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

[2022] SGHC 173

Originating Summons No 1267 of 2021

Between

Bhavin Rashmi Mehta

… *Plaintiff*

And

(1) Chetan Mehta
(2) Sanjiwan Sahni
(3) Quek Hung Guan
(4) Arpee Gem Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Companies — Directors — Resignation]
[Civil Procedure — Injunctions]

Bhavin Rashmi Mehta
v
Chetan Mehta and others

[2022] SGHC 173

General Division of the High Court — Originating Summons No 1267 of 2021
Valerie Thean J
6, 12 May, 15 June 2022

28 July 2022

Valerie Thean J:

Introduction

1 Wrongs against companies should be sought to be corrected by companies. While a member of a company may be aggrieved when he believes that a wrong has been committed against the company, he does not, generally, have a personal right to correct that wrong. This is the effect of the proper plaintiff rule from *Foss v Harbottle* (1843) 2 Hare 461 – in an action for a wrong alleged to have been done against a company, the proper plaintiff is *prima facie* the company itself.

2 This rule is not a legalistic procedural obstacle. It is the consequence of the fundamental company law principle that a company is a separate legal personality from its members. It is also justified by practical considerations, because when a wrong has been committed against a company, the interests of

all of the company's members and creditors will have been affected. One member should not be allowed to proceed by way of a personal action and recover at the expense of the other, similarly affected, parties. Nor should a prospective defendant have to worry about facing a multiplicity of related suits from different affected parties: *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*") at [65]. While s 216A of the Companies Act 1967 (2020 Rev Ed) ("CA") allows a member to pursue corporate wrongs by bringing an action in the company's name, leave of court is required and there are pre-conditions that must be met. This acts as the built-in safeguard to ensure that any such action would be one in the legitimate interests of the company and would result in an increase in corporate value: *Ng Kek Wee* at [64].

3 That being the case, the CA does, in certain circumstances, grant members personal rights. One example would be under s 216 of the CA, which provides members with a remedy for wrongs suffered in their personal capacity. Two other examples, ss 399 and 409A of the CA, allow a member to seek an order from court compelling or restraining a party from doing or not doing certain acts that would contravene the CA. The plaintiff, Mr Bhavin Rashmi Mehta ("Mr Bhavin Mehta"), filed Originating Summons No 1267 of 2021 (the "OS") premised on these provisions in the present case. A request was further made during the course of the oral hearing for equitable relief under the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA").

4 In my view, the present case was not an appropriate occasion for the recognition of such personal rights. I dismissed the OS on 12 May 2022. Mr Bhavin Mehta has appealed, and these are my reasons.

Background

The parties

5 The fourth defendant, Arpee Gem Pte Ltd ("Arpee Gem") is a Singapore company incorporated on 23 April 2003 as a holding company for various subsidiaries in a network of companies involved in the business of selling and buying diamonds and precious gems.[1] Initially set up by two brothers, Mr Rashmi Mehta and Mr Prabodh Mehta, the businesses have now devolved to their sons: the plaintiff, Mr Bhavin Mehta (Mr Rashmi Mehta's son), and the first defendant, Mr Chetan Mehta (Mr Prabodh Mehta's son).[2]

6 Mr Bhavin Mehta and Mr Chetan Mehta held one share each in Arpee Gem. Burma Ruby Inc, a company controlled by Mr Bhavin Mehta's side of the family, and BC Manufacturing Inc, a company controlled by Mr Chetan Mehta's side of the family, held 18,000 shares each in Arpee Gem. The only other shareholder in Arpee Gem, Lotus Global Investments Pte Ltd, held preference shares and did not exercise control of the company.[3] The two Mehta families therefore had equal shares in Arpee Gem.

7 The board of Arpee Gem comprised five directors, helmed by Mr Bhavin Mehta and Mr Chetan Mehta. The three remaining directors, the second defendant, Mr Sanjiwan Sahni ("Mr Sahni"), the third defendant, Mr Quek Hung Guan ("Mr Quek") and one Mr Pradipkumar Modi ("Mr Modi") were appointed as independent directors.[4] Mr Modi was not a party to the

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1 Mr Bhavin Rashmi Mehta's 1st Affidavit filed 31 January 2022 ("BRM 1st Affidavit") at paras 5 and 7.

2 BRM 1st Affidavit at para 6.

3 BRM 1st Affidavit at paras 8 and 9.

4 Defendants' Written Submissions dated 29 April 2022 ("DWS") at para 21.

application, and the defendants asserted he was employed by a company controlled by Mr Bhavin Mehta.[5] Mr Sahni was appointed by Mr Prabodh and Mr Rashmi as a director of Arpee Gem sometime in 2004.[6] At issue in this case are two resignations he tendered in 2015 and 2018.

The network of businesses

8 Arpee Gem wholly owned Arpee Gem DMCC, a subsidiary incorporated in Dubai.[7] It was further a majority shareholder and in direct control of two Belgium incorporated subsidiaries, Kay Diamonds NV ("Kay Diamonds") and Gembel European Sales NV ("GES").[8]

9 The estimated shareholding in Kay Diamonds was as follows:[9]

<table>
<tr><td>Arpee Gem</td><td colspan="2">60.8%</td></tr>
<tr><td>Mr Bhavin Mehta</td><td>5.9%</td><td rowspan="2">19.6%</td></tr>
<tr><td>Mr Rashmi Mehta</td><td>13.7%</td></tr>
<tr><td>Mr Chetan Mehta</td><td colspan="2">19.6%</td></tr>
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5 Mr Chentan Mehta's 1st Affidavit dated 30 March 2022 ("CM 1st Affidavit") at paras 10 and 60.

6 Sanjiwan Sahni's 1st Affidavit dated 17 January 2022 ("SS 1st Affidavit") at para 13; Plaintiff's Written Submissions filed 29 April 2022 ("PWS") at para 4.

