayyaz sought to challenge the sale of MMSCPL's 19% share in City Mart to Mustaq: his complaint was that MMSCPL had sold its 19% share in City Mart to Mustaq for $25,932,771, and Mustaq then wrongfully took this $25,932,771 from MMSCPL.[952] In other words, instead of saying that Mustaq had wrongfully caused MMSCPL to pay Mustaq so that MMSCPL could acquire a share in City Mart, the plaintiffs now appeared to be saying that MMSCPL had sold its pre-existing 19% share in City Mart to Mustaq at an undervalue. This was a deviation from their pleaded case. Further, there was no evidence at all that Mustaq had used MMSCPL's and the Related Companies' funds to purchase City Mart in the first place.

637 It did appear to me, in the circumstances, that the defendants were justified in submitting that the Suit 780 plaintiffs appeared to have realised that their pleaded claim in respect of the Cambodia Properties was "doomed to fail

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951 Transcript, 26 October 2020 at p 28, line 18 to p 29, line 3.

952 Fayyaz 780 AEIC at paras 262–264.

for lack of documentary evidence" – and that it was in a belated attempt to save their case in respect of the Cambodia Properties that they turned to attacking the sale by MMSCPL to Mustaq of its 19% stake in City Mart. In this connection, it should also be highlighted that although Fayyaz disagreed that $25,932,771 was the fair value of MMSCPL's City Mart shares,[953] his answers in cross-examination demonstrated that he had no evidential basis for doing so. Indeed, his position appeared to be that the Suit 780 plaintiffs having decided at trial to challenge MMSCPL's sale of the shares to Mustaq (and not having pleaded such challenge beforehand), it was for Mustaq to prove that the sale was at a fair value:

> A: How did they derive the book value of 25-plus million when a year ago it was 35-plus million? Where is the valuation or records? Was there any independent valuation made which we can rely on to say that this figure is right?
>
> …
>
> A: When the price is shown way above what is supposed to be, then the auditors would go and look into the documents. If the price is shown below the market rate, then the auditors wouldn't bother.
>
> Q: Well, but let's come back to this very instance. You actually have no evidential basis for somehow suggesting that this is at an undervalue, correct?
>
> A: I do not have any proof. Can I explain?
>
> Ct: Yes.
>
> A: If the value is shown as 25 million-plus, which is shown below the market value, then Mr Mustaq should have produced the valid documents stating the valuation of the property.

638 At the end of the day, as seen above, Fayyaz admitted that he did not have any proof for suggesting that the sale of MMSCPL's 19% share in City

953 Transcript, 26 October 2020 at p 24, line 4 to p 25, line 14.

Mart to Mustaq for $25,932,771 was at an undervalue.[954] I also accepted that this value of $25,932,771 was recorded as the book value of the 19% share in City Mart in MMSCPL's financial statement for 2015.[955]

639 As for Fayyaz's allegation that the sale of MMSCPL's 19% share of City Mart to Mustaq was done without the knowledge and consent of the Samsuddin estate, even putting aside the fact that the allegations about this sale were never pleaded by the Suit 780 plaintiffs in the first place, it was not disputed that at the material time, Mustaq was already one of the two joint executors of the Samsuddin estate; and Fayyaz, on his own evidence, had not been administering the estate after the grant of probate.[956]

640 I did not find Chee's evidence to be of any help to the Suit 780 plaintiffs, given the dearth of any evidential basis for their various allegations. In the circumstances, I held that the Suit 780 plaintiffs were unable to make out a *prima facie* case in respect of the Cambodia-related allegations.

Remitting US$10 million through MFE to Hang Seng Bank

641 I address next the Suit 780 plaintiffs' allegations about the remittance of MMSCPL funds by Mustaq. The Suit 780 plaintiffs claimed that between 1996 to 2000, Mustaq remitted US$10 million from MMSCPL through MFE to Hang Seng Bank in Hong Kong "to his own personal bank account without paying tax on the monies", and that he subsequently "used the said monies to pay for a building he bought in Jakarta, Indonesia".[957]

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954 Transcript, 26 October 2020 at p 25, lines 6–9.

955 JCB Vol 3 at p 1983 (note 7).

956 Transcript, 26 October 2020 at p 14 lines 3–25.

957 SOC 780 at para 88.

The parties' submissions

642 The plaintiffs relied on Fayyaz's and Ansar's evidence[958] for this claim, while the defendants submitted that there was no evidence to substantiate their allegations.[959]

The evidence

643 In his AEIC, Fayyaz asserted that in or around 2002 or 2003, Mustaq had told him that he (Mustaq) had transferred US$10 million from MMSCPL through MFE to Jakarta, where he intended to buy a building.[960]

644 Under cross-examination, Fayyaz claimed that there was an error in his AEIC. He claimed that in fact, the US$10 million was *first* transferred "through foreign exchange to Hong Kong to Mr Mustaq's account", and that Mustaq *then* "got an offer of this building which was of $10 million which was in Jakarta". Fayyaz added that there was "some investigation going on at the MFE" and "that's why the transfer was made to Mr Mustaq's account in Hong Kong but it was not reflected in the accounts".[961]

My findings

645 As with the other allegations by the Suit 780 plaintiffs which I dealt with above, there was no evidence to substantiate Fayyaz's evidence about what he had supposedly heard from Mustaq in 2002 or 2003. Ansar's evidence really only consisted of a bare assertion during cross-examination that Mustaq had

958 PCS 780 at paras 912–920.

959 DCS 780 at para 879.

960 Fayyaz 780 AEIC at para 277; AB Vol 4 at p 3003 (EOGM on 2 December 2015).

961 Transcript, 23 October 2020 at p 160, lines 7–14.

used MMSCPL's funds to buy himself properties "(n)ot just in Singapore; Cambodia, Sri Lanka, Malaysia, Indonesia, India".[962] This assertion was not even made in Ansar's AEIC; and when pressed, Ansar could only say "(e)veryone knows that" without being able to point to any evidence in support of the assertion (or even to explain whom he meant by the amorphous term "everyone").

646 As for Fayyaz, as seen above, despite supposedly being the one person in whom Mustaq had confided about transferring money to buy property in Indonesia, he could not even keep his story straight. His testimony at trial deviated from his AEIC evidence. When asked why he had not said anything in his AEIC about Mustaq transferring MMSCPL monies to his account in Hong Kong when MFE was under investigation, he could only offer the wholly unbelievable excuse that the evidence had been "missed out" from his AEIC.

647 In the circumstances, I agreed with the defendants that the Suit 780 plaintiffs were unable to establish a *prima facie* case in respect of the alleged remittance of US$10 million.

Wrongfully diverting revenue from MMSCPL to MPL

648 I address next the Suit 780 plaintiffs' allegation that Mustaq engaged in wrongfully diverting revenue from MMSCPL to MPL. The plaintiffs claimed that Mustaq had effected this wrongful diversion of revenue between 1998 and 2005, by installing credit card terminals in MMSCPL's business premises, ostensibly to collect payments from customers of MMSCPL buying goods sold by MMSCPL – but in reality to effect the transfer of the monies collected from these terminals directly to MPL's bank account instead of MMSCPL's bank

962 Transcript, 5 November 2020 at p 27 lines 5–15.

accounts. Mustaq is the registered shareholder and director of MPL.[963] The Suit 780 plaintiffs also alleged that although part of the car park was owned by MMSCPL, only MPL's collection terminals were installed in the car parks under Mustaq's instructions, such that MMSCPL's car park revenue was also diverted away from MMSCPL to MPL.

The parties' submissions

649 The plaintiffs argued[964] that the defendants had admitted that monies were collected by the MPL credit card terminals, and that as such, it was for the defendants to produce documents to prove that the monies being collected at these terminals were the payments made by customers for the gold and jewellery sold by MPL. As for the matter of the car park terminals, Fayyaz claimed that he had personally confirmed with Mustaq that the car parking fees belonging to MMSCPL were being collected by MPL.

650 The defendants, on the other hand, submitted[965] that the Suit 780 plaintiffs actually had no evidence to substantiate their allegations about the credit card terminals and/or the car park terminals. MPL ran its business from MMSCPL's premises, and given that MPL's financial statement for 2016 showed that MPL paid rent to a related party, the reasonable inference was that the MPL credit card terminals allegedly placed in MMSCPL's premises were actually placed in those parts of MMSCPL's premises that MPL rented, and that these credit card terminals were used to collect payment from MPL customers.

963 SOC 780 at paras 91–93.

964 PCS 780 at paras 956–977.

965 DCS 780 at paras 881–889.

The evidence

(1) Fayyaz's evidence

651 In cross-examination, Fayyaz alleged that "at MPL, they have installed a credit card terminal at the MMSCPL premises and collecting and the money is directly going to the MPL account". He claimed he had "personally seen it" and "Athar has also seen it". This information was not in Fayyaz's AEIC.[966]

652 Fayyaz also alleged that MMSPCL's car parking fees were collected by MPL. He claimed that he had "confirmed from Mr Mustaq about the car parking fee being collected by MPL although the car park was MMSCPL's". He also claimed that he had a "second proof": according to him, the tutor of Ayaz's children would claim the "carpark coupons" from Ayaz after parking her car in that carpark; and these coupons would state clearly that the money was received by MPL. Again, this information was not in Fayyaz's AEIC.[967]

653 Fayyaz also claimed that he had "personally asked and confirmed" with Mustaq that MPL was not paying any rent to MMSCPL, although it might be "possible" that MPL had started paying rent "in the past two or three years" or "[m]aybe after 2003". Again, this information was not in his AEIC.[968]

654 Lastly, Fayyaz claimed that he knew both MPL and MMSCPL had their own staff. However, he claimed that "MPL had lesser staff and MPL used to use staff from MMSCPL most of the time". According to Fayyaz, in the previous year, "about 28 staff who were working at MPL who were originally

966 Transcript, 22 October 2020 at p 15, line 18 to p 16, line 7.

967 Transcript, 22 October 2020 at p 18, line 23 to p 19, line 9.

968 Transcript, 22 October 2020 at p 20, lines 18–21,0 line 4.

from MMSCPL were transferred back to MMSCPL." Again, this information was not in his AEIC.[969]

(2) Athar's evidence

655 Athar was employed by MMSCPL as a Merchandising Manager around 1994, and reported directly to Mustaq. He left his job with MMSCPL in 2003 and migrated back to India.[970]

656 Athar gave evidence that around April 1998, there was an incident involving the then chief cashier at MMSCPL who took monies from MMSCPL through credit card manipulations. Mustaq then asked Athar to look into the credit card payments and transaction details. This was how Athar came to find out about the transfer of payments from MMSCPL to MPL. Athar claimed that in or about 1998, Mustaq got some credit card terminals installed in MMSCPL's premises, and payments due to MMSCPL were then paid into the accounts of MPL instead. When Althar reported to Mustaq that he had observed MMSCPL's credit card payments going to MPL, Mustaq told him that "these decisions were part of business". Thereafter, Mustaq did not discuss this matter again with Athar.[971]

My findings

657 The evidence relied on by the Suit 780 plaintiffs in respect of their allegation of wrongful diversion of revenue from MMSPCL to MPL appeared to me to be manifestly unreliable.

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969 Transcript, 22 October 2020 at p 21, lines 12–20.

970 AEIC of Athar Aziz for Suit 780 dated 19 August 2020 ("Athar 780 AEIC") at para 1.

971 Athar 780 AEIC at paras 7–9.

658 None of Fayyaz's claims about the credit card terminals or the car park terminals appeared in his AEIC.[972] He came up with the allegations on the witness stand for the first time. This failure to mention the allegations in his AEIC was quite stunning, given that these were matters expressly pleaded in the Suit 780 statement of claim. He even claimed on the witness stand that the Suit 780 plaintiffs had "confirmed" their version of events with a "maintenance manager, Mr Shameen" who "also said the same thing" – but again, this piece of evidence was not mentioned in his AEIC, nor was "Mr Shameen" called as a witness. There was also no documentary evidence produced to support his claims: for example, the credit card machine slips he claimed to have personally seen generated by the terminals, or the car park coupons claimed by the tutor of Ayaz's children.

659 As for Athar, under cross-examination he admitted that he had no proof of his assertion that the MPL credit card machines placed in MMSCPL premises were used to carry out MMSCPL transactions.[973] He also admitted that he had no basis for asserting that payments due to MMSCPL were paid into MPL's account instead, and that he did not actually know what monies went into or were paid into the accounts of MPL.[974]

660 On the whole, I did not find that the Suit 780 plaintiffs' evidence was enough to show a *prima facie* case of wrongful diversion of revenue from MMSCPL to MPL.

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972 DCS 780 at paras 882, 886.

973 Transcript, 4 November 2020 at p 30 lines 1 to p 31 line 21.

974 DCS 780 at para 883; Transcript, 4 November 2020 at p 33 line 11 to p 35 line 5.

661 I have noted earlier the defendants' suggestion that one *possible* explanation for the presence of MPL credit card terminals in MMSCPL premises was that these MPL credit card terminals were simply placed in those parts of MMSCPL premises that were rented by MPL, and that these terminals were used to collect payments from MPL's customers for the purchase of MPL's goods. This appeared to be a plausible explanation, given that Fayyaz himself conceded that MPL ran its business from MMSCPL's premises. In fact, I noted that although Fayyaz initially claimed that MPL did not pay rent, he subsequently appeared to acknowledge that it did in fact pay rent – although he hedged this by claiming that its rental payments only started "[m]aybe after 2003".[975] The defendants also produced MPL's financial statements from 2016 which showed that MPL paid rent to a related party.[976] However, beyond observing that the defendants had a plausible explanation for the presence of the credit card terminals, I did not think that I needed to make any factual findings on the defendants' explanation, as I found that the Suit 780 plaintiffs were unable even to make out a *prima facie* case based on their own evidence.

Failing to ensure that family member employees do not extract value from MMSCPL

662 I next address the Suit 780 plaintiffs' allegation that "Mustaq and/or Ishret and/or Sharma and/or Osama and/or Iqbal breached their duties as directors of MMSCPL" by "(f)ailing to ensure that family member employees do not extract value from MMSCPL". In their statement of claim, the plaintiffs pleaded that from 1996 to 2006, Osama (Mustaq's son and the fourth defendant in the minority oppression suits) bought electronic goods and accessories in the

975 Transcript, 22 October 2020 at p 20, line 14 to p 21, line 1.

976 Transcript, 22 October 2020 at p 14, lines 14–18.

name of his own firm, and then supplied these goods to MMSCPL at a profit.[977] At the material time, Osama was working for MMSCPL and had responsibility for purchasing goods on behalf of MMSCPL, and he was also a director of MMSCPL from 14 February 2001 to 10 February 2004.[978]

The parties' submissions

663 The plaintiffs relied on a document showing transactions entered into between MMSCPL and Sun Fatt Marketing ("Sun Fatt"). The latter was Osama's sole proprietorship, which he had registered on 4 December 2000 and subsequently terminated on 2 April 2006. For their part, the defendants contended[979] that the purchase records relied on by the Suit 780 plaintiffs did not in fact support the plaintiffs' claim.

The evidence

(1) Fayyaz's evidence

664 Fayyaz stated in his AEIC that from 2001 to 2004, Osama "bought goods from Sun Fatt and then sold these goods to MMSCPL for a profit", without disclosing these transactions. No attempts were made by Mustaq to recover the losses suffered by MMSCPL.[980] To support his allegation, Fayyaz pointed to a purchase order from Sun Fatt to MMSCPL,[981] which he said he had printed out from MMSCPL's purchasing office around end-2018.[982] According to Fayyaz,

977 SOC 780 at paras 95–96.

978 SOC 780 at paras 30 and 33.

979 DCS 780 at paras 891–895.

980 Fayyaz 780 AEIC at para 268.

981 AB Vol 9 at pp 6683–6685.

982 Transcript, 20 October 2020 at p 51, line 18 to p 52, line 7.

this purchase order showed that Sun Fatt had supplied goods to MMSCPL on 26 November 2001, 6 March 2003, 27 July 2003, 8 December 2003, and 9 January 2004.[983] The document also bore the word "OSAMA" on the last page,[984] which according to Fayyaz meant that "Osama is the owner of Sun Fatt and also the buyer from MMSCPL".[985]

(2) Asrar's evidence

665 Asrar, the youngest son of Samsuddin, was born in 1972.[986] In his AEIC, he said that from 1996 to 2006, when he visited Singapore as a tourist, he would accompany Osama on the latter's trips to purchase various goods for MMSCPL. However, instead of purchasing these goods directly for MMSCPL, Osama would buy these goods in the name of his own business and later sell them to MMSCPL.[987] Asrar made a statutory declaration about Osama's conduct on 6 September 2017.[988]

My findings

666 In my view, the evidence relied on by the Suit 780 plaintiffs in respect of their allegations about Osama and Sun Fatt appeared to me to be manifestly unreliable.

983 AB Vol 9 at p 6684; Transcript, 20 October 2020 at p 52, lines 17–23.

984 AB Vol 9 at p 6685.

985 Transcript, 20 October 2020 at p 53, lines 24–25.

986 AEIC of Asrar Ahmad in Suit 780 dated 19 August 2020 ("Asrar 780 AEIC") at para 1.

987 Asrar 780 AEIC at paras 12–13.

988 Asrar 780 AEIC at pp 11–13.

667 In the first place, the document relied on by the Suit 780 plaintiffs did not actually show what Fayyaz claimed it showed. In cross-examination, Fayyaz admitted that the document did not show the prices at which Osama allegedly bought goods from Sun Fatt and then sold these goods to MMSCPL;[989] it did not show that Sun Fatt had sold goods to MMSCPL for a profit;[990] and it also did not show any losses suffered by MMSCPL.[991]

668 As for Asrar, he accepted that he had no evidence of what he claimed to have observed during his numerous trips with Osama. To the extent that he relied on the same document as Fayyaz, it provided no support at all for his bare allegation about having seen Osama buy goods under his firm's name and then sell them to MMSCPL at profit. In cross-examination, he also conceded[992] that he would not be able to comment on whether MMSCPL had made a profit or a loss on the transactions with Sun Fatt because

> …all along I was not here, so I wouldn't know whether it is a profit or a loss.

669 Having regard to the state of the Suit 780 plaintiffs' evidence, I agreed with the defendants that the plaintiffs were unable to establish a *prima facie* case in respect of the allegations concerning Osama and Sun Fatt.

The Suit 780 plaintiffs' claim of an "express trust" of one-third of the Family Assets

670 I next address the Suit 780 plaintiffs' claim that Mustaq held one-third of the Family less the MMSCPL shares (*ie*, the "Trust Assets") on an express

989 Transcript, 23 October 2020 at p 145, lines 20–24.

990 Transcript, 23 October 2020 at p 147, lines 13–17.

991 Transcript, 23 October 2020 at p 150, lines 19–20.

992 Transcript, 4 November 2020 at p 126, lines 21–24.

trust for the Samsuddin Estate. It will be remembered that in their statement of claim, the Suit 780 plaintiffs defined "Family Assets" as comprising: (i) MMSCPL, (ii) all of Mustaq's assets, and (iii) the Related Companies, referring to MPL, BID, Mustafa Air Travel Pte Ltd ("MAT"), Mustafa Foreign Exchange Pte Ltd ("MFE"), Mustafa Holdings Pte Ltd ("MHPL") and Mustafa Development Pte Ltd ("MDPL").[993]

671 Both the Suit 780 plaintiffs and the defendants were agreed on the applicable legal principles, *ie*, that three certainties needed to be present for the creation of an express trust: certainty of intention; certainty of subject matter; and certainty of the objects of the trust (*per* the CA in *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*") at [51]).

The parties' submissions

672 According to the Suit 780 plaintiffs, Mustaq 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.[994] Specifically, the Suit 780 plaintiffs alleged that Mustaq had made two statements in Hindi – "*sabme, sabka barabar hai*" and "*sabme apka barabar hai*" – which, roughly translated, meant "everyone has an equal share in everything" and "you have a share in everything". According to the plaintiffs, since Samsuddin had a one-third share of MMSCPL, and Samsuddin was one of the three partners in the business, this meant – and was understood to mean – that "Samsuddin would have a 1/3 share of all of the family's assets".[995]

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993 SOC 780 at para 99.

994 PCS 780 at paras 1138–1158.

995 PCS 780 at para 1141.

673 Further, according to the Suit 780 plaintiffs, the fact that Mustaq had taken steps to carry out the terms of the draft settlement deed of 29 March 2016, as well as the inclusion of MPL, BID, MFE, MAT and Cambodian properties in this deed, supported the plaintiffs' claim that these entities and properties were held by Mustaq on an express trust for the Samsuddin Estate.[996]

674 On the other hand, the defendants contended that the Suit 780 plaintiffs had not established the three certainties required for the express trust to exist.[997] First, there was no certainty of intention[998] as the plaintiffs were unable to make out a *prima facie* case that the oral representations were in fact made by Mustaq, or that these oral representations (even if made) evinced an intention by Mustaq to create the express trust.[999] Second, there was no certainty of object: the plaintiffs' witnesses differed on whom exactly Mustaq was holding "everything" on trust for.[1000] Third, there was no certainty of subject matter[1001]: on the plaintiffs' own evidence, it was not clear what assets and/or properties were covered by the term "everything".[1002]

The plaintiffs' pleadings and the further and better particulars

675 The plaintiffs' pleaded case was as follows (I exclude the registration numbers of the various companies):

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996 PCS 780 at paras 1159–1175.

997 DCS 780 at paras 432–482.

998 DCS 780 at paras 291–431.

999 DCS 780 at para 437.

1000 DCS 780 at para 440.

1001 DCS 780 at paras 442–482.

1002 DCS 780 at para 445.

> 98. Mustaq holds one third of the Family Assets (defined at paragraph 99 below) less the MMSCPL shares ("Trust Assets") on an express trust, for the Samsuddin Estate.
>
> 99. Mustaq had at or around the occasion the time of the incorporation of MMSCPL and the Related Companies [and] on numerous subsequent occasions represented to and/or assured Samsuddin and the Plaintiffs and all the other beneficiaries of the Samsuddin Estate that Samsuddin and/or the Samsuddin Estate would receive and/or was or would be entitled to a one third beneficial share of: MMSCPL; the Related Companies; and (iii) all of Mustaq's assets, (collectively the "Family Assets").
>
> Related Companies
>
> (a) Mustafa's Pte Ltd…
>
> (b) B.I. Distributors Pte Ltd…
>
> (c) Mustafa Air Travel Pte Ltd…
>
> (d) Mustafa Foreign Exchange Pte Ltd…
>
> (e) Mustafa Holdings Pte Ltd…
>
> (f) Mustafa Development Pte Ltd…
>
> collectively referred to as the "Related Companies".

676 Based on the pleadings, it appeared that the representations were made by Mustaq (i) around the time that MMSCPL was incorporated, (ii) around the time that each of the Related Companies was incorporated and (iii) on numerous subsequent occasions. In other words, based on the statement of claim, the representations would have been made – at the very least – on the following occasions when the Related Companies were incorporated:[1003]

(a) MPL: 11 March 1980

(b) MMSCPL: 21 February 1989

(c) MAT: 6 July 1989

1003 PCS 1158 at para 293.

(d) BID: 21 August 1997

(e) MHPL: 9 January 1998

(f) MDPL: 16 March 2001

(g) MFE: 1 August 2006

677 In the first set of further and better particulars of the Statement of Claim filed on 26 November 2018 ("Suit 780 First F&BP"),[1004] the Suit 780 plaintiffs said this:

> Mustaq orally represented to the 1st Plaintiff [Fayyaz] on many occasions for at least the past 10 years that the Plaintiffs and all the other beneficiaries of the Samsuddin Estate that Samsuddin and/or the Samsuddin Estate has a one third beneficial share of MMSCPL, the Related Companies and the Family Assets. These are the best particulars the Plaintiffs are able to provide pending discovery and/or interrogatories.

678 At trial, Fayyaz confirmed that he had provided these facts.[1005] Since the Suit 780 First F&BP was filed in November 2018, this meant that Mustaq had made oral representations to Fayyaz since 2008 at the very least (*ie*, 10 years before 2018) regarding the "one-third beneficial share of MMSCPL, the Related Companies and the Family Assets".

679 In the second set of further and better particulars filed by the Suit 780 plaintiffs on 9 January 2019 ("Suit 780 Second F&BP"),[1006] the Suit 780 plaintiffs said this:

1004 Further and Better Particulars of the Statement of Claim Served Pursuant to Request dated 15 October 2020, dated 26 November 2018 at p 65, para 51(a).

1005 Transcript, 21 October 2020 at p 43, lines 6–14.

1006 Further and Better Particulars of the Statement of Claim dated 3 August 2018 Served Pursuant to Order of Court dated December 2018, at p 7, para 50(c).

> Mustaq orally represented to Samsuddin and the 1st Plaintiff on many occasions since the incorporation of MPL on 11 March 1980 that the Plaintiffs and all the other beneficiaries of the Samsuddin Estate that Samsuddin and/or the Samsuddin Estate has a one third beneficial share of MMSCPL, the Related Companies and the Family Assets.

680 This was followed by details of the alleged occasions, with "a number of occasions since 1980", and other occasions in 1986, 1989, 1995, 1998, and some time "[a]fter Samsuddin's demise". Fayyaz similarly confirmed at trial that he had provided these facts.[1007] He also explained that the oral representations set out in the Suit 780 Second F&BP were the two statements in Hindi cited in his AEIC.[1008]

681 Lastly, in the third set of further and better particulars filed on 25 August 2020 (the "Suit 780 Third F&BP"), the Suit 780 plaintiffs said that around 2013, Mustaq had orally informed Ansar (the second plaintiff in Suit 780) in Hindi that "everyone has an equal share in everything and you have an equal share".

The evidence and my findings

682 Having reviewed the evidence adduced by the Suit 780 plaintiffs, I found that they were unable to make out a *prima facie* case in respect of the three certainties required for the creation of an express trust. I summarise below the evidence led and also my findings.

1007 Transcript, 21 October 2020 at p 55, line 18 to p 56, line 2.

1008 Transcript, 21 October 2020 at p 61, lines 16–25; Fayyaz 780 AEIC at para 96; Suit 780 Second F&BP at p 8, para 50(a).

Certainty of intention

683 In respect of the element of certainty of intention, the Suit 780 plaintiffs put forward multiple, different versions of the oral representations made by Mustaq, the occasions when these representations were made, and the persons to whom they were made.

(A) VERSION 1: SINCE 1980

684 Based on the statement of claim, the Suit 780 First F&BP, the Suit 780 Second F&BP, and the Suit 780 Third F&BP, the Suit 780 plaintiffs alleged that Mustaq had told Fayyaz that Mustaq, Mustafa and Samsuddin would each have an equal share in MMSCPL and each of the Related Companies; and that he told Fayyaz this *at the time* each company was incorporated (and on numerous subsequent occasions). On this version, Mustaq's representations were first made on 11 March 1980 (the date that MPL was set up) and were then repeated on "numerous subsequent occasions".

(B) VERSION 2: SINCE 1986

685 However, Version 1 was inconsistent with the version presented in Fayyaz's own AEIC of 21 August 2020 – despite Fayyaz himself having provided the information for the Suit 780 First F&BP and the Suit 780 Second F&BP.

686 In Version 2, Fayyaz stated that on various occasions during Samsuddin's lifetime and after his passing, Mustaq would tell Fayyaz that the Samsuddin Estate had a one-third share in everything. This was said in Hindi as "*sabme, sabka barabar hai*" and "*sabme apka barabar hai*", which, roughly translated, meant "everyone has an equal share in everything" and "you have a

share in everything".[1009] These statements, according to Fayyaz, were repeated by Mustaq on "countless occasions", including the following: in 1986 before MMSCPL was incorporated, when Fayyaz was with Mustaq in Dubai; in 1989, around the time when MMSCPL was about to be incorporated; in 1995, during the opening of the Mustafa Centre; in 1998, during construction work at gate 3 of the Mustafa Centre; and after 19 April 2011, when Fayyaz and Mustaq were travelling to India for Samsuddin's funeral.[1010]

687 There were several anomalies in this version of events.

688 First, the incidents recounted by Fayyaz – which provided a *more* detailed account of the oral representations – appeared only in the Suit 780 Second F&BP, and not in the Suit 780 First F&BP. It was odd that Fayyaz should have been able to recall in January 2019 what he could not recall two months earlier, in November 2018.

689 Second, the Suit 780 Second F&BP also claimed that Mustaq made the oral representations "during the many meetings between Mustaq and [Fayyaz] over the past 10 years that was held in Mustaq's office on the 3rd floor of the SPA Building…in the 1st Plaintiff's house…and Mustaq's residence at 119 Keng Lee Road…".[1011] However, these details were not included in Fayyaz's AEIC.

690 Third, I noted that in the Suit 780 Third F&BP, the plaintiffs referred to an oral representation being made to Ansar around 2013. This was something

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1009 Fayyaz 780 AEIC at para 96.

1010 Fayyaz 780 AEIC at para 96.

1011 Suit 780 Second F&BP at p 9, para 50(a)(f).

which was not mentioned in Fayyaz's AEIC, or for that matter, the previous sets of further and better particulars.

691 Fourth, at trial, Fayyaz amended his AEIC to say that Mustaq had been making the oral representations to him *since 1986* (instead of 1980).[1012] At trial, Fayyaz explained that all the Related Companies were running "under one banner", and "*in 1986*, Mr Mustaq had himself told [Fayyaz] that … Mr Mustaq, Mr Mustafa and Mr Samsuddin, would have equal share in all the above mentioned companies" [emphasis added].[1013] This plainly contradicted the pleadings and the further and better particulars, which stated that the representations were first made on the occasion of the incorporation of MPL in *1980*, some six years earlier. Additionally, since the Related Companies were incorporated between 1980 and 2006 (see [676] above), Mustaq could not have made the alleged oral representations to Fayyaz about *all of the Related Companies in 1986*, as Fayyaz claimed.

(C) VERSION 3: AFTER THE 27 APRIL 1989 ALLOTMENT

692 Further versions of events emerged in Fayyaz's testimony under cross-examination.

693 First, when asked why Mustaq was issued 51%, Samsuddin 30%, and Mustafa 19% of the MMSCPL shares on 27 April 1989, Fayyaz explained that he had asked Mustaq about this allotment, and Mustaq explained that Samsuddin and Mustafa were in India most of the time, sometimes four to six months at one stretch – thus, Mustaq "had to have more shares on his name in

1012 Transcript, 21 October 2020 at p 69, lines 8–24; Fayyaz 780 AEIC at para 133.

1013 Transcript, 21 October 2020 at p 44, line 24 to p 45, line 5.

order to get bank documents and other legal and formal documents to be signed or to be under his name", and "[o]nly 51 per cent shareholder can do anything of that sort".[1014] When pressed on when this alleged conversation between himself and Mustaq had taken place, Fayyaz said:[1015]

> I cannot exactly remember the date but I definitely remember that it was in the same year, 1989, somewhere three to four months after the allocation of the shares, in the shop.

694 Fayyaz testified that Samsuddin had told him about the April 1989 share allotment in the same month that the shares were allotted.[1016] *After* speaking with Samsuddin, Fayyaz then had a "casual conversation" with Mustaq sometime in that same year (1989), in which Mustaq explained that he (Mustaq) held 51% of the shares "on paper" but, "in reality, everybody has one-third".[1017] Fayyaz said that Samsuddin was "not given any explanation" by Mustaq as to why he (Samsuddin) was allotted 30% of the shares, but Mustaq had explained everything to him (Fayyaz). Fayyaz said that he then "went back" to Samsuddin and "gave him the explanation".[1018]

(D) VERSION 4: VERBAL AGREEMENT BEFORE INCORPORATION OF MMSCPL

695 Rather confoundingly, after putting forward "Version 3" in his testimony, Fayyaz came up with a Version 4. According to Version 4, all three partners – Mustafa, Mustaq and Samsuddin – orally agreed that the ownership in MMSCPL would stay at one-third for each of them even after

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1014 Transcript, 21 October 2020 at p 4, line 23 to p 5, line 10.

1015 Transcript, 21 October 2020 at p 5, lines 13–21.

1016 Transcript, 21 October 2020 at p 7, lines 14–15.

1017 Transcript, 21 October 2020 at p 7, line 19 to p 8, line 4.

1018 Transcript, 21 October 2020 at p 10, lines 1–9.

incorporation.[1019] According to Fayyaz, the three partners reached this oral agreement *before* they decided to incorporate MMSCPL.[1020] This was contrary to his earlier evidence that Samsuddin had not received any explanation by Mustaq about why he (Samsuddin) was allotted 30% of the shares until Fayyaz asked Mustaq for an explanation in April 1989.

696 On Version 4, it would appear that Mustafa, Mustaq and Samsuddin had orally agreed on each of them having a one-third share of MMSCPL *even before they had decided to incorporate MMSCPL* – and that Fayyaz came to know of this agreement from Mustaq about three to four months after April 1989.

(E) SUMMARY

697 In sum, therefore, the Suit 780 plaintiffs appeared to have at least four different versions of events:

(a) Version 1: Mustaq told Fayyaz that Mustaq, Mustafa and Samsuddin would have an equal share in MMSCPL and each of the Related Companies at or around the time each company was incorporated (and on numerous subsequent occasions), beginning from 11 March 1980 with the incorporation of MPL.

(b) Version 2: Mustaq first told Fayyaz in 1986 that Mustaq, Mustafa and Samsuddin would each have an equal share in all the Related Companies. He repeated this on subsequent occasions thereafter.