7 SS 1st Affidavit at para 8; DWS at para 13.

8 BRM 1st Affidavit at para 10.

9 BRM 1st Affidavit at para 10(a).

10 As for GES, the estimated shareholding was as follows:[10]

<table>
<tr><td>Arpee Gem</td><td colspan="2">50.9%</td></tr>
<tr><td>Mr Bhavin Mehta</td><td>7.3%</td><td rowspan="2">24.4%</td></tr>
<tr><td>Mr Rashmi Mehta</td><td>17.1%</td></tr>
<tr><td>Mr Chetan Mehta</td><td colspan="2">24.5%</td></tr>
</table>

11 In turn, Kay Diamonds and GES owned another Belgium incorporated subsidiary, Menamani Investment Corporation NV ("MIC"). The estimated shareholding in MIC was as follows:[11]

Kay Diamonds	51.4%
GES	20.1%
Mr Rashmi Mehta	14.2%
Mr Chetan Mehta	14.2%

12 Mr Prabodh Mehta initially owned shares in all three companies. When he passed away in November 2020 his shares were transferred to his son, Mr Chetan Mehta.[12] Equal ownership was maintained as between the two Mehta families in each of Arpee Gem's three Belgian subsidiaries. Previously, equal representation was also maintained on the boards of all three companies through

10 BRM 1st Affidavit at para 10(b).

11 BRM 1st Affidavit at para 10(c).

12 BRM 1st Affidavit at para 11.

Mr Bhavin Mehta, Mr Rashmi Mehta, Mr Chetan Mehta and Mr Prabodh Mehta. This, however, changed when Mr Prabodh Mehta resigned as a director of all three companies in 2009. Mr Chetan Mehta also resigned as director of GES in 2021.

13 MIC owned a commercial property in Antwerp (the "Antwerp Property").[13] Management dispute over the Antwerp Property formed the immediate context for this dispute.

Events leading up to the OS

14 Sometime in 2019, Mr Chetan Mehta began discussions with Mr Sahni over the sale of the Antwerp Property to a friend of Mr Chetan Mehta.[14] According to Mr Chetan Mehta, this sale would alleviate MIC's financial difficulties, and stave off potential regulatory action from the Belgian authorities.[15] Mr Bhavin Mehta and Mr Rashmi Mehta, however, had doubts about whether the transaction would be carried out fairly as Mr Chetan Mehta was acquainted with the prospective purchaser.[16]

15 In order to facilitate the sale of the Antwerp Property, two draft director's resolutions in writing of Arpee Gem were prepared, dated 3 March 2020. These resolutions sought to re-appoint Mr Prabodh Mehta as a director of Kay Diamonds and appoint Mr Chetan Mehta as the proxy for Arpee Gem in the extraordinary general meetings ("EGMs") of Kay Diamonds and GES.[17]

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13 BRM 1st Affidavit at para 24.

14 BRM 1st Affidavit at p 76.

15 CM 1st Affidavit at para 34.

16 BRM 1st Affidavit at para 28.

17 BRM 1st Affidavit at para 26.

According to Mr Chetan Mehta, the former motion was sought to restore balance to the board representation on Kay Diamonds, in light of Mr Prabodh Mehta's resignation in 2009. This latter motion, Mr Bhavin Mehta contended, was Mr Chetan Mehta's attempt to unilaterally push through with the plan to sell the Antwerp Property, contrary to the established understanding that key decisions had to be made by both Mehta families.[18] These resolutions, however, were eventually withdrawn for want of proper notice.[19]

16 On 16 July 2021, Mr Chetan Mehta issued notice calling for board meetings of Kay Diamonds and MIC. The purpose of the meetings was to convene annual general meetings ("AGMs") for these companies and to set out the agenda for said AGMs ("the Kay Diamonds AGM" and "the MIC AGM").[20] For the Kay Diamonds AGM, Mr Chetan Mehta sought to add to the agenda the appointment of his son as a new director (by this time, Mr Prabodh Mehta had passed away). Again, this was said to be to restore parity between the two Mehta families on the board of Kay Diamonds. Mr Chetan Mehta also sought to add to the same agenda the determination of who was authorized to vote on behalf of Kay Diamonds in the affairs of MIC. For the MIC AGM, Mr Chetan Mehta sought to add to the agenda the decision to sell the Antwerp Property.[21] The convocations for the Kay Diamonds and MIC AGMs were then signed on 16 September 2021, fixing both AGMs on 6 October 2021 (collectively, the "October 2021 AGMs").[22]

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18 BRM 1st Affidavit at para 25.

19 BRM 1st Affidavit at para 27.

20 BRM 1st Affidavit at para 34.

21 BRM 1st Affidavit at para 35.

22 BRM 1st Affidavit at paras 37–38; pp 96 to 98.

17 On 22 September 2021, Mr Bhavin Mehta received an email from one Fiona Lim, who provided corporate secretarial service to Arpee Gem, giving notice of the October 2021 AGMs. This email also contained draft director's resolutions ("the Draft Resolutions").[23] The Draft Resolutions sought to appoint Mr Chetan Mehta as Arpee Gem's proxy for the Kay Diamonds AGM, and to authorize him as Kay Diamond's proxy in the MIC AGM.[24] This effectively would give Mr Chetan Mehta the controlling vote on matters discussed during the MIC AGM, including the sale of the Antwerp Property.