1019 Transcript, 21 October 2020 at p 11, lines 5–8.

1020 Transcript, 21 October 2020 at p 12, lines 1–6.

(c) Version 3: Mustaq had allotted the shares in the initial 27 April 1989 allotment without giving Samsuddin any explanation for the differing percentages. That same month, Samsuddin told Fayyaz about the allotment. Three to four months after that (still in 1989), Fayyaz asked Mustaq for an explanation and then conveyed the latter's explanation to Samsuddin.

(d) Version 4: Even *before* they decided to incorporate MMSCPL, Mustaq, Mustafa and Samsuddin had verbally agreed that they would each retain one-third of MMSCPL, notwithstanding the share allotments on paper.

698 In light of the inconsistencies and anomalies in the plaintiffs' evidence, and having regard to the piecemeal way in which their multiple narratives emerged (through the amendments to their statement of claim, their further and better particulars, Fayyaz's AEIC, Fayyaz's and Ansar's evidence at trial), I found that the plaintiffs were unable to establish a *prima facie* case of the certainty of intention required for an express trust.

Certainty of subject matter

699 I was also not persuaded that there was sufficient certainty of subject matter for the alleged express trust.

700 In their statement of claim, the Suit 780 plaintiffs defined the "Trust Assets" as one-third of the Family Assets less the MMSCPL shares. They then defined "Family Assets" as MMSCPL, the Related Companies and all of

Mustaq's assets.[1021] In their Suit 780 Second F&BP, the plaintiffs further explained that the "Family Assets" encompassed:[1022]

(a) The shares of MMSCPL;

(b) The shares of each of the alleged Related Companies;

(c) Mustaq's personal assets, comprising:

(i) All assets owned directly or indirectly by Mustaq in India except the house and agricultural land in Adampur Akber, Jaunpur, Uttar Pradesh.

(ii) All assets owned directly or indirectly by Mustaq in Bangladesh, Dubai, Indonesia, Sri Lanka, Cambodia, Thailand, and monies held in bank accounts in the United Kingdom; and

(iii) All assets owned directly or indirectly by Mustaq in Singapore except for 119 Keng Lee Road Singapore 308409 (the "Keng Lee Property").

(d) The income received from the assets set out at paragraphs (a) to (c) above, and the income that these assets continue to receive and the income from the investments made through the income from the said assets.

701 However, the plaintiffs' evidence in their affidavits and at trial was not consistent with what was put forward in their pleadings.

1021 SOC 780 at para 99.

1022 Suit 780 Second F&BP at p 10, para 51(b)(i).

702 First, Fayyaz said in his AEIC that Mustaq's personal assets also included *all assets owned directly or indirectly by Mustaq in Singapore*.[1023] He did not expressly exclude the Keng Lee Property, despite it being expressly excluded in the Suit 780 Second F&BP.[1024]

703 As for Ansar (the second plaintiff in Suit 780), he said in his AEIC that around 2013, Mustaq had told him on two occasions that everyone has an equal share in "everything".[1025] When asked at trial what "everything" meant, Ansar said this was "[a]ll the other properties…that is there in Singapore".[1026] When pressed on this, he said these were properties bought using the name of "MMSCPL and the group of companies", but claimed he could not remember the names of the "group of companies" besides MPL.[1027] He eventually admitted that he was unable to identify what exactly "everything" referred to.[1028]

704 Following the above admission, however, Ansar asserted that "everything" included properties in Cambodia, Sri Lanka, Malaysia, Indonesia and India. This assertion ran contrary to the Suit 780 Second F&BP and Fayyaz's own evidence, which had included properties in Bangladesh, Dubai and Thailand, and monies held in bank accounts in the United Kingdom.[1029]

1023 Fayyaz 780 AEIC at para 78.

1024 DCS 780 at paras 445–446.

1025 AEIC of Ansar Ahmad for Suit 780 dated 19 August 2020 ("Ansar 780 AEIC") at paras 19–20.

1026 Transcript, 5 November 2020 at p 23, line 25 to p 24, line 1.

1027 Transcript, 5 November 2020 at p 24, lines 6–23.

1028 Transcript, 5 November 2020 at p 26, lines 8–12.

1029 DCS 780 at para 451.

705 Finally, when asked to elaborate on the properties in India, Ansar said that the Suit 780 plaintiffs were not claiming the house in Chennai and the house in Adampur Akber, Jaunpur, Uttar Pradesh, but that they were claiming the Gudgaon property and the Mustafa Gold Mart in Chennai. Ansar claimed that this was the position decided following meetings between the Suit 780 plaintiffs.[1030] However, Ansar's exclusion of the house in Chennai put him at odds with the version presented in the Suit 780 Second F&BP and in Fayyaz's evidence – which was that they only excluded the house in Adampuar Akber, Jaunpur, Uttar Pradesh.[1031]

706 Finally, Ansar claimed that the Suit 780 plaintiffs did not claim the Keng Lee Property.[1032] This was consistent with the Suit 780 Second F&BP – but not with Fayyaz's evidence.

707 I also agreed with the defendants' submissions that the Suit 780 plaintiffs had not satisfactorily explained their position as to why "everything" encompassed MPL, BID, MAT and MFE.[1033] For example, to explain why MAT was included, the plaintiffs relied on Fayyaz's assertion that MAT was one of the companies which had "benefited from [MMSCPL] as [it] had access to [MMSCPL's] expertise, brand, goodwill, premises, funds and employees". When asked about this in cross-examination, Fayyaz made several claims (for example, that MAT had been using MMSCPL staff), none of which he was able to substantiate.

1030 Transcript, 5 November 2020 at p 32, lines 4–16.

1031 DCS 780 at paras 452–453.

1032 Transcript, 5 November 2020 at p 32, lines 13–16.

1033 DCS 780 at paras 457–474.

708 In light of the numerous inconsistencies and gaps in the Suit 780 plaintiffs' evidence, I agreed with the defendants that there was insufficient certainty of subject matter to found the express trust.

Certainty of object

709 Lastly, I found that the plaintiffs' evidence on the intended beneficiaries of this alleged express trust was wholly inadequate to establish a *prima facie* case of certainty of object.

710 In the Suit 780 Second F&BP, the plaintiffs stated that "everyone" meant the defendants, Mustafa and/or the beneficiaries of the Mustafa Estate and Samsuddin and/or the beneficiaries of the Samsuddin Estate.[1034] I understood "the defendants" to mean Mustaq, Ishret, Osama, Shama and Iqbal; the beneficiaries of the Mustafa Estate to mean the Suit 1158 plaintiffs and Mustaq himself; and the beneficiaries of the Samsuddin Estate to mean the five children of Sitarun and Samsuddin (including Fayyaz and Ansar), and Sitarun herself.

711 Having reviewed the evidence, I agreed with the defendants that the above position was not supported even by the evidence of the Suit 780 plaintiffs' own witnesses. First, Fayyaz said in his AEIC that "everyone" referred to "Samsuddin" having a 1/3 share of all the Family Assets[1035] – which was a narrower definition than that stated in the Suit 780 Second F&BP. Fayyaz also said in his AEIC that in April 2011, Mustaq told him that it was important for the family assets to be clearly divided so that the Mustafa Estate, the members

1034 Suit 780 Second F&BP at p 8, para 50(c)(a).

1035 Fayyaz 780 AEIC at para 96.

of Samsuddin's family and Mustaq's own family would each get a one-third share[1036] – which was a broader understanding than that disclosed in the Suit 780 Second F&BP.

712 As for Ansar, he claimed that he interpreted "everyone" to mean "Mustaq, Mustafa estate and Samsuddin estate", and the phrase "equal share" to mean "one-third to Mustaq, one-third to Mustafa estate and one-third to Samsuddin estate".[1037] In other words, contrary to the position stated in the Suit 780 Second F&BP, Ansar did not include the other defendants besides Mustaq in the definition of "everyone".

Summary

713 To sum up, therefore: such evidence as was put forward by the S 780 plaintiffs was simply inadequate to make out a *prima facie* case of the three certainties required for the pleaded express trust. In particular, I found it impossible to say that the words "everyone has an equal share in everything" and "you have a share in everything" could give rise to an inference that Mustaq had the intention to create a trust. I also found it impossible to draw any inference from these words as to what the assets encompassed by the word "everything" might be; and I noted that even as between the Suit 780 plaintiffs, there appeared to be no agreement as to the assets which the word "everything" might cover.

714 I also agreed with the defendants that it was not possible in law for a settlor to create a trust over future property, *ie*, property that the settlor does not

1036 Fayyaz 780 AEIC at para 96(d).

1037 Transcript, 5 November 2020 at p 23, lines 6–19.

presently own at the point of creating the trust (*Wan Lai Ting v Kea Kah Kim* [2015] SGHC 40 at [19]).[1038] The Suit 780 plaintiffs' inability to maintain a coherent and consistent account of when the express trust was created meant that there was a complete lack of evidence to establish a *prima facie* case that all the assets said to comprise the subject matter of the trust were assets owned by Mustaq *at the point the alleged express trust was created*. Further, I agreed with the defendants that insofar as the express trust was alleged to include immovable properties, s 7 of the Civil Law Act (Cap 43, 1999 Rev Ed) applied; and the Suit 780 plaintiffs had no evidence at all of compliance with s 7.[1039]

715 In the circumstances, I rejected the Suit 780 plaintiffs' claim that Mustaq held one-third of the Family Assets less the MMSCPL shares (the "Trust Assets") on an express trust for the Samsuddin estate.

716 For the avoidance of doubt, I also rejected any suggestion by the S 780 plaintiffs that there was a "verbal agreement" that the Mustaq, Mustafa and Samsuddin "each held [one-third] of the business".[1040] As the defendants pointed out, the existence of a "verbal agreement" to this effect should have been expressly pleaded. The Suit 780 plaintiffs having failed to plead it, they must be bound by what they have actually chosen to plead; and the court is precluded from deciding on a matter that they have not put into issue (see the CA's decision in *V Nithia v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]). In any event, on the subject of an alleged verbal agreement, I found the Suit 780 plaintiffs' evidence to be once again so riddled with

1038 DCS 780 at para 477.

1039 DCS 780 at paras 480–482.

1040 See, *eg*, Transcript, 21 October 2020 at p 2, lines 3–15; p 11, lines 5–8; p 41, line 23 to p 42, line 1.

inconsistencies as to be incapable of establishing a *prima facie* case of any such agreement.

717 For the reasons explained above, I rejected the Suit 780 plaintiffs' claims of an "express trust" of one-third of the Family Assets.

The Suit 780 plaintiffs' claim against Mustaq for fraudulent breach of his duties as executor and trustee of the Samsuddin estate

718 I next address the Suit 780 plaintiffs' claim against Mustaq for fraudulent breach of his duties as executor and trustee of the Samsuddin estate.

719 In their statement of claim, the Suit 780 plaintiffs pleaded that following Samsuddin's death, the Samsuddin estate was registered as a shareholder of MMSCPL; and that Mustaq, as executor and trustee of the Samsuddin estate from 25 June 2013, owed fiduciary duties to the estate to act in the best interest of the estate.[1041] The plaintiffs pleaded that by intentionally and systemically removing MMSCPL's funds in the manner described in [38] to [97] and [110] of their statement of claim, Mustaq had engaged in a dishonest and fraudulent design by acting in fraudulent breach of his duties and/or in fraudulent breach of trust, thereby causing loss to the Samsuddin Estate. According to the Suit 780 plaintiffs, Mustaq knew that his actions (as described in [38] to [97] and [110] of the statement of claim) were not in the interests of the Samsuddin Estate, or he did not honestly believe that they were in the interests of the beneficiaries of the Samsuddin Estate.

720 [38] to [97] and [110] of the Suit 780 statement of claim set out the plaintiffs' various allegations against Mustaq as well as Ishret, Shama, Osama

1041 SOC 780 at paras 104–105.

and Iqbal. I have dealt with these various allegations at [180]–[669] of these written grounds.

721 Mustaq, in his pleaded defence, admitted that he owed the Samsuddin estate fiduciary duties, as executor and trustee, to act in the estate's best interests, but denied that he was in breach of these duties. In gist, I understood Mustaq's case to be premised on his story of the 1973 Common Understanding, which – according to him – made him the sole owner of MMSCPL and allowed him to do with the company as he saw fit. According to this narrative, since he was the true owner of all shares in MMSCPL and its sole decision-maker, the conduct complained of by the plaintiffs could not be characterised as misappropriation of MMSCPL funds or otherwise oppression of minority shareholders' rights.

722 While I rejected some of the allegations of misappropriation of MMSCPL funds and of other instances of oppressive behaviour pleaded by the Suit 780 plaintiffs at [38] to [97] and [110] of the Suit 780 statement of claim, I found that the following allegations were made out: the dilution of the Samsuddin's shares effected by the 5 January 1995 and 11 December 2001 Allotments; the falsification of MOM applications to allow for the collection of "cashbacks" from MMSCPL employees; the taking of unsecured, interest-free loans by the directors of MMSCPL; and the non-payment of dividends to shareholders versus payment of substantial directors' fees. It was clear from the evidence adduced that Mustaq was party to these instances of misappropriation of MMSCPL funds and other wrongful behaviour. Insofar as these instances of misappropriation of MMSCPL funds and other wrongful behaviour occurred prior to his becoming the executor and trustee of the Samsuddin estate on 25 June 2013, it was clear that Mustaq did nothing to inform the beneficiaries of the Samsuddin estate of the wrongdoing and took no steps to rectify the

wrongdoing. In particular, he did nothing to alert them to the 5 January 1995 and the 11 December 2001 Allotments which had diluted Samsuddin's shares in MMSCPL. He – together with Ishret – caused MMSCPL to pay out huge directors' fees, and they – together with Iqbal – benefited from unsecured, interest-free directors' loans, while declaring no dividends to shareholders such as the Samsuddin estate for more than a dozen years. As I note in the next section of these written grounds (see [750]–[755] below), it was left to Fayyaz to make enquiries on behalf of the Samsuddin estate and eventually to uncover the depredations carried out by Mustaq, Ishret and Iqbal.

723 Insofar as the instances of misappropriation of MMSCPL funds and other wrongful behaviour occurred after 25 June 2013 (*eg*, the massive unsecured, interest-free directors' loans which continued after 25 June 2013), there was no doubt that Mustaq was party to them. In fact, one might say he was "front and centre" as far as the various instances of wrongdoing were concerned; and as far as I could see, since I found his story about the 1973 Common Understanding to be a pack of lies, he had no excuse.

724 In light of my findings, I was satisfied that the Suit 780 plaintiffs were able to make out their case against Mustaq for fraudulent breach of his duties as executor and trustee of the Samsuddin estate. I deal with the issue of the reliefs to be granted in the later section of these written grounds (at [784]–[798]).

The defences of laches, acquiescence and time-bar

725 I address next the defendants' pleaded defences of laches, acquiescence and time-bar. In all three suits, the defendants pleaded that the plaintiffs "failure to bring [their] claim[s] within a reasonable time, despite having knowledge or the means of knowledge, of the facts on which the claims are based, constitutes a bar by laches and/or acquiescence and prevents them from acting upon such

claims now".[1042] In Suit 9, the defendants also pleaded that the plaintiffs' claims related to matters which had occurred more than 12 years ago, and that the action was time-barred under s 23(a) of the Limitation Act (Cap 163).[1043]

726 I address first the defences of laches and acquiescence common to all three suits. I summarise first the applicable legal principles.

Laches and acquiescence

The applicable legal principles

727 The doctrine of laches is "properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted" (*Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 ("*Chng Weng Wah*") at [44]).

728 In *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 ("*Tan Yong San*"), the High Court held that while the courts hearing a s 216 application would take into account an equitable defence such as laches, the extent to which such a defence would disentitle the plaintiff to relief under s 216(2) must be decided on the facts of each case (at [108]). The court also noted (at [109]) that there were "two elements to consider when raising the defence of laches: (a) the

1042 Defence 780 at para 174; Defence 1158 at para 169; Defence 9 at para 179.

1043 Defence 9 at paras 177–178.

length of the delay and (2) whether such delay has caused any prejudice or injustice".

729 As to the defence of acquiescence, the CA in *Genelabs Pte Ltd v Institut Pasteur* [2000] 3 SLR(R) 530 ("*Genelabs*") – citing *Halsbury's Laws of England* vol 16 (4th Ed Reissue, at para 924) – explained the defence as follows:

> The term acquiescence is…properly used where a person having a right and seeing another person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to it being committed; a person so standing by cannot afterwards be heard to complain of 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 words or conduct.