18 Mr Bhavin Mehta took issue with the Draft Resolutions, alleging that he was not consulted in the preparation of the Draft Resolutions.[25] On 29 September 2021, he received a letter from Mr Chetan Mehta, addressed also to Mr Rashmi Mehta and the other directors in Arpee Gem, informing them that Mr Chetan Mehta would be present as proxy for Arpee Gem in the October 2021 AGMs.[26] Mr Bhavin Mehta then sought further clarifications with the company secretary, Mr Chew Kok Liang ("Mr Chew"), in relation to the Draft Resolutions and eventually received on 3 October 2021 signed copies of the Draft Resolutions dated 21 September 2021 ("the Purported Resolutions"). The signatures of Mr Chetan Mehta, Mr Sahni and Mr Quek appeared on the Purported Resolutions, constituting the requisite majority of the board for the resolutions to pass.[27]

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23 BRM 1st Affidavit at para 39; p 102.

24 BRM 1st Affidavit at para 41(a).

25 BRM 1st Affidavit at para 40.

26 BRM 1st Affidavit at para 42; p 111

27 BRM 1st Affidavit at pp 120–124

19 Mr Bhavin Mehta then emailed Mr Chew, raising various objections to the validity of the Purported Resolutions in an email dated 5 October 2021.[28] Pertinent to the present application was the allegation that Mr Sahni was no longer a director of Arpee Gem, having tendered resignations to the board in 2015 and 2018.

The 2015 and 2018 Resignations

20 The two purported resignations by Mr Sahni, which Mr Bhavin Mehta referred to, occurred in 2015 and 2018.

21 On 14 December 2015, Mr Sahni sent an email to Mr Rashmi Mehta, with Mr Prabodh Mehta, Mr Bhavin Mehta and Mr Chetan Mehta copied. Therein, Mr Sahni indicated that he no longer intended to remain as director of Arpee Gem, and asked the recipients to treat the message as his resignation ("the 2015 Resignation").[29] Mr Sahni's affidavit in these proceedings explained that the resignation arose out of a misunderstanding between himself and Mr Rashmi Mehta, and for reasons wholly unconnected to Arpee Gem.[30] Mr Sahni alleged that after the 2015 Resignation was sent, Mr Rashmi Mehta apologised for the misunderstanding and indicated he would not accept Mr Sahni's resignation. Mr Prabodh Mehta and Mr Chetan Mehta separately called to indicate the same. According to Mr Sahni, he then decided to continue in his role as director in Arpee Gem.[31]

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28 BRM 1st Affidavit at pp 124–132

29 Ng Pi Wei's 1st Affidavit dated 23 December 2021 ("NPW 1st Affidavit") at p 72; Plaintiff's Bundle of Documents ("PBOD") at p 74.

30 Sanjiwan Sahni's 3rd Affidavit dated 30 March 2022 ("SS 3rd Affidavit") at paras 16–18.

31 SS 3rd Affidavit at paras 19–21.

22 Subsequently, on 4 December 2018, Mr Sahni sent an email titled "Arpee Gems Pte Ltd – Resignation" to Mr Chetan Mehta, Mr Bhavin Mehta and Mr Modi, attaching a letter which indicated his "resignation with immediate effect" ("the 2018 Resignation").[32] Mr Sahni's contention was that the reason for the 2018 Resignation was his dissatisfaction regarding compliance issues.[33] Again, he said, and Mr Bhavin Mehta disputed, that he was persuaded to remain through various telephone calls from Mr Prabodh Mehta, Mr Chetan Mehta, Mr Rashmi Mehta and a visit from Mr Rashmi Mehta and his wife.[34] Despite his resignation, he continued to perform duties as director of Arpee Gem, and therefore signed the Purported Resolutions in his capacity as director.

The OS

23 On 13 December 2021, Mr Bhavin Mehta filed this OS, alleging that Mr Sahni had ceased to be a director of Arpee Gem by the time the Purported Resolutions were signed because of either or both of Mr Sahni's resignations. This effectively meant that the Purported Resolutions did not carry the requisite majority of the board's votes. Mr Bhavin Mehta sought the following relief in the OS:

> 1. A declaration that the 2015 Resignation was valid and effective.
>
> 2. Alternatively, a declaration that the 2018 Resignation was valid and effective.
>
> 3. A declaration that Mr Sahni ceased to be a director of Arpee Gem on 14 December 2015.
>
> 4. Alternatively, a declaration that Mr Sahni ceased to be a director of Arpee Gem from 4 December 2018.

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32 NPW 1st Affidavit at p 73; SS 3rd Affidavit at para 22; PBOD at 75-76).

33 SS 3rd Affidavit at para 23.

34 SS 3rd Affidavit at para 26.

> 5. A declaration that the Purported Resolutions of Arpee Gem, dated 21 September 2021 are invalid and of no effect.
>
> 6. A declaration that the appointment of the 1st Defendant as a proxy of Arpee Gem for AGMs of KD and MIC are invalid and of no effect.
>
> 7. An order that Arpee Gem and/or its officers take necessary steps to remove Mr Sahni as director of Arpee Gem on ACRA records ("the ACRA prayer").
>
> 8. An injunction to restrain Mr Sahni from acting as or holding himself to be a director of Arpee Gem.
>
> 9. An injunction to restrain the defendants from taking any steps in furtherance of the Purported Resolutions or the appointment of Mr Chetan Mehta as a proxy for Arpee Gem, including the passing of any resolutions in reliance on the same.

24 On 10 March 2022, Mr Bhavin Mehta followed on with Summons No 433 of 2022 ("SUM 433") for an interim injunction to restrain Mr Sahni from exercising any power as a director of Arpee Gem until full disposal of the OS, and for the defendants be restrained from relying on and/or taking further action in respect of any director's resolution passed where Mr Sahni's vote had been decisive in the matter.

25 I heard the parties on 6 and 12 May 2022 and dismissed the OS. I thereafter dealt with costs on 15 June 2022. No order was made on SUM 433 as the reliefs it requested were no longer pertinent after the disposal of the OS.