The parties' submissions

730 The defendants claimed[1044] that Mustafa, Samsuddin and the respective plaintiffs knew or would have known about matters that formed the subject-matter of their minority oppression claims even before Mustafa's and Samsuddin's deaths, but that none of them had raised any objections. I summarise below the defendants' submissions in respect of those allegations of oppression which I have found to be made out by the plaintiffs:

(a) First, in respect of the share allotments and increases in authorised share capital, the defendants claimed that from 1990 until their deaths, Mustafa and Samsuddin had never raised any objections to Mustaq about how MMSCPL was run or how decisions were made.[1045]

1044 DCS 1158 at paras 762–820; DCS 780 at paras 967–1022.

1045 DCS 1158 at paras 71(a)–(b); DCS 780 at para 1004.

The defendants claimed that this was because Mustafa and Samsuddin considered MMSCPL to be Mustaq's business and did not consider themselves to be true owners of the business. Mustafa and Samsuddin never refused to sign any documents given to them by Mustaq, and they also never asked questions about the documents. They had thus consented to and acquiesced in the various share allotments and increases in authorised share capital by signing the documents approving these transactions. The defendants claimed, in addition, that the Suit 1158 plaintiffs had raised no queries and made no requests for specific information for 15 years after Mustafa's death; whereas the Suit 780 plaintiffs must have known of the share allotments and share capital increases through Samsuddin because he lived with Fayyaz from 1997 until his death and would have discussed MMSCPL matters with Fayyaz.

(b) Second, in respect of the Cashback Scheme, Ayaz allegedly found out about this around 2013, while Fayyaz found out around 2015. No action was taken after each of them made the alleged discovery; and neither reported the matter to the authorities, despite this being the logical and reasonable thing to do.[1046]

(c) Third, in respect of the taking of loans from MMSCPL, Mustafa, Samsuddin and the respective plaintiffs would have been aware of this longstanding "practice" in MMSCPL, and yet they had never objected to the same.[1047]

1046 DCS 1158 at paras 71(e); DCS 780 at para 1004.

1047 DCS 1158 at paras 71(d); DCS 780 at para 1004.

(d) Fourth, in respect of the non-payment of dividends and the payment of excessive directors' fees to Mustaq and Ishret between 2000 and 2013, Mustafa, Samsuddin and the plaintiffs must have been aware that no dividends were paid for years and yet they had never objected.[1048]

731 Both the Suit 1158 plaintiffs and the Suit 780 plaintiffs denied that their claims were barred by laches and/or acquiescence.

732 The Suit 1158 plaintiffs submitted[1049] that although they had discovered the Cashback Scheme sometime in 2013, they discovered the defendants' other wrongdoings only between April 2016 and 2017; and thereafter, they had promptly commenced Suit 1158 in December 2017. The Suit 1158 plaintiffs explained that they had not sued immediately after finding out about the Cashback Scheme in 2013 because at that stage, they had still been trying to obtain further information about the Mustafa Estate's interest in MMSCPL, and they had been kept in the dark by Mustaq about his other wrongdoings.

733 In similar vein, the Suit 780 plaintiffs submitted[1050] that there was no inordinate delay on their part and that they too had brought their claims within a reasonable time from discovery of the defendants' wrongdoing. In their reply submissions,[1051] the Suit 780 plaintiffs also submitted that Mustaq had kept the Samsuddin Estate in the dark on the affairs of MMSCPL, and there was no evidence of acquiescence on their part.

1048 DCS 1158 at paras 71(f); DCS 780 at para 1004.

1049 PCS 1158 at paras 1080–1110.

1050 PCS 780 at paras 85, 216–229.

1051 PRS 780 at paras 781–808.

My findings

734 The defendants having pleaded the defences of laches and acquiescence, the onus of proving the elements of each of these defences fell on them. They did not give any evidence.

735 Having considered the evidence actually adduced before me, I did not find the elements of either laches or acquiescence to be made out by the defendants. I found that the defendants having given no evidence, there was nothing to rebut Ayaz's and Fayyaz's evidence as to the circumstances leading to the commencement of their respective suits – which included the discovery of the Cashback Scheme, the discussions with Mustaq, his proposals to them, and the draft Deed of 2016; and I saw no reason to disbelieve the evidence of Ayaz and Fayyaz on these matters.

(1) Ayaz's evidence

736 Ayaz gave evidence that he felt "mistreated" and "segregated" from the rest of the family by Mustaq in 2013 when he and his family members were not allowed to stay in Mustaq's new residence.[1052] It was then that he started asking Mustaq questions about the Mustafa estate, including the Mustafa estate's shares in MMSCPL.[1053] It was around this time (in 2013) that he also heard about the Cashback Scheme from MMSCPL employees. He felt troubled by what he heard.[1054] Between mid-2013 and April 2016, he tried asking Mustaq about these things and about the Mustafa estate's affairs; in particular, the Mustafa estate's

1052 Ayaz 1158 AEIC at paras 65–68.

1053 Ayaz 1158 AEIC at para 69.

1054 Ayaz 1158 AEIC at paras 71–72.

shares in MMSCPL. However, Mustaq did not provide answers.[1055] Mustaq's children also warned Ayaz to stay away from Mustaq and to stop asking questions about the Mustafa estate's affairs.[1056]

737 In January 2014, Mustaq made a verbal proposal to Ayaz to buy out the Mustafa estate's shares in MMSCPL.[1057] Ayaz rejected the proposal as he felt that Mustaq was hiding something and he did not want to accept any buy-out offer "blindly".[1058] Shortly thereafter, Mustaq and his family members got MMSCPL to start paying out dividends to the Mustafa estate and the other shareholders, but they made MMSCPL stretch out these payments over twelve monthly instalments a year. Ayaz believed that they were doing so in order to get him and his family to understand that if they fought for their legal rights, they would be cut off from future dividend instalments and would have no resources to take any legal action.[1059]

738 In mid-2015, Mustaq made the Mustaq Proposal through Ayaz to the beneficiaries of the Mustafa estate.[1060] In February 2016, Ayaz's brother Ishtiaq received the draft settlement deed which Mustaq wanted them to sign. However, Ayaz realised that the draft deed did not follow the terms of the Mustaq Proposal: in particular, clause 7 of the draft deed provided *inter alia* that the beneficiaries of the Mustafa estate would be precluded from raising any further

1055 Ayaz 1158 AEIC at para 76.

1056 Ayaz 1158 AEIC at para 77.

1057 Ayaz 1158 AEIC at para 80.

1058 Ayaz 1158 AEIC at para 82.

1059 Ayaz 1158 AEIC at paras 88–90.

1060 Ayaz 1158 AEIC at paras 84–85.

queries about the affairs of MMSCPL.[1061] Ayaz refused to sign the draft deed.[1062] In April 2016 there was another meeting with Mustaq, together with Fayyaz and the law firm Mallal & Namazie, but this did not result in any signed agreement.[1063]

739 Around early 2016, Ayaz had also decided to engage Rajesh to help him look into the matter of the Mustafa estate's shares in MMSCPL. Ayaz's evidence was that he only found out about the 5 January 1995 Share Allotment and the 11 December 2001 Share Allotment after Rajesh downloaded these documents from ACRA around May 2016.[1064] After engaging his present solicitors in June 2016, Ayaz discovered that Mustaq had lodged the Mustaq POA dated 22 December 2001 in the High Court; and he moved quickly to revoke this POA on 1 July 2016.[1065] Ayaz's solicitors then wrote to Mustaq to ask for information on the Mustaq POA on 13 July 2016.[1066] However, from 13 July 2016 to 29 December 2016, over a span of around five months, Mustaq refused to cooperate with the Suit 1158 plaintiffs.[1067]

740 During this period, Rajesh continued his investigations. *Inter alia*, on 18 August 2016, Rajesh downloaded an MMSCPL Information Memorandum dated 21 November 2013 from the Internet; and it was then that Ayaz found out about the loans from MMSCPL to the directors.[1068] In a letter from Mustaq's

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1061 Ayaz 1158 AEIC at paras 95–98.

1062 Ayaz 1158 AEIC at para 103.

1063 Ayaz 1158 AEIC at paras 104–108.

1064 Ayaz 1158 AEIC at paras 112, 117–118.

1065 Ayaz 1158 AEIC at paras 122–130.

1066 Ayaz 1158 AEIC at para 131.

1067 Ayaz 1158 AEIC at para 134.

1068 Ayaz 1158 AEIC at paras 148–152.

then solicitors dated 7 November 2016, which Ayaz reviewed with Rajesh, Ayaz noticed further information about the directors' loans and also about the payment of directors' fees.[1069] Thereafter, from February 2017, Mustaq halved the amount of dividends being paid by MMSCPL to Ayaz (which dividend payments had only commenced in 2014). The Suit 1158 plaintiffs commenced Suit 1158 and Suit 9 in December 2017;[1070] and a few months later, all dividend payments by MMSCPL ceased in March 2018.

(2) Fayyaz's evidence

741 As for Fayyaz, he gave evidence that in 2013, Ayaz had spoken to him about being upset with Mustaq as Mustaq did not allow Ayaz and his family to stay in the residence at Keng Lee Road. Ayaz said that Mustaq had suggested he should consider cashing out the Mustafa estate's share of the business and moving back to India. After thinking about this, Fayyaz thought it might be best for the Samsuddin Estate to "cash out" its interest in the business too. He met with Mustaq to ask about this.

742 A few days after the above meeting, Mustaq allowed Fayyaz to review the audited financial statements of MMSCPL for 2012 or 2013. His request to see the audited accounts of the Related Companies was refused. He then asked Mustaq why the directors' fees for 2013 were more than $5 million when there no dividends had been paid. Mustaq did not answer Fayyaz's queries.[1071] Fayyaz also queried him on the value of the Samsuddin estate's share in the Family Assets. It was after Mustaq told Fayyaz to compute what 15.12% of MMSCPL was worth based on the 2013 audited accounts that disagreements started up

1069 Ayaz 1158 AEIC at paras 202, 213–215.

1070 Ayaz 1158 AEIC at paras 273–274.

1071 Fayyaz 780 AEIC at paras 117–122; Transcript, 23 October 2020 at p 56, lines 2–15.

between the two of them. According to Fayyaz, Mustaq became visibly troubled over the next few months. He met with Fayyaz many times; and each time, he would have a new proposal on how to settle the matter.

743 Finally, sometime in mid-2015, Mustaq made the Mustaq Proposal to Fayyaz.[1072] On 29 March 2016, Mustaq asked Fayyaz to sign a draft settlement deed, which Fayyaz did as he still trusted Mustaq at this stage and had not yet investigated the affairs of MMSCPL.[1073] Ayaz, who refused to sign the draft deed, later pointed out to Fayyaz that clause 7 of the draft deed disallowed the beneficiaries of the Samsuddin Estate and Mustafa Estate from raising questions as regards the affairs of MMSCPL. As a result, Fayyaz started to suspect Mustaq had something to hide.[1074]

744 Another meeting between Mustaq, Ayaz and Fayyaz took place on 13 April 2016 at the offices of Mallal & Namazie. However, once again there was no agreement signed.[1075] Fayyaz subsequently found out about the actions filed by Ayaz and the other Suit 1158 plaintiffs in December 2017.[1076] He read the statement of claim in Suit 1158 about one or two weeks after it had been filed,[1077] and became deeply concerned by the allegations therein. Knowing he had to do something to protect the interests of the Samsuddin Estate, Fayyaz approached Rajesh in early 2018 as he knew Ayaz had engaged the latter to look into the

1072 Fayyaz 780 AEIC at para 127.

1073 Fayyaz 780 AEIC at para 128.

1074 Fayyaz 780 AEIC at paras 130–132.

1075 Fayyaz 780 AEIC at para 139.

1076 Fayyaz 780 AEIC at para 142.

1077 Transcript, 23 October 2020 at p 54, lines 8–9.

affairs of MMSCPL on behalf of the Mustafa Estate. He sought Rajesh's help too to investigate the affairs of MMSCPL on behalf of the Samsuddin Estate.[1078]

745 In respect of the 5 January 1995 and the 11 December 2001 Share Allotments, Fayyaz stated in his AEIC that Samsuddin had told him in 2004 about being brought by Mustaq to a law firm for the execution of a will and about being shocked to see it stated in the will that he (Samsuddin) owned only 15.12% of MMSCPL.[1079] Fayyaz stated that at that stage, while he was aware of the 15.12% figure stated in the will, he was not aware of the 5 January 1995 and 11 December 2001 Allotments and the dilution of Samsuddin's shares wrought by these allotments.[1080] Fayyaz's evidence in cross-examination (which was not refuted) was he had come to know about the 5 January 1995 and 11 December 2001 Allotments in 2016, as Ayaz had told him about this matter towards the end of 2016, after getting Rajesh to investigate.[1081]

746 As for the non-declaration of dividends, Fayyaz said that although by December 2017 he knew that no dividends had been declared by MMSCPL for years up until 2014, he did not know at the time that the directors' fees were so excessive or that millions of dollars in loans had been taken by the directors of MMSCPL: he only found out about the details of these instances of wrongdoing in 2018, after hiring Rajesh.[1082]

1078 Fayyaz 780 AEIC at paras 144–145.

1079 Fayyaz 780 AEIC at paras 102–104.

1080 Fayyaz 780 AEIC at para 143.

1081 Transcript, 23 October 2020 at p 55, lines 11–22.

1082 Transcript, 23 October 2020 at p 56, line 23 to p 57, line 19.

747 As for the Cashback Scheme, Fayyaz's evidence – like Ayaz's – was that he came to know of this around 2015 from other people.[1083]

(3) My findings

748 First, in respect of the 5 January 1995 and 11 December 2001 Share Allotments, insofar as the defendants tried to argue that the resolutions and other documents relating to these allotments proved Mustaq's and Samsuddin's awareness of them and of the consequent dilution in their shareholdings, I have found that the documents relied on by the defendants have not been shown to be authentic and that it has not been established that Mustafa and/or Samsuddin actually signed these documents to indicate their approval of the allotments (see above at [115] and [212]).

749 Second, in respect of the payment of directors' fees, the defendants argued that since Samsuddin had received yearly directors' fees of $200,000 between 1990 and 2002, this made it "highly unlikely" that Samsuddin would not have known of the directors' fees being paid to Mustaq and Ishret from 2002 to 2011.[1084] I found this argument devoid of merit and have dealt with earlier in these written grounds (at [526]).

750 Third, whilst I did not accept those portions of Fayyaz's evidence relating to his claims about Mustaq holding one-third of the Family Assets on "express trust" for the Samsuddin estate, his evidence as to when he and Ayaz started questioning Mustaq about their respective estates' rights – and how Mustaq responded to their questions – was consistent with Ayaz's account; and I found that their accounts rang true. Further, Ayaz's and Fayyaz's evidence

1083 Transcript, 23 October 2020 at p 58, lines 6–11.

1084 DCS 780 at para 955.

was corroborated by objective evidence. It was not disputed that dividends were declared by MMSCPL for the first time in more than a dozen years, in February 2014; and this coincided with the enquiries that Ayaz and Fayyaz started to make of Mustaq in 2013 as to their respective estates' rights. It was also not disputed that these dividend payments were drawn out into monthly instalments – which, as I have previously mentioned, would certainly have the effect of sending the beneficiaries of both estates the message that continued receipt of these instalments depended on Mustaq's good graces. When these dividend payments did not appear to have the desired effect of putting an end to questions, the Mustaq Proposal was made in mid-2015, and a draft settlement deed presented to Ayaz and Fayyaz for signature in early 2016. Tellingly (and this too could not be disputed), the draft deed included a clause which precluded the two estates from asking any further questions about the affairs of MMSCPL and the Related Companies and/or from holding Mustaq liable for anything in connection with the management of these entities. After Ayaz refused to sign this draft deed, another meeting in April 2016 failed to result in any signed agreement. There was also a lengthy meeting between Ayaz and Mustaq on 4 September 2016, during which Ayaz confronted Mustaq about the dilution of the Mustafa estate's shares following the 5 January 1995 and 11 December 2001 Allotments. Mustaq again tried to persuade Ayaz to sign the draft deed, which Ayaz refused. Shortly thereafter, dividend payments were halved from February 2017 onwards – and were cut off entirely soon after the commencement of proceedings by the beneficiaries of the Mustafa estate.

751 Apart from the above chronology, it should also be remembered that neither Ayaz nor Fayyaz was ever a director of MMSCPL. Neither was ever involved in the management of MMSCPL. I did not think it could be disputed that both men were not well-informed as to corporate matters. Indeed, this was

why they sought help from Rajesh to investigate the affairs of MMSCPL and their respective estates' shares in MMSCPL.