Legal context

Sections 399(2) and 409A

26 When the OS was initially filed, Mr Bhavin Mehta relied on ss 399(2) and 409A of the CA.

27 Section 399(2) of the CA expressly empowers the Registrar of Companies, any member of the company, or the Official Receiver or the company's liquidator, to apply to the court to compel an officer or former officer of the company to do what he or she is required by the CA to do. Section 399(2) of the CA reads as follows:

> **Court may compel compliance**
>
> **399**.—…
>
> (2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he or she is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer is deemed to have the same status, powers and duties as he or she had at the time the act, matter or thing should have been done.
>
> …

Section 409A of the CA, on the other hand, expressly empowers any person affected by a contravention of the CA to apply to the court for what is, in effect, either a prohibitory injunction to restrain non-compliance with the CA or a mandatory injunction to compel compliance with the CA. Section 409A of the CA reads as follows:

> **Injunctions**
>
> **409A**.—(1) — Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —
>
> (*a*) the Registrar; or
>
> (*b*) any person whose interests have been, are or would be affected by the conduct,

> grant an injunction restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
>
> (2) — Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of —
>
> > (*a*) the Registrar; or
> >
> > (*b*) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,
>
> grant an injunction requiring the first mentioned person to do that act or thing.

28 Section 409A(1) applies where there is conduct which constitutes a contravention of the CA. Section 409A(2) applies where a person refuses or fails to do an act or thing required by the CA. As the court in *Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd and others* [2018] 5 SLR 256 ("*Mukherjee Amitava* (HC)") recognised at [43], the refusal or failure to do an act required by the CA is essentially a contravention of the CA, and therefore s 409A(2) is premised on a contravention of the CA, albeit implicitly. In my view, the same can be said of s 399(2) of the CA, which applies to situations where an officer or former officer of a company has failed or omitted to do an act which, under the CA, he or she is required or directed to do. Thus, all the provisions which Mr Bhavin Mehta relied upon were premised on a contravention of the CA. From a plain reading of the provisions, ss 399(2) and 409A of the CA do not simply apply to any case where there has been wrongdoing, improper conduct or irregularity in relation to a company. They only apply where that wrongdoing, improper conduct or irregularity *contravenes the CA*.

29 Thus, to establish his entitlement to any of the remedies sought, the first hurdle which Mr Bhavin Mehta needed to cross was to show that any of the defendants contravened, or were going to contravene, the CA.

Contravention of the CA

30 Of the various remedies pursued, Mr Bhavin Mehta was only able to point to a contravention of s 173A of the CA, which required the company to inform the Registrar of Companies of any change in the appointment of any director within 14 days. Mr Sahni was still registered as a director with ACRA, despite having already resigned according to Mr Bhavin Mehta. This alleged contravention, however, only related to prayer 7.

31 Regarding the other prayers, Mr Bhavin Mehta argued that s 39 of the CA was contravened. But s 39 of the CA is a general provision that reads:

> **Effect of constitution**
>
> **39.**—(1) Subject to this Act, the constitution of a company, when registered, binds the company and the members thereof to the same extent as if it respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.
>
> (2) All money payable by any member to the company under the constitution is a debt due from the member to the company.

Section 39 essentially provides that when the constitution of a company was registered, it bound the company and its members to the same extent as if it was signed and sealed by each member, and bound all members to observe the provisions of the constitution. It statutorily enshrined the common law rule that the company constitution was a contract between the shareholders and the company, as well as the shareholders *inter se*. Section 39 does not impose a statutory obligation to obey the terms of the constitution of a company (or in

fact *any* statutory obligation). Thus, there could not have been a contravention of this section for the purposes of ss 399 and 409A of the CA.

Section 18 read with Schedule 1, SCJA

32 In the course of the hearing, with Mr Bhavin Mehta's attempt to locate contravention of the CA having failed in respect of all prayers except prayer 7, his counsel made an oral application for leave to amend the OS in order to rely on s 18 read with Schedule 1 of the SCJA to enforce ss 145(4A) and 145(4B) of the CA ("the Oral Application"). This was intended as an alternative basis for relief, aside from ss 399(2) and 409A of the CA.

33 Under s 145(4A) of the CA, a director may resign by giving the company written notice of his or her resignation subject to the company constitution. Section 145(4A) reads as follows:

> **Directors**
>
> 145.—…
>
> …
>
> (4A) Subject to subsection (5), unless the constitution otherwise provides, a director of a company may resign by giving the company a written notice of his or her resignation.

Under s 145(4B) of the CA, resignation is not conditional on the company's acceptance of the resignation absent any contrary provision in the company's constitution. Section 145(4B) reads as follows:

> (4B) Subject to subsection (5), the resignation of a director is not conditional upon the company's acceptance of his or her resignation.

34 I did not allow leave for the amendment as I was not minded to grant any relief on this alternative basis, in any event.

35 I explain with reference to the prayers sought in the OS.

Declaratory relief

36 Prayers 1 to 6 were Mr Bhavin Mehta's prayers for various declaratory reliefs. Sections 399 and 409A of the CA only provided for injunctions only; the declarations were presumably sought under the general discretionary jurisdiction of the court. As noted by the Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [13], relief in the form of a declaration of right would generally be superfluous for a plaintiff who had a subsisting cause of action. That was plainly the case here, because the declarations sought related to the very legal issues that were the basis for the substantive injunctions sought at prayers 7 to 9. For example, prayer 5, for a declaration that the Purported Resolutions of Arpee Gem, dated 21 September 2021 were invalid and of no effect, would be superfluous if Mr Bhavin successfully obtained any of the injunctions sought. This is because that injunction would have to be premised on the invalidity of the Purported Resolutions.

37 Pertinent, in addition, were the requirements that had to be satisfied before the court could grant declaratory relief (*Karaha Bodas* at [14]):

(a) the court must have the jurisdiction and power to award the remedy;

(b) the matter must be justiciable in the court;

(c) as a declaration is a discretionary remedy, it must be justified by the circumstances of the case;

(d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;

(e) any person whose interests might be affected by the declaration should be before the court; and

(f) there must be some ambiguity or uncertainty about the issue in respect of which the declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

Of most relevance to this case was the requirement that the plaintiff have *locus standi*. To satisfy this requirement, the plaintiff had to be asserting the recognition of a "right" that was personal to him (*Karaha Bodas* at [15]).