752 I also did not think it could be disputed that both Ayaz and Fayyaz, as well as the other beneficiaries of the Mustafa and Samsuddin estates, were not financially well-resourced. Both Ayaz and Fayyaz were employed by MMSCPL; both had family members dependent on them. Since 2000, the estates had not been receiving dividends on the shares they held in MMSCPL;[1085] and the families' financial situation depended primarily on Mustaq's good graces. The fact that the dividend payments which started in 2014 were split into monthly instalments would have made them all the more conscious that the financial tap could be turned off by Mustaq at any time. Ayaz gave evidence in his AEIC that Mustaq's children tried to "pressure" him to sign the draft deed which Mustaq had presented to him, by "threatening" him with the "reversal of benefits", by which he understood them to be referring to the monthly dividend payments.[1086]

753 The above factors were relevant in contributing to my understanding of why the Suit 1158 and Suit 780 plaintiffs did not immediately rush to file official complaints and legal proceedings when they first heard of the Cashback Scheme in 2013. In *Lim Seng Wah and another v Han Meng Siew and others* [2016] SGHC 177 ("*Lim Seng Wah*"), the first plaintiff Lim and the second plaintiff Heah commenced a minority oppression suit in July 2014 against the first defendant Han and the second defendant Wang. The plaintiffs' claims were premised on allegations *inter alia* that the defendants had caused the company to grossly overpay them huge amounts in directors' fees between 2002 and 2014

1085 SOC 1158 at para 74.

1086 Ayaz 1158 AEIC at para 184.

while only declaring relatively low dividends. The defendants raised the defences of laches and acquiescence as they contended that Lim and Heah had not protested the directors' fees and dividends at any of the company's AGMs until the 2013 AGM. The High Court held (at [168]) that "(m)erely because a shareholder does not immediately initiate legal proceedings complaining about treatment unfairly dished out to him does not mean that he is always precluded from doing so subsequently". In *Lim Seng Wah*, the court rejected the defendants' allegations of laches and acquiescence. In so deciding, the court held that the allegations and laches and acquiescence had to be looked at in the context of the explanations given by Lim and Heah. The court accepted (at [170]) Lim's explanation that he had protested the ratio of directors' fees versus dividends at the AGM in 2002, but had felt cowed by Han's hostility and insistence that he (Lim) had misinterpreted the agreement between them. Lim had then felt that there was no point protesting at the following year's AGM. In 2003, Lim had also turned down the request of another shareholder, Ang, to join him in his action against Han, because at that time Lim had limited financial resources, was still employed by the company, and also felt that it was pointless to challenge Han. When Ang's suit against Han was subsequently dismissed, Lim and Heah felt helpless against Han. The court accepted that both Lim and Heah were "not as well educated as Han and both [were] of a gentler disposition compared to Han". Both also "had limited financial resources to challenge the defendants".

754 In the present case, I accepted that after Ayaz and Fayyaz first heard about the Cashback Scheme in 2013, they did not rush to take action because they needed time to make further enquiries, and in particular, to find out more about the respective estate's shares in MMSCPL and their rights. I also accepted that in the course of their making these further enquiries, they met with no substantive answers from the one person who had access to all the necessary

information, *ie*, Mustaq; and that instead, Mustaq sought to divert or deflect their enquiries by putting forward various proposals. Clearly, Ayaz, Fayyaz and the other beneficiaries of the Mustafa and Samsuddin estate were subjected to financial pressure by Mustaq, in the form of the monthly dividend payments which started after their enquiries started, which were halved when Mustaq could not get the draft deed signed, and which ceased shortly after the commencement of Suit 1158 and Suit 9.

755 I accepted, in addition, that due to Ayaz's and Fayyaz's lack of familiarity with corporate matters, it was not until they engaged Rajesh – in 2016 and in 2018 respectively – that they started finding out about matters such as the share allotments and the massive directors' loans. In this connection, while Fayyaz did see MMSCPL's audited financial statements for 2013 and he did ask Mustaq about the high amount of directors' fees shown for that financial year, I did not think he had sufficient information at that stage to "put two and two together" and to recognise the shenanigans that Mustaq and his family members were up to. Indeed, I noted that Fayyaz stated in his AEIC that when he tried to ask for the financial statements of the Related Companies after seeing the MMSCPL financial statements for 2013, his request was refused – which demonstrated that he was only being shown those documents that Mustaq permitted him to see.[1087] I accepted that Fayyaz would not have had a full picture of the wrongs being done to the Samsuddin estate's rights until after he engaged Rajesh to carry out investigations.

756 Based on the evidence adduced, I was satisfied that the defendants had failed to show inordinate delay by the plaintiffs in commencing proceedings.

[1087] Fayyaz 780 AEIC at para 121.

757 For the avoidance of doubt, while Samsuddin did sign a will in 2004 which stated his MMSCPL shareholding to be 15.12%, I accepted Fayyaz's affidavit evidence about the helplessness Samsuddin felt when he discovered what the will said about his MMSCPL shareholding ("*He was crying…he told me he felt that God would see to it that justice was done*").[1088] It was not disputed that Samsuddin was illiterate in English, had received only very basic education in India, and had trusted Mustaq as someone he had "helped to raise". It was also not disputed that Mustaq was the one who had arranged for Samsuddin to go to Mallal & Namazie to execute the will; and given Samsuddin's illiteracy, Samsuddin could not have been the one giving the lawyers instructions directly. In the circumstances, it was unsurprising that he should have felt helpless to challenge Mustaq openly after learning of the 15.12% shareholding figure reflected in the will. Moreover, based on my earlier findings (see above at [745]), I accepted that at this stage and even at the stage when Fayyaz filed affidavits in the probate proceedings affirming the 15.12% figure, neither Samsuddin nor Fayyaz was aware at the material time of the 5 January 1995 and the 11 December 2001 Allotments and of how these allotments had diluted Samsuddin's shares. To borrow the words of the High Court in *Lim Seng Wah* (at [171]), given these circumstances, the mere fact that the Suit 780 plaintiffs commenced their action only in 2018 "[did] not in any way lessen the unfairness of the defendants' reprehensible conduct towards [the plaintiffs]".

758 As to the element of prejudice, although the defendants made the vague and sweeping allegation in their closing submissions that the "passage of time" meant they no longer had power, custody and/of possession of "many of the contemporaneous records",[1089] they failed to explain exactly what

1088 Fayyaz 780 AEIC at para 104.

1089 DCS 1158 at para 72.

"contemporaneous" records they had lost due to the "passage of time" and exactly how the loss of these alleged records had impacted their case adversely. In any event, none of the defendants took the witness stand – so there was no evidence to support their allegation of prejudice.

759 As for the defence of acquiescence, I did not find any evidence of either set of plaintiffs having made any representation to the defendants in circumstances to found an estoppel, waiver or abandonment of their rights; nor was there any evidence of prejudice to the defendants.

760 In this connection, I noted that the defendants argued that documents such as those showing the 5 January 1995 Share Allotments were available for download from the ACRA website, and that the plaintiffs failed to do so: their position appeared to be that the plaintiffs' ignorance was no ground for equitable relief. I did not think this argument was sustainable on the present facts. In the authority relied on by the defendants (*Allcard v Skinner* [1887] 36 ChD 145, ("*Allcard*")), what the court actually said was:

> Ignorance which is *the result of deliberate choice* is no ground for equitable relief; nor is it an answer to an equitable defence based on laches and acquiescence.
>
> [emphasis added]

761 In *Allcard*, the plaintiffs sued the defendant to recover money and stocks which she had transferred to him, allegedly as a result of his undue influence. The court found her claim to be barred by laches and acquiescence. *Inter alia*, in respect of the issue of acquiescence, the court noted (at 188) that the plaintiff had had some six years to decide what to do; that she had been in communication with her solicitors, who had told her "it was too large a sum to leave behind without asking for it back", in "a clear intimation to her that she ought to ask for her money back, and… a distinct invitation to her to consider

her rights"; and that she had declined to do so and preferred not to trouble about it. It was in this context that the court held that if the plaintiff did not know her rights, it was as a result of her own resolution not to inquire into them. In the present case, the defendants did not adduce any evidence to show that Mustafa and Samsuddin had the means to find out at any time about the 1995 and 2001 Allotments (or for that matter, of the other matters complained of in these oppression suits), and that they *deliberately chose* to refrain from doing so. Nor was there any evidence that the Suit 1158 and Suit 780 plaintiffs deliberately chose to refrain from inquiring into their rights.

Whether plaintiffs had commenced proceedings for an improper collateral purpose and in bad faith

762 Finally, I should also make it clear that having reviewed the evidence adduced, I rejected the defendants' allegations that the plaintiffs in these three suits had commenced proceedings for an "improper collateral purpose" and "in bad faith".[1090]

763 While I did find that the Suit 1158 and Suit 780 plaintiffs were unable to establish some of the allegations of wrongdoing pleaded, I did not find that the evidence showed the plaintiffs to have commenced the suits for an "improper collateral purpose" and "in bad faith". The defendants were the ones who pleaded that both sets of plaintiffs brought suit for the "improper collateral purpose" of retaliating against Mustaq for refusing their "unreasonable and excessive demands for more gratuitous property, assets and financial benefits". However, Mustaq did not take the witness stand to testify about the plaintiffs' supposed demands and their "retaliation" against him for refusing those demands. No evidence at all was adduced by the defendants of the "improper

1090 Defence 1158 at paras 6, 164–168; Defence 780 at paras 169–173.

collateral purpose" pleaded. The plaintiffs gave evidence that they brought these proceedings because they had carried out investigations after prolonged stonewalling by Mustaq and had uncovered numerous instances of wrongdoing by Mustaq and some of his family members. As can be seen from the preceding sections of these written grounds, I found in favour of the plaintiffs' account of why and how they came to commence proceedings.

Mustaq's counterclaims in Suit 1158 and Suit 780

764 I next address Mustaq's counterclaims in Suit 1158 and Suit 780. In both suits, Mustaq counterclaimed for a declaration that he was the legal and beneficial owner of all the MMSCPL shares registered to the Mustafa estate and the Samsuddin estate, both of whom – according to his pleaded case – held the shares for him on either a common intention constructive trust or a resulting trust.[1091] Mustaq claimed that he, Mustafa and Samsuddin had shared the common intention that he alone would be the "absolute owner" of all MMSCPL shares; and that in reliance on this common intention, he had acted to his detriment over the years by assuming various forms of financial liability for the benefit of MMSCPL (*eg*, providing capital, acting as guarantor for loans etc).[1092] Alternatively, he claimed that he alone had provided all the consideration for the MMSCPL shares whereas Mustafa and Samsuddin had provided no consideration; and that he had never intended to benefit either of them.[1093]

765 Mustaq did not take the witness stand. There was no evidence given by the defence to substantiate the claims about "common intention constructive trust" and "resulting trust". In any event, from his pleaded case, it was clear that

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1091 Defence 1158 at paras 171–175; Defence 780 at paras 177–183.

1092 Defence 1158 at para 172; Defence 780 at para 179.

1093 Defence 1158 at para 49; Defence 780 at para 46.

Mustaq's counterclaim was based on his story about the 1973 Common Understanding and the 2001 Common Understanding,[1094] and how they had made him the sole "absolute owner" of MMSCPL. Since I found his story about the 1973 and 2001 Common Understandings to be a pack of lies, this meant that the factual stratum for his counterclaim no longer existed.

766 I add that as the Suit 1158 plaintiffs pointed out,[1095] the defendants did appear to realise mid-trial how shaky the foundation for their entire defence and for Mustaq's counterclaim really was, since they attempted mid-trial to introduce amended pleadings that posited a *gift* of the MMSCPL shares by Mustaq to the Mustafa and Samsuddin estates – and supposedly, a subsequent revocation of such gift. This proposed new position was so far removed from the position which the defendants had adopted for the past several years that I had to wonder how the pleaded defence and counterclaim had come about in the first place.

767 For the reasons alluded to above, I dismissed Mustaq's counterclaim in both Suit 1158 and Suit 780 for a declaration of his sole legal and beneficial ownership of the shares held by the estates.

768 Mustaq also brought a counterclaim against Fayyaz in Suit 780, for a declaration that Fayyaz had breached his duties as executor and trustee of the Samsuddin estate. *Per* his pleaded case, Mustaq claimed that in suing Mustaq for fraudulent breach of his (Mustaq's) duties as executor and trustee of the Samsuddin estate, Fayyaz was acting in breach of *his* own duties as executor and trustee, because he had brought the claim against Mustaq "in bad faith" and

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1094 Defence 1158 at paras 36 and 52; Defence 780 at para 57.

1095 PCS 1158 at paras 1173–1174.

for the "improper collateral motive" of seeking retaliation for Mustaq's rejection of his "excessive and unreasonable demands for more gratuitous property, assets and financial benefits".[1096] Mustaq also claimed that the Suit 780 plaintiffs' claim against him for fraudulent breach of his duties as executor and trustee of the Samsuddin estate was "unmeritorious, frivolous, vexatious, and otherwise an abuse of process".[1097]

769 For the reasons explained earlier (at [718]–[724] and [762]–[763]), I found in favour of the Suit 780 plaintiffs' claim against Mustaq for fraudulent breach of his duties as executor and trustee of the Samsuddin estate; and I rejected the defendants' allegations that the two sets of plaintiffs had commenced the present proceedings for an improper collateral purpose and in bad faith. Given the findings I have arrived at, I found no merit in Mustaq's counterclaim against Fayyaz for the latter's alleged breach of his duties as executor and trustee of the Samsuddin estate.

Summary of my findings for Suit 1158 and Suit 780

770 To sum up, I found for the Suit 1158 and the Suit 780 plaintiffs on their claims of minority oppression (albeit not on all the grounds raised); and I found for the Suit 780 plaintiffs on their claim against Mustaq for the fraudulent breach of his duties as executor and trustee of the Samsuddin estate. In coming to these findings, I rejected the defendants' pleaded case as to the 1973 Common Understanding, the 2001 Common Understanding and Mustaq's sole ownership of all MMSCPL shares.

1096 Defence 780 at para 186(a)(i).

1097 Defence 780 at para 186(a)(ii).

771 I dismissed Mustaq's counterclaims in both Suit 1158 and Suit 780, including his counterclaim against Fayyaz for the alleged breach of Fayyaz's duties as executor and trustee of the Samsuddin estate.

772 Lastly, I dismissed the Suit 780 plaintiffs' claim in respect of the "express trust" allegedly held by Mustaq on behalf of the Samsuddin estate one-third of the Trust Assets.

Suit 9

The parties' pleaded cases

773 In respect of Suit 9, the plaintiffs were the same persons as the Suit 1158 plaintiffs. In claiming that Mustaq (the defendant in Suit 9) had breached his duties as the administrator and trustee of the Mustafa estate, the plaintiffs relied on essentially the same facts that were relied on for their oppression action – just as Mustaq relied on essentially the same matters pleaded in his Suit 1158 defence – including, in particular, the 1973 and 2001 Common Understandings and his alleged sole ownership of all MMSCPL shares.[1098]

774 The plaintiffs pleaded that as the administrator and trustee of the Mustafa estate, Mustaq owed the following duties:[1099]

(a) The duties of loyalty and fidelity;

(b) A duty to act honestly and in good faith in the best interests of the Mustafa Estate and for proper purposes at all times and not for any personal, collateral or other improper purpose;

1098 PCS 1158 at paras 1200–1246.

1099 SOC 9 at para 54.

(c) A duty to avoid placing himself in a position of conflict or potential conflict between his loyalty and duties on the one hand and his personal interests or the interests of a third party on the other hand;

(d) A duty to declare any such conflict and/or potential conflict;

(e) A duty not to make a profit from his position as administrator and/or trustee and to account for any profits that he makes from his position as administrator and/or trustee;

(f) A duty to disclose to the Mustafa Estate any breaches of the aforesaid or other duties owed to the Mustafa Estate;

(g) To maintain accounts and to provide them at any beneficiary's request;

(h) To furnish information with regard to matters relating to the Mustafa Estate at any beneficiary's request; and

(i) A continuing duty to comply with and/or abide by all of the aforementioned duties and to promptly set right and/or rectify and/or prevent the recurrence of any breach of the aforementioned duties.

775 The plaintiffs contended that having regard to the Mustafa estate's shareholding in MMSCPL, once Mustaq was appointed as administrator of the Mustafa estate, he had a duty to disclose to them the various acts of misappropriation of MMSCPL funds and other oppressive acts pleaded in Suit 1158, and to take steps to rectify the wrongdoing as well as to prevent recurrence of such wrongdoing. By failing to do so, he had breached the above duties.[1100]

[1100] PCS 1158 at paras 1209–1212.

776 In his Suit 9 defence, Mustaq accepted that the above duties were "the general duties of an administrator and trustee of an estate".[1101] However, in reliance on essentially the same matters pleaded in his defence in Suit 1158, he denied having breached any of these duties: for example, in respect of the dilution of Mustafa's and the Mustafa estate's shares in the 1995 and 2001 Allotments, he pleaded that the allotments were done with their full knowledge, and that they raised no objections thereto because of the 1973 and the 2001 Common Understandings;[1102] in respect of the unsecured, interest-free directors' loans, he pleaded that there was a longstanding practice in MMSCPL of directors taking loans which Mustafa and the plaintiffs were aware of, and that moreover the plaintiffs themselves benefited from these loans; and so on. Mustaq also claimed in his Suit 9 defence that prior to 2016, the plaintiffs had never shown interest in how MMSCPL was run, nor asked for accounts or other documents in relation to either MMSCPL and the Mustafa estate: they were content to let him grow the business and to defer to him all decision-making about both MMSCPL and the Mustafa estate. According to Mustaq, this was because of the 1995 and the 2001 Common Understandings.[1103]

777 In Suit 9, the defendants also pleaded the defence of time-bar under s 23(a) of the Limitation Act, as they claimed that the plaintiffs' causes of action did not accrue within 12 years before the filing of Suit 9.[1104]

1101 Defence 9 at para 98.

1102 Defence 9 at paras 58 and 77.

1103 Defence 9 at para 133.

1104 Defence 9 at para 177.

My findings

778 As seen from the earlier sections of these written grounds, I found in the plaintiffs' favour on their Suit 1158 claims in respect of the dilution of the Mustafa Estate's shares in the 5 January 1995 and the 11 December 2001 Allotments; the taking of unsecured and interest-free directors' loans; the making of falsified MOM applications, *ie*, the Cashback Scheme; and the non-payment of dividends to shareholders despite the payment of substantial directors' fees. It was clear from the evidence adduced that Mustaq was party to these instances of wrongful behaviour. Insofar as these instances of wrongful behaviour occurred prior to his becoming the administrator and trustee of the Mustafa estate, it was clear that Mustaq did nothing to inform the Suit 9 plaintiffs of the wrongdoing and took no steps to rectify the wrongdoing following his appointment as administrator. Indeed, *per* his pleaded case, his position was that pursuant to the 1973 and 2001 Common Understandings, there was no wrongdoing because he was the sole owner of MMSCPL, and the plaintiffs knew they had no basis for objecting to how he chose to run the company.

779 Insofar as the instances of wrongful behaviour occurred after he became the administrator and trustee of the Mustafa estate, there was no doubt that Mustaq was party to them; that he did nothing to alert the plaintiffs to the wrongdoing; and that he took no steps to rectify or prevent the wrongdoing. In fact, as I said earlier in relation to the Suit 780 plaintiffs' claim against Mustaq for breach of his duties as executor and trustee of the Samsuddin estate, Mustaq appeared to be "front and centre" as far as the various instances of wrongdoing were concerned; and as far as I could see, since I found his story about the "Common Understandings" to be a pack of lies, he had no excuse.

780 Further, I agreed with the Suit 9 plaintiffs that the evidence showed that when the plaintiffs tried to ask Mustaq for information about the Mustafa estate and in particular about the estate's shares in MMSCPL, he kept the truth from them by stonewalling and even by lying. For example, Ayaz gave evidence (which was unrefuted) that in 2015, when he asked Mustaq about the Mustafa estate's shares in MMSCPL, Mustaq told him the estate had a 15% shareholding – without revealing the 5 January 1995 and 11 December 2001 Allotments and how they had caused the share dilution in the first place.[1105] When his tactics of obfuscation and deception failed to work, Mustaq resorted to applying financial pressure on Ayaz and the other Suit 9 plaintiffs. *Per* Ayaz's evidence (again not refuted), Mustaq first tried offering them the Mustaq Proposal (which nevertheless required them to agree to give up all rights to further query Mustaq about his management of MMSCPL); then he tried giving them money in the form of dividend payments (which were nevertheless drawn out into monthly instalments); then he halved these dividend payments when Ayaz failed to stop asking questions; and then he ceased all payments when Ayaz and his family members commenced Suit 9 and Suit 1158.[1106] In fact, when Ayaz and his family members persisted with their suits, Ayaz found his employment with MMSCPL abruptly terminated (through the non-renewal of his S-pass),[1107] and his family turfed out of company accommodation.[1108]

781 As for the time-bar defence pleaded by the defendants, I found this to be without merit either. As the Suit 9 plaintiffs pointed out, s 23 of the Limitation Act expressly provides that it is subject to s 22(1). Section 22(1) provides that

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1105 Ayaz 1158 AEIC at paras 86, 284 and 354; PCS 1158 at paras 1223–1224.

1106 Ayaz 1158 AEIC at paras 84, 88–90, 273–275.

1107 Ayaz 1158 AEIC at paras 492–501.

1108 Ayaz 1158 AEIC at para 502.

no period of limitation prescribed by this Act 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. In *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 (at [25]), the High Court – in considering s 22(1)(b) of the Limitation Act – noted that the Limitation Act provided in s 2(1) that "trust" and "trustee" had the same meaning as in the Trustees Act (Cap 337, 2005 Rev Ed) and the Trustees Act provided that "trustee" would include a personal representative. The Trustees Act also defines "personal representative" so as to include the administrator for the time being of a deceased person. In Suit 9, the plaintiffs – as beneficiaries of the Mustafa estate – had sued the administrator of the estate (Mustaq), alleging *inter alia* the deliberate dilution of the estate's shareholding to the benefit of Mustaq's own shareholding, misappropriation of funds from the company in which the estate held a 25.4% share, *etc*: I agreed that s 23(a) of the Limitation Act, being subject to s 22(1), did not apply to the Suit 9 claims.

782 In light of my findings, I rejected the defences pleaded by Mustaq in Suit 9. I was satisfied that the Suit 9 plaintiffs were able to make out their claim against him for breach of his duties as administrator and trustee of the Mustafa estate.

783 In the next section of these written grounds, I address the reliefs to be ordered in the three suits.

Reliefs granted in Suit 1158 and Suit 780

784 In respect of the plaintiffs' claims of minority oppression in Suit 1158 and Suit 780, in addition to praying for declarations that the 5 January 1995 and

the 11 December 2001 Allotments were void and for orders setting these allotments aside, the Suit 1158 plaintiffs prayed for MMSCPL to be wound up and/or such further and/or other relief as the court deemed fit.[1109] As for the Suit 780 plaintiffs, in addition to praying for declarations that the 5 January 1995 and the 11 December 2001 Allotments were void and for orders setting these allotments aside, they prayed for an order that Mustaq buy out the Samsuddin estate's shares in MMSCPL at a price to be assessed by an independent expert, taking into account the losses suffered by MMSCPL as a result of the defendants' oppressive conduct, or alternatively, for an order for MMSCPL to be wound up.[1110]

785 I did not find winding up MMSCPL to be an appropriate remedy. Our courts have repeatedly held that a winding-up order should only be granted as a last resort in an oppression action; and in general, the courts are not minded to wind up operational and successful companies unless no other remedy is available (see eg *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745, "*Lim Swee Khiang*"). In *Lim Swee Khiang*, the CA found the appellant minority shareholders' claims of oppression to be made out in the context of a family-owned quasi-partnership. The appellants sought an order winding up the company (Borden) on the basis that the familial and close-knit management that was originally conceived was no longer possible and Borden's business would only continue to be exploited by the respondent majority for their own advantage. In refusing to order that Borden be wound up, the CA held (at [91]–[92]) that –

> 91 …the court's discretion under s 216 of the CA should be exercised with a view to bringing to an end or remedying the matters complained of. *If the state of affairs in a particular case*

1109 SOC 1158 at pp 39–40.

1110 SOC 780 at pp 60–62.

> *can be remedied by an order other than winding up, there is no reason for a court to wind up the company*. Further, we are of the view that *winding up should only be ordered if, having taken into account all the circumstances of the case, it is the best solution for all the parties involved. In general, the courts are not minded to wind up operational and successful companies unless no other remedy is available.*
>
> 92 In our view, the most appropriate remedy is for the respondents to purchase the appellants' shares.
>
> [emphasis added]

786 In the present proceedings, I found no reason seriously to doubt the picture which emerged from the audited financial statements and the expert reports of MMSCPL as a viable going concern which has been making good profits over the year. For example, for FY 2018, MMSCPL's net profit after tax was S$21,109,541; and its accumulated profits for FY 2000 to FY 2018 stood at more than S$196 million.[1111] Indeed, neither set of plaintiffs appeared to me to be seriously disputing that MMSCPL *is* operational and profitable: if anything, one of the plaintiffs' key complaints in these proceedings was that the defendants had over the years extracted the profits for themselves while leaving the plaintiffs out in the cold.

787 Instead of winding up MMSCPL, I was of the view that an appropriate remedy would be to order that Mustaq and Ishret to buy out the shares of the Mustafa Estate and the Samsuddin Estate. At [183]–[314] of these written grounds, I ruled that the 5 January 1995 and the 11 December 2001 Allotments should be declared null and void and of no effect, and that they should be set aside or cancelled pursuant to s 216(2)(*a*) of the Companies Act. The effect of this was that the Mustafa Estate's shareholding should now stand at 25.4% and the Samsuddin Estate's shareholding at 25.7%.

[1111] Chee's First Report at para 2.4.1.

788 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.

789 Following further submissions, the terms of the buy-out orders were settled by me; and these terms appear as Annex A to the judgments extracted by the plaintiffs in Suit 1158 and Suit 780. Copies of the judgments are annexed to these written grounds.

790 I also granted the declarations and the setting-aside orders sought by the two sets of plaintiffs in respect of the 5 January 1995 and the 11 December 2001 Allotments. As to the 27 June 1991 Allotment, the 16 January 1993 Allotment and the 19 May 1993 Allotment, which were challenged by the Suit 780 plaintiffs, I have explained at [338]–[388] above my reasons for declining to set aside these allotments.

791 In their statement of claim, the Suit 780 plaintiffs also prayed for a declaration that Ishret (the second defendant) was not the beneficial owner of the shares registered in her name and that all allotments of shares to her were null and void.[1112] In the course of the trial, no objective evidence of any sort was

[1112] SOC 780 at p 60, para 9.

adduced to substantiate the assertion that Ishret was "not the beneficial owner of the shares registered in her name". More fundamentally, the Suit 780 plaintiffs failed to make out any coherent basis for seeking such a declaration. I therefore declined to grant any such declaration.

792 In addition, the Suit 780 plaintiffs prayed for an order that MOM investigate the Cashback Scheme.[1113] This was clearly misconceived; and I declined to grant any such order. MOM was not a party to these proceedings. Moreover, the proper avenue for seeking such a prayer lies in an application for a mandatory order and not in a civil action. In any event, based on the evidence given by the plaintiffs' own witnesses, MOM had in fact already conducted investigations and interviewed witnesses.

793 As to the Suit 780 plaintiffs' claim against Mustaq for breach of his duties as executor and trustee of the Samsuddin estate, I held that the plaintiffs were entitled to a declaration that he had breached his duties. However, I did not make a separate order for the Suit 780 parties to proceed for an assessment of damages in favour of the Samsuddin estate (*per* prayer 14 of the Suit 780 statement of claim), because on the evidence adduced before me at trial, I was of the view that the losses suffered by the Samsuddin estate would be sufficiently addressed *via* the remedy of the share buyout. I noted that in the Suit 780 plaintiffs' pleadings, the loss alleged to have been suffered by the Samsuddin estate as a result of Mustaq's breaches of his duties as the executor and trustee of the estate was framed in terms of the intentional and systematic removal of MMSCPL's funds (*per* [106] of the Suit 780 statement of claim). While Fayyaz's AEIC stated that the Samsuddin estate was seeking *inter alia* damages to be assessed for Mustaq's breaches of duties as executor and trustee,

[1113] SOC 780 at p 61, para 11.

apart from elaborating on the allegations of oppressive behaviour by Mustaq (and his family members) which led to the removal of funds from MMSCPL, Fayyaz did not give evidence of any separate loss accruing to the estate as a result of Mustaq's breaches of duties. As mentioned above, the valuation process for the share buyout would take into account all monies of MMSCPL that have been misappropriated according to the findings I have made on the defendants' breaches and after making appropriate adjustments to offset the effects of their oppressive and/or unjust conduct.

794 For the record, the Suit 780 plaintiffs have reserved their right to bring separate proceedings to seek the revocation of the grant of probate to Mustaq.[1114]

Reliefs granted in Suit 9

795 In respect of Suit 9, the plaintiffs were entitled to a declaration that the defendant Mustaq had breached his duties as administrator and trustee of the Mustafa Estate.

796 I also agreed that in view of the breaches committed, Mustaq should no longer carry on as the administrator of the Mustafa Estate, and the grant of LA to him should be revoked. However, I had reservations about Ayaz being appointed as the administrator in his place. This was because it was clear to me that there was by now much bad blood between Mustaq on the one hand and Ayaz and his family members on the other hand; and it should not be forgotten that Mustaq himself was also a beneficiary of the Mustafa Estate. In the circumstances, after hearing further submissions from parties, I ordered that a professional third-party administrator be appointed to take over from Mustaq as executor and trustee of the Mustafa estate.

1114 SOC 780 at para 108.

797 Further, the Suit 9 plaintiffs were entitled to 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 reason of the breaches I have found. The Suit 9 plaintiffs submitted that the account should be taken on a wilful default basis as they had successfully proved multiple breaches by Mustaq of his duties as administrator and trustee of the estate. I accepted the plaintiffs' submissions. As the CA held in *UVJ and others v UVH and others* [2020] 2 SLR 336 (at [25]), an account on the basis of wilful default is premised on misconduct by the trustee: the beneficiary must allege and prove at least one act of wilful neglect or default. Given my findings as to Mustaq's breaches, I held that the account should be taken on a wilful default basis.

798 Instead of an order that Mustaq pay to the Mustafa Estate such account as is determined by the court, I ordered that there be liberty for the Suit 9 plaintiffs to apply for further orders in respect of any losses suffered by the estate, as determined by the account; and at that stage, the necessary adjustments can then be made to prevent double recovery in view of the remedy granted in Suit 1158 for the buyout of the estate's shares. I thought this was the more appropriate order because at the end of the day, the account is a procedure – and the precise remedies can come after the account.

Costs

799 The Suit 1158 submitted that they were entitled to the full costs of Suit 1158 in line with the general rule that costs always follow the event, as the plaintiffs had been successful on the fundamental issue of establishing minority

oppression.[1115] The Suit 9 plaintiffs also submitted that they were entitled to the full costs of Suit 9 as they had succeeded in the main issue of whether Mustaq had breached his duties as administrator and whether the grant of LA to him should be revoked.[1116]

800 The Suit 780 plaintiffs similarly submitted that they were entitled to the full costs of the suit.[1117] Although the Suit 780 plaintiffs had not made out their case against Shama and Osama (the third and fourth defendants), they submitted that nevertheless, these two defendants should not be awarded any costs.[1118]

801 Mustaq and Ishret (the first and second defendants) argued that the legal costs and disbursements claimed by the plaintiffs in both suits were unreasonable and excessive, and sought a reduction in the costs and disbursements. Shama, Osama and Iqbal (the fifth defendant) argued that as the claims against Shama and Osama were dismissed and the plaintiffs did not succeed in most of their allegations against Iqbal, the plaintiffs should be liable for Shama's and Osama's costs, while no order as to costs should be made against Iqbal.[1119] The company MMSCPL (the sixth defendant) submitted that as a nominal defendant joined to the suit, no costs order should be made against it.[1120]

802 In respect of the costs in S 1158 and S 780, as the plaintiffs did succeed in establishing their claims of minority oppression against Mustaq and Ishret, I

1115 Suit 1158 and Suit 9 plaintiffs' Costs Submissions at paras 2–3.

1116 Suit 1158 and Suit 9 plaintiffs' Costs Submissions at para 4.

1117 Suit 1158 and Suit 9 Plaintiffs' Costs Submissions at para 7.

1118 Suit 780 Plaintiffs' Costs Submissions at paras 13–14.

1119 3rd to 5th defendants' Costs Submissions for HC/S 1158/2017 at paras 2–3.

1120 6th defendant's Costs Submissions for HC/S 1158/2017 at paras 2–4.

was of the view that they should be awarded costs, but that the quantum of costs should be reduced to take into account that they had not succeeded on all their allegations of oppression. The Suit 1158 plaintiffs fared better than the Suit 780 plaintiffs, as they succeeded on most of their allegations of oppression except those relating to the "sham" BID invoices. I was of the view, therefore, that there should only be a very modest reduction in the quantum of costs payable to the Suit 1158 plaintiffs by Mustaq and Ishret. The Suit 780 plaintiffs, on the other hand, did not succeed on quite a number of allegations of oppression, and also failed in their claim of an "express trust": there had to be an appropriate reduction in the quantum of costs payable to them so as to reflect this state of affairs.

803 36 trial days were originally allocated for the trial of all three suits; and although in the end only 20 trial days were used following the defendants' decision to submit no case, I took into consideration the fact that the defendants' decision was made known only midway through trial: the plaintiffs' counsel in both Suit 1158 and Suit 780 would clearly have done their getting-up on the basis that they were preparing for a 36-day trial, with cross-examination of five defendants and their expert witness. A total of 14 witnesses were called by the plaintiffs in Suit 1158, including two experts; and 14 witnesses, including one expert, were also called by the plaintiffs in Suit 780 (although in all, seven witnesses were common to both suits). As for the complexity of the matters in dispute, I agreed with the plaintiffs' counsel that there were a number of complex legal issues dealt with in the course of proceedings (*eg* the issues relating to the *Wong Moy* exception). The evidence in this case was very voluminous, with documentary evidence going back more than two decades. Counsel also had to contend with the fact that witnesses (several of whom were quite elderly) were recalling events years – even decades – in the past. In addition, several curveballs were thrown by the defendants during the

proceedings – including the sudden application to amend their pleadings in what I considered an unexpected manner halfway through the trial. All of this would have had a bearing on the level of skill, specialised knowledge and responsibility and the time and labour expected of counsel.