Mandatory injunctive relief

38 Prayer 7, for a mandatory injunction, was the only prayer for which ss 399 and 409A of the CA were engaged: see [26]–[29] above. Here, the court retained discretion as to whether or not to grant relief. In *Mukherjee Amitava* (HC) at [45], Vinodh Coomaraswamy J noted that both ss 399 and 409A of the CA use the permissive word "may" in empowering the court to grant relief. This was seen to be analogous to the position with regard to injunctions in general, which are a discretionary, equitable remedy. In *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2004] 3 SLR(R) 12 ("*Tang Yoke Kheng*") at [18] Lai Kew Chai J said the following about the discretion to grant an injunction pursuant to s 409A of the CA:

> 18 A court has to exercise its discretionary powers under s 409A of the Companies Act justly and sensibly. The jurisdiction to issue statutory injunctions and make other orders under s 409A of the Companies Act is conferred so that courts may in exercising it either deter contraventions of the provisions of the Companies Act, such as trading with the intention of defrauding creditors, or prevent the furtherance of such infractions of provisions of the Companies Act. It follows that courts may take into account in relation to s 409A of the Companies Act wider issues than those which arise under traditional equitable principles and, for present purposes, I had

> to consider whether the statutory injunction would serve the purposes of the Companies Act.

39 On the potential alternative basis that Mr Bhavin Mehta sought prayer 7 pursuant to the court's powers under the SCJA, the position would be more onerous. In *Viknesh Dairy Farm Pte Ltd v Balakrishnan s/o P S Maniam and others* [2015] SGHC 27 at [82]–[83], Tan Siong Thye J held:

> 82 A mandatory injunction imposes an onerous burden on the person against whom the injunction is issued. …
>
> 83 Ultimately, it is a question of the balance of benefits between the plaintiff and the defendant and in *Tay Tuan Kiat v Pritnam Singh Brar* [1985–1986] SLR(R) 763 at [9], Chao Hick Tin J (as he then was) cited the following passage from *Charrington v Simons & Co Ltd* [1970] 1 WLR 725 at 730:
>
> > Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory order, and if so, what kind of mandatory order, will produce a fair result. In this connection the court must, in my judgment, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be deprived of relief to which he is justly entitled merely because it will be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which confer no appreciable benefit to himself and will be materially detrimental to the defendant.

40 Therefore, insofar as Mr Bhavin Mehta relied on ss 339 and 409A of the CA, he would have to show that without the injunction, proper corporate compliance under the CA would be frustrated. Insofar as he relied on traditional equitable principles, he would have had to show that on balance, the mandatory injunctions sought would produce a fair result. Amongst other considerations, the benefit to Mr Bhavin Mehta as compared to any detriment to the defendants would have been relevant.

Prohibitory injunctive relief

41 Prayers 8 and 9 concerned prohibitory injunctive relief. Again, these prayers sought would not compel compliance with any part of the CA and therefore could only have been granted if they were sought under the jurisdiction conferred on the court pursuant to the SCJA.

42 Such a prohibitory injunction is an equitable remedy that is granted at the court's discretion. The remedy is granted to address the real risk of an actionable wrong: see Steven Gee QC, *Commercial Injunctions* (Thomson Reuters, 6th Ed, 2016) ("*Gee on Commercial Injunctions*") at para 2-035. The basis must be the need to prevent infringement of the claimant's rights.

43 In *Vastint Leeds BV v Persons unknown* [2019] 4 WLR 2 ("*Vastint Leeds*") at [31(3)], the English High Court, building on *Gee on Commercial Injunctions* and the English Court of Appeal's decision in *Islington London Borough Council v Elliot* [2012] Civ 56, suggested a two-stage test:

> … (a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights? (b) Secondly, if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?
>
> …

44 Crucial in this case was the first stage of the test above, that unless restrained by the injunction the defendant would act in breach *of the claimant's rights*. I will return to this at [81(c)] below.

45 The court in *Vastint Leeds* also prescribed the following factors to be relevant considerations at both stages of the test. In respect of the first stage, *ie* whether there is a strong probability the defendant will act in breach of the plaintiff's rights unless an injunction is granted, the court at [31(4)] held as such:

> … Beginning with the first stage—the strong possibility that there will be an infringement of the claimant's rights—and without seeking to be comprehensive, the following factors are relevant: (a) If the anticipated infringement of the claimant's rights is entirely anticipatory—as here—it will be relevant to ask what other steps the claimant might take to ensure that the infringement does not occur. … (b) The attitude of the defendant or anticipated defendant in the case of an anticipated infringement is significant. As *Spry, Equitable Remedies*, 9th ed (2013) notes at p 393: "One of the most important indications of the defendant's intentions is ordinarily found in his own statements and actions". (c) Of course, where acts that may lead to an infringement have already been committed, it may be that the defendant's intentions are less significant than the natural and probable consequences of his or her act. (d) The time-frame between the application for relief and the threatened infringement may be relevant. The courts often use the language of imminence, meaning that the remedy sought must not be premature. (*Hooper v Rogers*[1975] Ch 43, 50)

As for the second stage, *ie* whether damages would be an inadequate remedy where the defendant had already infringed the plaintiff's rights, the court at [31(5)] held as such:

> Turning to the second stage, it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material: (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind. (b) The distinction between mandatory and prohibitory injunctions.