804 Having regard to the above considerations and bearing in mind the fairly high degree of overlap in evidential and legal issues as between Suit 1158 and Suit 9, I ordered that in respect of the plaintiffs' party-and-party costs in Suit 1158, Mustaq and Ishret were to pay the plaintiffs $400,000 (excluding disbursements). I ordered that Mustaq and Ishret should be jointly and severally liable for these costs. The $400,000 costs included the costs of interlocutory summonses for which costs had been reserved prior to trial. For Suit 9, I ordered Mustaq to pay the plaintiffs party-and-party costs of $400,000 (excluding disbursements). This meant that the total quantum of party-and-party costs awarded to the Suit 1158 and Suit 9 plaintiffs came to $800,000 (excluding disbursements).

805 As the Suit 1158 plaintiffs did not succeed in their claims against Shama and Osama, I ordered the plaintiffs to pay Shama and Osama costs of $120,000 (all in, including disbursements). As for Osama, although the Suit 1158 plaintiffs had succeeded against him on some of their claims of oppression, they had failed on others. On balance, therefore, I decided it was fair that Osama should not be ordered to pay any costs to the Suit 1158 plaintiffs. As for the company MMSCPL, I ordered that all fees, costs, expenses and disbursements incurred by and charged to it arising out of and/or in connection with the plaintiffs' complaints and this action should be fully reimbursed by Mustaq and Ishret.

806 For S 780, I ordered Mustaq and Ishret to pay the plaintiffs party-and-party costs (excluding disbursements) fixed at $450,000 (excluding disbursements). This figure factored in a reduction on account of the allegations or claims which the Suit 780 plaintiffs did not succeed on, and also included the costs of various interlocutory summonses.

807 The Suit 780 plaintiffs were also ordered to pay Shama and Osama costs fixed at $120,000 all in (including disbursements). For the reason explained above in relation to Suit 1158 (at [802]), I did not order Iqbal to pay any costs. As for the company MMSCPL, all fees, costs, expenses and disbursements incurred by and charged to it arising out of and/or in connection with the Suit 780 plaintiffs' complaints and this action were ordered to be fully reimbursed by Mustaq and Ishret.

808 Disbursements were dealt with separately on 12 April 2022, as both sets of plaintiffs needed time to provide the defendants with the breakdown of the disbursements claimed and supporting documents. In gist, I allowed most of the disbursements claimed by the plaintiffs, save for the item relating to the consultancy fees paid to Rajesh's consultancy firm (Bliss Infotech). This item was quantified as $540,000 in S 1158 and separately as $340,000 in S 780 – which in my view were very much excessive, given Rajesh's own description at trial of the work he had done. I reduced this item to $100,000 in S 1158 and $90,000 in S 780.

809 In S 780, the defendants also objected to the amount of $522,445-21 claimed in respect of the fees paid to the plaintiffs' expert Mr Chee of RSM Corporate Advisory Pte Ltd. In my view, $522,445-21 was a reasonable disbursement figure for all four of Chee's expert reports and his testimony. However, as some of the Suit 780 plaintiffs' claims on which Chee provided

expert evidence were dismissed (through no fault of Chee's), I agreed with the defendants that there should be a deduction to account for that portion of his evidence which I would attribute to those dismissed claims. I therefore allowed an amount of $400,000 in respect of this item.

Applications for stay of execution (SUM 401, 402 and SUM 29)

810 On 28 January 2022 Mustaq and Ishret took out applications for the stay of execution of the judgments in all three suits (HC/SUM 401/2022 ("SUM 402") in Suit 1158, HC/SUM 402/2022 ("SUM 402") in Suit 780 and HCF/SUM 29/2022 ("SUM 29") in Suit 9). In gist, Mustaq and Ishret claimed that their appeals would be rendered nugatory if the stay applications were not granted, because they claimed that the plaintiffs did not have available or sufficient valuable assets for there to be a reasonable probability of recovering any sums paid towards the share purchase price and the costs of the proceedings.

811 Parties were agreed on the legal principles applicable to an application for a stay of execution pending appeal. These principles were summarised by the High Court in *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC 174 ("*Strandore*") (at [7]) as follows:

> (a) While the court has the power to grant a stay, and this is entirely at the discretion of the court, the discretion must be exercised judicially, ie, in accordance with well-established principles.
>
> (b) The first principle is that, as a general proposition, the court does not deprive a successful litigant of the fruits of his litigation, and lock up funds to which he is prima facie entitled, pending an appeal. There is no difference whether the judgment appealed against was made on a summary basis or after a full trial.
>
> (c) This is balanced by the second principle. When a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory. Thus a stay will be granted if it can be shown by affidavit that, if the

> damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.
>
> (d) The third principle follows, and is an elaboration of the second principle, that an appellant must show special circumstances before the court will grant a stay.

812 Having reviewed the affidavit evidence, I did not find that Mustaq and Ishret had made out special circumstances warranting the grant of a stay of execution in all three cases. The burden of proof was on Mustaq and Ishret, as the applicants, to satisfy me of the plaintiffs' impecuniosity, and not for each plaintiff individually to prove to the court's satisfaction the extent of his or her financial means. Mustaq and Ishret failed to show that the plaintiffs were financially impecunious, or that they would do anything to render my decisions nugatory, or that they would abscond with the proceeds from the share buy-out and make themselves untraceable in the event of a successful appeal. Further, as I pointed out to counsel at the hearing on 28 March 2022, given the inability of parties to agree so far on most if not all matters related to the share buyout (and in the case of Suit 9, on the terms of the professional administrator's appointment), it seemed to me highly unlikely that the purchase monies for the plaintiffs' shares would be not only paid to the respective estates but also distributed to each of the individual plaintiffs before the hearing of the appeals.

813 I should add that this was a case where judgment was given after a lengthy trial, in the course of which I saw no evidence either of the plaintiffs being insolvent or impecunious or of their being inclined to avoid compliance with orders of Court. In fact, just as an example: in respect of the costs which I ordered both sets of plaintiffs to pay the third and fourth defendants (Shama and Osama), it was not disputed that the plaintiffs in Suit 1158 had paid the costs already even without demand being made, and the plaintiffs' counsel for the plaintiffs in Suit 780 confirmed for the record at the hearing on 28 March 2022 that his clients would shortly be paying those costs as well. I also noted that

Mustaq and Ishret did not dispute the plaintiffs' assertions as to the existence of the enforcement regime between Singapore and India. Therefore, the fact that some of the plaintiffs were located in India was not to my mind a factor that weighed in the defendants' favour in considering whether they had shown special circumstances justifying a stay.

814 I found it telling, as well, that although oral judgment was given in August 2021 and the terms of the buyout order were settled on 9 December 2021, Mustaq and Ishret did not file this stay application until late January 2022, and then only after they were asked by the plaintiffs for payment of the costs of the trial proceedings. Indeed, not only was no stay application filed until late January 2022, in the months between 23 August 2021 and January 2022, the defendants participated in extensive discussions and negotiations over the terms of the buyout order, the terms of the engagement of the valuer and so on, and gave no indication at all that they would apply for a stay of execution. I agreed with the plaintiffs' counsel that one could reasonably infer from the defendants' protracted inaction that they themselves had no genuine belief that the plaintiffs were impecunious or likely unable to repay any monies paid in the event of the defendants' successful appeal; further, that the eventual timing of the stay applications – coming as they did on the heels of the plaintiffs' request for payment of their costs – strongly suggested that Mustaq and Ishret filed these stay applications primarily to delay the payment of costs ordered against them.

815 Finally, I was disturbed to see from the affidavit evidence that at the same time that Mustaq and Ishret were coming to court to demand a stay of execution, they themselves had apparently continued with the reprehensible conduct which was the subject of the plaintiffs' claims and which formed the subject of my findings of oppression at trial. I refer in particular to the 17 January 2022 AGM, which was held without notice to the Mustafa and

Samsuddin Estates, and at which it was resolved that Mustaq and Ishret be paid $5,000,000 and $200,000 in directors' fees respectively.[1121] This would have come soon after the specific finding I made that the payment of substantial director's fees to Mustaq and Ishret in the context of non-payment of dividends constituted oppressive behaviour. That Mustaq and Ishret had conducted themselves in this manner while concurrently seeking orders to stay the execution of the judgments granted to the plaintiffs seemed to me another good reason not to deny the plaintiffs the fruits of the hard-fought litigation.

816 For the reasons set out above, I dismissed the stay applications in all three suits.

Mavis Chionh Sze Chyi
Judge of the High Court

Davinder Singh s/o Amar Singh SC, Jaikanth Shankar, Sngeeta Rai, Stanley Tan Jun Hao, Golovkovskaya Irina, Joshua Chia, Sheiffa Safi Shirbeeni and Delvin Chua (Davinder Singh Chambers LLC) (instructed); Singh Purain Darshan, Avtar Ranee Kaur Purain, Avinash Singh Purain and Jazmeen Kaur d/o Charanpal Singh (Darshan & Teo LLP) for the plaintiffs in HC/S 1158/2017 and HCF/S 9/2017;
Sarbjit Singh Chopra, La'Brooy Sean Francois, Roshan Singh Chopra, Lee Wen Rong Gabriel and Lim Jonathan Wei-Ren for the plaintiffs (Selvam LLC) in HC/S 780/2018;
Yeo Khirn Hai Alvin SC, Koh Swee Yen SC, Tiong Teck Wee, Quek Yi Zhi Joel (Guo Yizhi), Lee Ming Shan Hannah, Wong Yan Yee,

[1121] See Ayaz's affidavit at para 20(d)(iii), Exhibit AA-248 pp 888–891.

Law May Ning and Claire Lim (WongPartnership LLP) for the first and second defendants in HC/S 1158/2017 and HC/S 780/2018 and the defendant in HCF/S 9/2017;
Yuen Djia Chiang Jonathan and Chia Ming Yee Doreen (Xie Minyi) (Rajah & Tann Singapore LLP) for the third, fourth and fifth defendants in HC/S 1158/2017 and HC/S 780/2018;
Lim Tat, Subir Singh Grewal, Kang Hui Lin Jasmin and Wan Chi Kit (Aequitas Law LLP) for the sixth defendant in HC/S 1158 and HC/S 780/2018.

Annex A: Order for Suit 1158

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

Case No.: HC/S 1158/2017
Doc No.: HC/JUD 590/2021
Filed: 20-December-2021 10:09 AM

Between

1. AYAZ AHMED
(FIN No. F1874365P)
2. KHALIDA BANO
(NRIC No. S2731674C)
3. ISHTIAQ AHMAD
(India Passport No. N644234)
4. MAAZ AHMAD KHAN
(FIN No. F1363903P)
5. WASELA TASNEEM
(India Passport No. M1926010)
6. ASIA
(India Passport No. H5294991)

...Plaintiff(s)

And

1. MUSTAQ AHMAD @ MUSHTAQ AHMAD S/O MUSTAFA
(NRIC No. S2019378F)
2. ISHRET JAHAN
(NRIC No. S2595621D)
3. SHAMA BANO
(NRIC No. S7770799I)
4. ABU OSAMA
(NRIC No. S7170545E)
5. IQBAL AHMAD
(NRIC No. S2586147G)
6. MOHAMED MUSTAFA & SAMSUDDIN CO. PTE LTD
(Singapore UEN No. 198900680Z)

...Defendant(s)

JUDGMENT

Before: Justice Chionh Sze Chyi Mavis in Open Court
Date of Judgment: 09-December-2021

The action having been tried before the Honourable Justice Chionh Sze Chyi Mavis on 12 to 16 October 2020, 19 to 23 October 2020, 26 to 30 October 2020, 2 to 6 November 2020 and 9 November 2020, **IT IS ADJUDGED THAT:**

Paragraph 1

It is declared that the 5 January 1995 Allotment is void and of no effect;

Paragraph 2

The 5 January 1995 Allotment be cancelled pursuant to section 216(2)(a) of the Companies Act (Cap 50, 2006 Rev Ed) ("**Companies Act**");

Paragraph 3

It is declared that the 11 December 2001 Allotment is void and of no effect;

Paragraph 4

The 11 December 2001 Allotment be cancelled pursuant to section 216(2)(a) of the Companies Act;

Paragraph 5

The Estate of Mustafa s/o Majid Khan ("Mustafa Estate") is the legal and beneficial owner of 25.4 % of the shares of the 6th Defendant;

Paragraph 6

The 1st and 2nd Defendants shall buy out (the "**Buyout Order**") the Mustafa Estate's 25.4% shareholding in the 6th Defendant at a price (the "**Purchase Price**") to be determined by an independent valuer (the "**Valuer**") who shall be appointed by agreement between the Plaintiffs, the Plaintiffs in HC/Suit 780/2018 and the 1st and 2nd Defendants within 3 weeks from the date of this Judgment, failing which by the Court;

Paragraph 7

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 a part of the Buyout Order and this Judgment;

Paragraph 8

The timelines set out in this Judgment and/or the Buyout Order may be extended by the Court or by consent of the Plaintiffs and the 1st and 2nd Defendants in writing;

Paragraph 9

For the avoidance of doubt, between the date of this Judgment to the date on which the Mustafa Estate's shares are bought by the 1st and 2nd Defendants in accordance with the Buyout Order, the Mustafa Estate shall continue to be a registered shareholder holding 25.4% of the shares in the 6th Defendant and shall be entitled to exercise all rights and privileges as a shareholder of the 6th Defendant, including but not limited to the pre-emption rights provided by Articles 31 to 36 of the 6th Defendant's Articles of Association;

Paragraph 10

The 1st and 2nd Defendants shall pay the Mustafa Estate interest at the rate of 5.33% per annum on the Purchase Price from the date on which the 1st and 2nd Defendants are to buy out the Mustafa Estate's Shares in the 6th Defendant at the Purchase Price pursuant to paragraph 9 of Annex A herein to the date on which full payment of the Purchase Price is made to the Mustafa Estate;

Paragraph 11

The Plaintiffs have not made out their claim that the 3rd and 4th Defendants acted in a manner that was

oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the conduct of the 5 January 1995 and 11 December 2001 Allotments;

Paragraph 12

The Plaintiffs have not made out their claim that the 3rd and 4th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the unsecured and interest free loans from the 6th Defendant;

Paragraph 13

The Plaintiffs have not made out their claim that the 1st to 5th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the creation of sham invoices;

Paragraph 14

The Plaintiffs have not made out their claim that the 2nd to 5th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the falsification of the applications to the Ministry of Manpower for work passes for the foreign employees of the 6th Defendant;

Paragraph 15

The Plaintiffs have not made out their claim that the 3rd to 5th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the non-payment of dividends while paying substantial directors' fees to the 1st and 2nd Defendants;

Paragraph 16

The relief sought by the Plaintiffs that the 6th Defendant be wound up pursuant to section 216(2)(f) of the Companies Act is not granted;

Paragraph 17

The 1st Defendant's counterclaim is dismissed; and

Paragraph 18

The Court shall hear the parties on the issue of costs. All costs shall be awarded on the standard basis.

Annex A of the draft Judgment

Paragraph 1 of Annex A

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.

Paragraph 2 of Annex A

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 the 6th Defendant that have been misappropriated according to the findings made by the Honourable Justice Mavis Chionh 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 maybe elaborated upon by Her Honour in any written grounds that may be delivered by Her Honour:

i. That the 1st, 2nd and 5th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the conduct of the 5 January 1995 and 11 December 2001 Allotments;

ii. The 1st, 2nd and 5th Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the unsecured and interest free loans from the 6th Defendant;

iii. The 1st Defendant acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the falsification of applications to the Ministry of Manpower for work passes for the foreign employees of the 6th Defendant;

iv. The 1st and 2nd Defendants acted in a manner that was oppressive to the Mustafa Estate's rights as a shareholder of the 6th Defendant in relation to the non-payment of dividends while paying substantial directors' fees to the 1st and 2nd Defendants.

Paragraph 3 of Annex A

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 1st, 2nd and/or the 5th Defendants, and determine the value of the Mustafa Estate's 25.4% shareholding in the 6th Defendant as at 16 August 2021.

Paragraph 4 of Annex A

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.

Paragraph 5 of Annex A

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 1st and 2nd Defendants in the manner stated in paragraph 1 herein.

Paragraph 6 of Annex A

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 this Suit, HC/S 780/2018 and HCF/S 9/2017 ("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 or Information 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.

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.

All written communications from the Valuer to any party must be copied to the other parties. All written communications from a party to the Valuer must be copied to the other parties.

The Valuer shall be entitled to speak to such persons as the Valuer may consider necessary to assist him in discharging his duties including but not limited to the Plaintiffs and/or the 1st and 2nd Defendants and/or their nominated representatives.

If the Valuer forms the view that 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.

Paragraph 7 of Annex A

The 1st and 2nd Defendants and the 6th Defendant and its directors shall provide their full cooperation to the Valuer as may be necessary for the Valuer to carry out his work and to determine the Purchase Price.

Paragraphs 8 of Annex A

Within 2 months from the date of the Valuer's appointment, the Plaintiffs and the 1st

and 2nd Defendants are entitled to make one round of submissions to the Valuer on the matters that are relevant to the Valuer's determination of the Purchase Price, having regard to the terms of the Buyout Order. Each party's submissions must be copied to the other parties.

Within 4 months from the date of the Valuer's appointment, the Valuer shall provide a draft report to the Plaintiffs and to the 1st and 2nd Defendants who will then be entitled to make one further round of submissions to the Valuer on the matters set out in the draft report and/or matters that the Valuer ought to have taken into account which he did not, which submissions shall be sent to the Valuer within 4 weeks of receiving the draft report from the Valuer. Each party's submissions must be copied to the other parties.

Within 4 weeks from the date on which the Valuer receives the submissions from the Plaintiffs and 1st and 2 Defendants referred to above, the Valuer shall finalise and deliver a report (the "**Valuer's Report**") to the Court, the Plaintiffs and the 1st and 2nd Defendants. The Valuer's Report shall include the Purchase Price as determined by the Valuer in accordance with the terms of the Buyout Order and all decisions, findings and conclusions as determined by the Valuer in determining the Purchase Price, including any inferences drawn and the bases for such inferences.

The Valuer's Report can only be challenged on one or more of the following three grounds: (a) if it is not in accordance with the terms of the Buyout Order or (b) if the valuation was patently or manifestly in error or (c) there was fraud, corruption, collusion, dishonesty, bad faith or bias. In the absence of any of these three grounds, the Valuation shall be conclusive and binding on the Plaintiffs and the 1st and 2nd Defendants for the purpose of ascertaining the Purchase Price at fair value of the Mustafa Estate's 25.4% shareholding in the 6th Defendant.

Paragraph 9 of Annex A

Within 3 weeks from the date on which the Valuer delivers the Valuer's Report to the Court, the Plaintiffs and the 1st and 2nd Defendants, the 1st and 2nd Defendants shall buy out the Mustafa Estate's 25.4% shareholding in the 6th Defendant at the Purchase Price.

Paragraph 10 of Annex A

In the event the 1st and 2nd Defendants fail to buy out the Mustafa Estate's 25.4% shareholding by the time prescribed above, the Plaintiffs shall be at liberty to apply to the Court.

Paragraph 11 of Annex A

If the Valuer's determination of the Purchase Price is subsequently varied and/or set aside by the Court upon any application by the Plaintiffs and/or the 1st and 2nd Defendants, the parties shall be entitled to seek the necessary consequential relief from the Court.

Paragraph 12 of Annex A

The Valuer, the Plaintiffs and the 1st and 2nd Defendants have liberty to apply to Court.

1.

TEH HWEE HWEE
REGISTRAR
SUPREME COURT
SINGAPORE

Annex B: Orders for Suit 780

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

Case No.: HC/S 780/2018
Doc No.: HC/JUD 595/2021
Filed: 27-December-2021 03:02 PM

Between

1. FAYYAZ AHMAD
(NRIC No. S2723062H)
2. ANSAR AHMAD
(FIN No. G5194085M)

...Plaintiff(s)

And

1. MUSTAQ AHMAD @ MUSHTAQ AHMAD S/O MUSTAFA
(NRIC No. S2019378F)
2. ISHRET JAHAN
(NRIC No. S2595621D)
3. SHAMA BANO
(NRIC No. S7770799I)
4. ABU OSAMA
(NRIC No. S7170545E)
5. IQBAL AHMAD
(NRIC No. S2586147G)
6. MOHAMED MUSTAFA & SAMSUDDIN CO. PTE LTD
(Singapore UEN No. 198900680Z)

...Defendant(s)

Counterclaim of 1st Defendant

Between

MUSTAQ AHMAD @ MUSHTAQ AHMAD S/O MUSTAFA
(NRIC No. S2019378F)

...Plaintiff(s) in Counterclaim

And

1. FAYYAZ AHMAD
(NRIC No. S2723062H)
2. ANSAR AHMAD
(FIN No. G5194085M)

...Defendant(s) in Counterclaim

JUDGMENT

Before: Justice Chionh Sze Chyi Mavis in Open Court
Date of Judgment: 09-December-2021

This action having been tried before the Honourable Justice Chionh Sze Chyi Mavis on 12 October 2020 to 16

October 2020, 19 October 2020 to 23 October 2020, 26 October 2020 to 30 October 2020, 2 to 6 November 2020 and 9 November 2020, **IT IS ADJUDGED THAT**:

Paragraph 1

It is declared that the 5 January 1995 Allotment is void and of no effect;

Paragraph 2

The 5 January 1995 Allotment be cancelled pursuant to section 216(2)(a) of the Companies Act (Cap 50, 2006 Rev Ed);

Paragraph 3

It is declared that the 11 December 2001 Allotment is void and of no effect;

Paragraph 4

The 11 December 2001 Allotment be cancelled pursuant to section 216(2)(a) of the Companies Act (Cap 50, 2006 Rev Ed);

Paragraph 5

The 1991 to 1993 Allotments shall not be set aside;

Paragraph 6

The Estate of Samsuddin s/o Mokhtar Ahmad ("**Samsuddin Estate**") is the legal and beneficial owner of 25.7 % of the shares of the 6th Defendant;

Paragraph 7

The 1st and 2nd Defendants shall buy out (the "**Buyout Order**") the Samsuddin Estate's 25.7% shareholding in the 6th Defendant at a price (the "**Purchase Price**") to be determined by an independent valuer (the "**Valuer**") who shall be appointed by agreement between the Plaintiffs, the Plaintiffs in HC/S 1158/2017 and the 1st and 2nd Defendants within 3 weeks from the date of this Judgment, failing which by the Court;

Paragraph 8

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;

Paragraph 9

The timelines set out in this Judgment and/or Buyout Order may be extended by the Court or by consent of the Plaintiffs and the 1st and 2nd Defendants in writing;

Paragraph 10

For the avoidance of doubt, between the date of this Judgment to the date on which the Samsuddin Estate's shares are bought by the 1st and 2nd Defendants in accordance with the Buyout Order, the Samsuddin Estate shall continue to be a registered shareholder holding 25.7% of the shares in the 6th Defendant and shall be entitled to exercise all rights and privileges as a shareholder of the 6th Defendant, including but not limited to the pre-emption rights provided by Articles 31 to 36 of the 6th Defendant's Articles of Association;

Paragraph 11

The 1st and 2nd Defendants shall pay the Samsuddin Estate interest at the rate of 5.33% per annum on the Purchase Price from the date on which the 1st and 2nd Defendants are to buy out the Samsuddin Estate's Shares in the 6th Defendant at the Purchase Price pursuant to paragraph 9 of Annex A herein to the date on which full payment of the Purchase Price is made to the Samsuddin Estate

Paragraph 12

The Plaintiffs have not made out their claims of oppression against the 1st to 5th Defendants in respect of the following:

(a) The 3rd to 5th Defendants in respect of the 1991 to 1993 Allotments;

(b) The 1st to 5th Defendants in respect of the 9 April 1996 and 24 February 1997 Allotments;

(c) The 3rd and 4th Defendants in respect of the unsecured and interest free directors' loans;

(d) The 2nd to 5th Defendants in respect of the falsification of applications to the Ministry of Manpower for work passes for the foreign employees of the 6th Defendant;

(e) The 3rd to 5th Defendants in respect of the allegation that no dividends were declared or paid while the 1st and 2nd Defendants received substantial directors' fees;

(f) The 1st to 5th Defendants in respect of the allegation that sham transactions backed by sham invoices were concocted to create the appearance that the 6th Defendant was indebted to B.I. Distributors Pte Ltd ("**the BID Claim**");

(g) The 1st to 5th Defendants in respect of the allegations pleaded at paragraphs 80 to 96 and 97A to 97E of the Plaintiffs' Statement of Claim (Amendment No. 1) dated 12 August 2020 ("**SOC**"); and

(h) The 1st Defendant acted in a manner pleaded at paragraph 110 SOC.

Paragraph 13

Subject to the findings that the Plaintiffs have not made out their claims that the 1st Defendant fraudulently breached his fiduciary duties and duties as executor and trustee of the Samsuddin Estate by reason of the matters set out in paragraph 12 above, it is declared that the 1st Defendant fraudulently breached his fiduciary duties and duties as an executor and trustee of the Samsuddin Estate, with the loss to the Samsuddin Estate as a result of his conduct to be addressed by the Buyout Order herein.

Paragraph 14

The Plaintiffs' claim that the 1st Defendant holds 1/3 of the Trust Assets on trust as defined at paragraphs 98 and 99 of the SOC (1) for the Samsuddin Estate is dismissed;

Paragraph 15

The Plaintiffs' claims against the 3rd and 4th Defendants are dismissed;

Paragraph 16

The claim that the 2nd Defendant is not the beneficial owner of the shares of the 6th Defendant registered in her name is dismissed;

Paragraph 17

The claim for an investigation by the Ministry of Manpower is dismissed;

Paragraph 18

The relief sought by the Plaintiffs that the 6th Defendant be wound up pursuant to section 216 (2) (f) of the Companies Act is not granted;

Paragraph 18A

The 1st Defendant's counterclaim against the Plaintiffs is dismissed;

Paragraph 19

The 1st Defendant's counterclaim against the 1st Plaintiff is dismissed; and

Paragraph 20

The Court shall hear parties on the issue of costs. All costs shall be awarded on the standard basis.

1. Annex A

TEH HWEE HWEE
REGISTRAR
SUPREME COURT
SINGAPORE

Annex A of the Judgment

Paragraph 1 of Annex A

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 Samsuddin Estate's 25.7% shareholding in the 6th Defendant.

Paragraph 2 of Annex A

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 the 6th Defendant that have been misappropriated according to the findings made by the Honourable Justice Mavis Chionh 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 1st, 2nd and 5th Defendants acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of the 6th Defendant in relation to the conduct of the 5 January 1995 and 11 December 2001 Allotments;

ii. The 1st, 2nd and 5th Defendants acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of the 6th Defendant in relation to the unsecured and interest free loans from the 6th Defendant;

iii. The 1st Defendant acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of the 6th Defendant in relation to the falsification of applications to the Ministry of Manpower for work passes for the employees of the 6th Defendant;

iv. The 1st and 2nd Defendants acted in a manner that was oppressive to the Samsuddin Estate's rights as a shareholder of the 6th Defendant in relation to the non-payment of dividends while paying substantial directors' fees to the 1st and 2nd Defendants;

Paragraph 3 of Annex A

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 1st, 2nd and/or the 5th Defendants, and determine the value of the Samsuddin Estate's 25.7% shareholding in the 6th Defendant as at 16 August 2021.

Paragraph 4 of Annex A

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.

Paragraph 5 of Annex A

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 1st and 2nd Defendants in the manner stated in paragraph 1 herein.

Paragraph 6 of Annex A

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 this Suit, HC/S 1158/2017 and HCF/S 9/2017 ("**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 or Information 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.

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.

All written communications from the Valuer to any party must be copied to the other parties. All written communications from a party to the Valuer must be copied to the other parties.

The Valuer shall be entitled to speak to such persons as the Valuer may consider necessary to assist him in discharging his duties, including but not limited to the Plaintiffs and/or the 1st and 2nd Defendants and/or their nominated representatives.

If the Valuer forms the view that 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.

Paragraph 7 of Annex A

The 1st and 2nd Defendants and the 6th Defendant and its directors shall provide their full cooperation to the Valuer as may be necessary for the Valuer to carry out his work and to determine the Purchase Price.

Paragraph 8 of Annex A

Within 2 months from the date of the Valuer's appointment, the Plaintiffs and the 1st and 2nd Defendants are entitled to make one round of submissions to the Valuer on the matters that are relevant to the Valuer's determination of the Purchase Price, having regard to the terms of the Buyout Order. Each party's submissions must be copied to the other parties.

Within 4 months from the date of the Valuer's appointment, the Valuer shall provide a draft report to the Plaintiffs and to the 1st and 2nd Defendants who will then be entitled to make one further round of submissions to the Valuer on the matters set out in the draft report and/or matters that the Valuer ought to have taken into account which he or she did not, which submissions shall be sent to the Valuer within 4 weeks of receiving the draft report from the Valuer. Each party's submissions must be copied to the other parties.

Within 4 weeks from the date on which the Valuer receives the submissions from the Plaintiffs and 1st and 2 Defendants referred to above, the Valuer shall finalise and deliver a report (the "**Valuer's Report**") to the Court, the Plaintiffs and the 1st and 2nd Defendants. The Valuer's Report shall include the Purchase Price as determined by the Valuer in accordance with the terms of the Buyout Order and all decisions, findings and conclusions as determined by the Valuer in determining the Purchase Price, including any inferences drawn and the bases for such inferences.

The Valuer's Report can only be challenged on one or more of the following three grounds: (a) if it is not in accordance with the terms of the Buyout Order or (b) if the valuation was patently or manifestly in error or (c) there was fraud, corruption, collusion, dishonesty, bad faith or bias. In the absence of any of these three grounds, the Valuation shall be conclusive and binding on the Plaintiffs and the 1st and 2nd Defendants for the purpose of ascertaining the Purchase Price at fair value of the Samsuddin Estate's 25.7% shareholding in the 6th Defendant.

Paragraph 9 of Annex A

Within 3 weeks from the date on which the Valuer delivers the Valuer's Report to the Court, the Plaintiffs and the 1st and 2nd Defendants, the 1st and 2nd Defendants shall buy out the Samsuddin Estate's 25.7% shareholding in the 6th Defendant at the Purchase Price.

Paragraph 10 of Annex A

In the event the 1st and 2nd Defendants fail to buy out the Samsuddin Estate's 25.7% shareholding by the time prescribed above, the Plaintiffs shall be at liberty to apply to the Court.

Paragraph 11 of Annex A

If the Valuer's determination of the Purchase Price is subsequently varied and/or set aside by the Court upon any application by the Plaintiffs and/or the 1st and 2nd Defendants, the parties shall be entitled to seek the necessary consequential relief from the Court.

Paragraph 12 of Annex A

The Valuer, the Plaintiffs and the 1st and 2nd Defendants have liberty to apply to Court.

Annex C: Orders for Suit 9

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

Case No.: HCF/S 9/2017
Doc No.: HCF/JUD 3/2021
Filed: 17-December-2021 12:43 PM

Between

1. AYAZ AHMED
(FIN No. F1874365P)
2. KHALIDA BANO
(NRIC No. S2731674C)
3. ISHTIAQ AHMAD
(India Passport No. N644234)
4. MAAZ AHMAD KHAN
(FIN No. F1363903P)
5. WASELA TASNEEM
(India Passport No. M1926010)
6. ASIA
(India Passport No. H5294991)

...Plaintiff(s)

And

MUSTAQ AHMAD @ MUSHTAQ AHMAD S/O MUSTAFA
(NRIC No. S2019378F)

...Defendant(s)

JUDGMENT

Before: Justice Mavis Chionh in Open Court
Date of Judgment: 09-December-2021

The action having been tried before the Honourable Justice Chionh Sze Chyi Mavis on 12 to 16 October 2020, 19 to 23 October 2020, 26 to 30 October 2020, 2 to 6 November 2020 and 9 November 2020, **IT IS ADJUDGED THAT:**

Paragraph 1

It is declared that the Defendant has breached his duties as administrator and trustee of the Mustafa Estate;

Paragraph 2

The Plaintiffs have not made out their claim that the Defendant breached his duties as administrator and trustee of the Mustafa Estate in relation to the creation of sham invoices;

Paragraph 3

The grant of letters of administration to the Defendant in relation to the Mustafa Estate be revoked pursuant to section 32 of the Probate and Administration Act;

Paragraph 4

The grant of letters of administration in relation to the Mustafa Estate be made to a professional third-party administrator who shall be appointed by agreement between the Plaintiffs and the Defendant within 3 weeks from the date of this Judgment, failing which by the Court;

Paragraph 5

The Defendant shall give an account of his administration of the Mustafa Estate on a wilful default basis;

Paragraph 6

It is declared that the Defendant is liable to account to the Mustafa Estate for the losses caused to the Mustafa Estate by reason of his breaches of duties;

Paragraph 7

The Plaintiffs are at liberty to apply, after the taking of an account, for further orders. For the avoidance of doubt, these further orders may include but are not limited to orders that the Defendant pay to the Plaintiffs all sums found to be due to the Plaintiffs on the taking of the account and for judgement to be entered for the Plaintiffs in respect of the sums found due together with interest at such rate and for such period as the Court deems fit (subject to there being no double recovery as between this action and the Minority Oppression Action in HC/S 1158/2017);

Paragraph 8

The Defendant shall pay the Plaintiffs' costs on a standard basis. The Court will hear the parties on the quantum of the costs.

1. S 9 - Draft Judgment (Endorsed) - 16.12.2021

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KENNETH YAP YEW CHOH
REGISTRAR
FAMILY JUSTICE COURTS
SINGAPORE