46 With this in mind, I now turn to address the legal and factual issues which this dispute has raised for my decision.

Issues to be determined

47 The legal requirements for the various remedies sought threw up two queries. First, was there a contravention of the CA? In line with the discussion at [30] to [31] above, only prayer 7 concerned a potential contravention of the CA. Second, for the other prayers where there was no contravention of the CA, was there sufficient basis to grant the relief sought pursuant to the court's discretion under the SCJA? If the answer was no, any amendment of the OS would have been superfluous.

48 Central to these queries was the substantive dispute between the parties concerning the effect of Mr Sahni's 2015 and 2018 Resignations. The defence rested on arguments as to withdrawal by consent and estoppel by convention.[35] In order for Mr Bhavin Mehta to secure the remedies requested, the onus was his to show on the affidavit evidence that there was no defence to the reliefs requested. His contention was that the defences raised by the defendants were untenable, both legally and factually. The issues relevant to the substantive dispute therefore were:

(a) whether there was any legal premise to the defendants' two arguments; and

(b) if so, whether there existed any factual basis.

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[35] DWS at paras 73, 76 – 98 and 99–114.

49 I first consider the central issue in dispute, the validity of Mr Sahni's resignations, before returning to the appropriateness of the various reliefs sought.

Analysis

Did the defendants raise a dispute with legal premise?

50 Under s 145(4A) of the CA, a director may resign by giving the company written notice of his or her resignation subject to the company constitution. Under s 145(4B) of the CA, resignation is not conditional on the company's acceptance of the resignation absent any contrary provision in the company's constitution. Generally, unless the notice specifies another date as the effective date of resignation, the resignation is effective from the day it is received by the company: Victor C S Yeo, Joyce Lee and Pamela Hanrahan *et al*, *Commercial Applications of Company Law in Singapore* (CCH Asia, 4th Ed, 2018) at para 10.340.[36] Article 108.6 of the Memorandum and Articles of Association of Arpee Gem also provided for resignation by notice in writing to the company.[37]

51 Mr Bhavin Mehta's position was that Mr Sahni had validly resigned on 14 December 2015, or, in the alternative, on 4 December 2018 (collectively, "the Resignations").[38] Because similar arguments were made in respect of the Resignations, I deal with them collectively.

52 It was not seriously disputed by the parties that Mr Sahni had effectively resigned from the company on 14 December 2015 and if not, on 4 December

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36 Defendant's Bundle of Authorities ("DBOA") at Tab 15.

37 PWS at para 11.

38 PWS at paras 5–8.

2018. Article 108.6 of Arpee Gem's constitution stated that the office of director should become vacant if the director resigned his office by notice in writing to Arpee Gem, and that was what Mr Sahni did via email on both 14 December 2015 and 4 December 2018 in clear and unequivocal language. While the defendants contended that the 2015 Resignation was not valid as Mr Sahni's 14 December 2015 email was not addressed to the *company,* this objection was, in my view, overly technical (and it was not seriously pursued by the defendants). Mr Sahni's 14 December 2015 email was sent to Mr Rashmi, with Mr Prabodh, Mr Chetan Mehta and Mr Bhavin Mehta copied. These persons were the controlling minds of the family business. Seen in that context, Mr Sahni's 14 December 2015 email constituted sufficient notice.

53 Instead, the defendants' main argument relied on the course of conduct by Arpee Gem, its directors and Mr Sahni after the Resignations. The defendants contended that through this course of conduct, the Resignations were withdrawn and therefore, at all material times, Mr Sahni remained a director of Arpee Gem. In the alternative, the defendants argued, arising from the same conduct, that Mr Bhavin Mehta was estopped from alleging that Mr Sahni did not continue to be a director of Arpee Gem.[39]

Was withdrawal by consent a viable argument?

54 The defendants' primary position was that the 2015 and 2018 Resignations were withdrawn through a course of conduct which began after the 2015 Resignation.

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[39] DWS at para 7.

55 As a matter of legal principle, they contended that the resignation of a director could be withdrawn by either the company or the party who gave the resignation, as long as both parties consented to the withdrawal.[40] They cited *Glossop v Glossop* [1907] 2 Ch 370 ("*Glossop*")[41] in support of this proposition. The defendants also contended that the withdrawal of a director's resignation could also be implied by conduct (*Byers and others v Ningning* [2021] 3 LRC 434 ("*Byers*")).[42]

56 Mr Bhavin Mehta raised a technical objection to this. It was argued that, because a director's resignation was effective from the time the notice of his resignation was received by the company (see [50] above), the only means for Mr Sahni to continue as a director following his resignation was to *re-appoint* him as director. Pursuant to Articles 104–106 of Arpee Gem's constitution, directors could be appointed by way of resolutions passed at a general meeting of the company, or a meeting of the board of directors.[43] This, Mr Bhavin Mehta argued, was not done, nor was the defendants' submission in any event that Mr Sahni had been re-appointed by subsequent conduct.

57 In *Glossop*, the plaintiff director wrote a letter of resignation to the company stating that he would be resigning as director of the company. The constitution provided that the office of director would be vacated upon the director tendering written notice of resignation, but that the vacation of office would not take effect unless within six months, the directors passed a resolution that the director had vacated his office. The issue therefore was whether the

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40 DWS at para 77.

41 DBOA at Tab 7.

42 DBOA at Tab 4.

43 Ng Pi Wei's Affidavit dated 23 December 2021 at pp 59-60.

plaintiff, having given notice to the company, was entitled to withdraw the notice prior to the passing of a resolution by the directors. Neville J held in the affirmative, and made the observation (at 374) that generally:

> a director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the company properly exercised by their managers, who are the directors of the company. But, of course, that is always dependent upon any contract between the parties, and that has to be ascertained form the articles of association.

58 Upon a further reading of *Glossop*, it was also apparent that Mr Bhavin Mehta's technical objection must fail. In relation to the precise effect of the articles of association regarding resignations, Neville J held (at 375) the following:

> Now what are the events whereby a director vacates his office? One of those events is "If by notice in writing to the company he resigns his office," *and I think that, upon such notice, he has vacated his office, although by the proviso the effect of that vacation is not immediate, but is suspensory, and does not take effect until a resolution has been passed by the directors.* It seems to me that that is a different matter from saying that the director cannot vacate his office until such a resolution has been passed.
>
> [emphasis added]

In other words, Neville J saw the proviso that a resolution be passed by the directors to only suspend the effect of a resignation. The resignation itself still took place on the date the notice was served. As soon as a director served his notice of resignation, his office was vacated. Thus, there was no basis to treat the present case as different from *Glossop*.

59 In addition, in *Byers*, the company's articles of association provided that resignation was effective upon receipt by the Company office of a director's notice of resignation. Nevertheless, the Privy Council relied on Neville J's *dicta*

in *Glossop*. In *Byers*, the respondent director was the sole director of a company. The liquidators of the company began proceedings against the respondent for breach of her directors' duties regarding improper payments made in November 2009. The respondent, however, asserted that she had resigned as director on 29 May 2009 and thus owed no fiduciary duties, relying on a letter to the company board indicating the same. The Privy Council held at [67]–[68] that:

> The finding that Miss Chen remained a *de jure* director well after the 29 May was a perfectly proper one for the judge to make as a matter of fact and law. Miss Chen may have had second thoughts straight away or changed her mind after a day or two, or perhaps a little longer. *At all events, Miss Chen continued to act in relation to the business and affairs of PFF after 29 May 2009 in just the same way as she had before that date* and, in making the finding he did, the judge must have been satisfied that, contrary to her evidence and despite her letter of resignation, *she decided to continue to be a* de jure *director after all, and that she did so with the consent of PFF.*
>
> It has long been established that a director who has given the company proper notice of his or her resignation is not entitled to withdraw that notice, save with the consent of the company: *Glossop v Glossop* [1907] 2 Ch 370. Here, as we have seen, the sole shareholder of PFF was PISG, and Miss Chen was the sole shareholder of PISG. Miss Chen gave evidence at the trial and there is no reason to doubt that she was also a director of PISG. Miss Chen could therefore, upon application of the *Duomatic* principle and on behalf of PISG, as the sole shareholder in PFF, consent to the withdrawal of her notice of resignation, and that consent would be binding on PFF.

As such, the Privy Council held that the respondent still remained a *de jure* director notwithstanding her effective resignation in May 2009 as she continued to behave as though she was a director.

60 The plaintiff sought to distinguish *Byers* on the basis that it involved a company with only one director. The argument was that this prevented the director from tendering resignation, because every company had to have a

director. I did not accept this argument. In fact, the court in *Byers* specifically addressed the fact that the company only had one director at [52]:

> PFF was required to have at least one director and this was a particularly critical time for the company. If there was no satisfactory evidence that Mr Gan (or anyone else) became a *de jure* director on 29 May 2009, *it provides at least some support for the view that Miss Chen did not in fact resign on that day.*

The relevance of this fact was therefore simply evidentiary. The court did not see the fact that the company had only one director as rendering it such that the director did not, or could not, resign as a matter of law.

61 To summarise, two points were clear from the authorities above. First, a director's resignation could be withdrawn with consent of the company, exercised by its management. Second, a director's resignation could be shown to be withdrawn where the director continued to act as a director even after that resignation.

Was estoppel by convention a viable argument?

62 The elements of estoppel by convention were laid down by the Court of Appeal in *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 (at [31]). These elements are:

(a) the parties must have acted on "an assumed and incorrect state of fact or law" in their course of dealing;

(b) the assumption must be either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other; and

(c) it must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption.

63 The defendants argued that these elements were established.[44] To the first element, they contended that the assumed "incorrect state of fact" was the acknowledgment, by conduct of all directors of Arpee Gem and Mr Rashmi, of the second defendant's authority as director of Arpee Gem given his course of conduct indicating the same. The acquiescence of these stakeholders to Mr Sahni acting as a director subsequent to the 2015 Resignation fulfilled the second element of agreement. In relation to the last element of unconscionability, the defendants argued that it was unconscionable for Mr Bhavin Mehta to act contrary to the assumed facts as it would lead to the invalidation of the Purported Resolutions. This was unjust as they were intended to restore parity to the board of Kay Diamonds and MIC, and to compel disclosure of financial information necessary to finalize audit accounts of Arpee Gem.

64 Mr Bhavin Mehta did not take issue with the authorities cited by the defendants but argued that the defendant's argument on estoppel by convention could only apply in the context of an existing contractual relationship between Mr Bhavin Mehta and Mr Sahni. It was thus contended that estoppel could not apply as no contractual relationship arose.

65 In this regard, Mr Bhavin Mehta cited Abdullah J in *Day, Ashley Francis v Yeo Chin Huat Anthony* [2020] 5 SLR 514 ("*Ashley Francis*") in that "estoppel by convention operates only where parties are in a contractual relationship" (at [200]).[45] It appeared, however, that Mr Bhavin Mehta took Abdullah J's remark out of context. In *Ashley Francis*, Abdullah J was rejecting the notion that estoppel by convention could *prove the existence* of a claimed contractual

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44 DWS at paras 103–114.

45 Plaintiff's Supplemental Bundle of Authorities at Tab 4.

relationship. He was not stating that estoppel by convention was only applicable in the contractual context. In any event, that is plainly not the case. Estoppel by convention is applicable in relation to non-contractual dealings, such as the dealings between the tax authority and a taxpayer: *Tinkler v Revenue and Customs Commissioners* [2021] 3 WLR 697 at [1]–[2].

66 Returning to the three criteria, the first criterion applied in the event that the defendants' argument that the course of conduct resulted in a withdrawal of resignation was not made out. The course of conduct could indicate that all parties acted on the basis of the assumption that Mr Sahni remained a director, including Mr Bhavin Mehta. On the last criterion of unconscionability, the defendants rely not detriment suffered by Mr Sahni, but that which would befall another defendant, *the company*, Arpee Gem, as the validity of its acts pursuant to the Purported Resolutions were now in jeopardy. This created an interesting dilemma, that while Mr Bhavin Mehta was attempting to assert a right for and on behalf of the Arpee Gem, it was Arpee Gem that would suffer detriment. Application of this third element highlighted how Mr Bhavin Mehta might not be the appropriate plaintiff. I return to this at [81] below. The legal argument was nonetheless a viable one, depending on the factual content.

Was there any factual basis to the defendants' legal arguments?

67 Whether or not Mr Sahni was acting as a director after the Resignations was therefore relevant for the purposes of both ascertaining whether the Resignations were withdrawn and whether estoppel by convention applied. I thus turn to the various aspects of the parties' course of conduct which the defendants contended showed that Mr Sahni continued acting as a director. This included the following:

(a) There were meetings and/or calls by key figures of the family business persuading Mr Sahni to continue as director following the 2015 and 2018 resignations (the "2015 Calls" and "2018 Calls" respectively).

(b) Mr Sahni continued to carry out several functions of a director following the 2015 Resignation: he was in active communication with external professionals such as the auditors of Arpee Gem, who sought instructions from Mr Sahni, and signed off on executed financial statements ("the financial statements") alongside Mr Bhavin Mehta.

(c) Mr Sahni continued to receive renumeration as a director Directors' fees from 2015 to 2021.

(d) Mr Sahni was tasked with the responsibility to liquidate the affairs of Arpee Gem and appointed a liquidator in his capacity as director before the 2018 Resignation.

(e) There were no instructions given by Mr Bhavin Mehta or any of the directors of Arpee Gem to record the Resignations with the Registrar of Companies.

68 I deal with each category of evidence in turn.

(1) The 2015 and 2018 Calls

69 Mr Sahni alleged that after the 2015 Resignation was sent, Mr Rashmi apologized for the misunderstanding and indicated he would not accept Mr Sahni's resignation. Mr Prabodh and Mr Chetan Mehta separately called to indicate the same. According to Mr Sahni, he then decided to continue in his role as director. Regarding the 2018 Calls, Mr Sahni testified that, following the 2018 Resignation, Mr Rashmi and his wife, Ms Swati Mehta, came to his office

in Delhi and assured him that the lapses in the accounts would not occur again.[46] Mr Sahni's testimony was that he then agreed to continue as a director of Arpee Gem.

70 While Mr Chetan Mehta affirmed Mr Sahni's account, Mr Rashmi Mehta denied that the 2015 and 2018 Calls were made.[47] Ms Swati Mehta also denied that the 2018 Call occurred.[48] This was unsurprising given the alignment of interests in the present case. But it was important to place the dispute in context. Despite Mr Sahni's resignation, no replacement director was appointed. And as the following sections show, Mr Sahni continued to complete various acts as a director up until the time this OS was filed in December 2021.

(2) Signing of Financial Statements

71 The defendants relied on the fact that Mr Sahni had signed off on audited financial statements of Arpee Gem (the "Financial Statements") for the financial years ending on 31 March 2014 and 31 March 2015 as evidence that he continued to act as a director.[49] In particular, Mr Sahni and Mr Bhavin Mehta both signed off on the director's statement dated 5 July 2019 certifying the truth of the Financial Statements (the "Director's Statement"), and Mr Bhavin Mehta himself had signed off on these documents. The defendants contended that this showed Mr Bhavin Mehta accepted and/or acquiesced to Mr Sahni's authority as director of Arpee Gem.

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46 SS 3rd Affidavit at para 27.

47 Mr Rashmi Mehta's Affidavit dated 21 April 2022 ("RM Affidavit") at paras 15 and 17.

48 Mrs Swati Mehta's Affidavit dated 21 April 2022 at paras 4–5.

49 DWS at para 35(a).

72 Mr Bhavin Mehta contended that it simply escaped his attention that Mr Sahni was representing himself as a director. Mr Bhavin Mehta also suggested that he had inadvertently signed the Financial Statements after 4 December 2018 despite seeing Mr Sahni's title of director and/or signature there as he could have had the misimpression that Mr Sahni was signing the Financial Statements for the period prior to his 2015 Resignation.

73 I found Mr Bhavin Mehta's explanation that he simply did not notice to be not sufficiently convincing. It was not denied by Mr Bhavin Mehta that the Director's Statement was signed on 5 July 2019. It was clear from the Financial Statements that Mr Sahni's name and signature on the document appeared on the same page as his own.

(3) Payment of Director's Fees to Mr Sahni

74 The defendants pointed out that the payment of director's fees to Mr Sahni for the financial years 2015 to 2021 were all paid out of companies controlled by Mr Bhavin Mehta and/or Mr Chetan Mehta.[50] These payments, which would have had to be authorised by Mr Bhavin Mehta, showed that both Mehta families acknowledged that Mr Sahni continued to act as a director in Arpee Gem.

75 Mr Bhavin Mehta instead asserted that the director's fees were paid by Attendus Company AG ("Attendus"), and that the typical practice was for Mr Sahni to unilaterally present his invoices to Attendus and for Attendus to pay without question. In this regard, Mr Bhavin Mehta asserted that there was

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50 DWS at para 36.

no evidence that he had knowledge that Mr Sahni continued to receive payments after 4 December 2018.[51]

76 Even taking Mr Bhavin Mehta's contentions at its highest, that Mr Sahni would unilaterally present his invoices to Attendus at least suggested that he believed that he was still operating as a director of Arpee Gem. This was consistent with the defendant's submission that Mr Sahni withdrew his resignation by conduct.

(4) Appointment to assist with liquidation of Arpee Gem

77 The defendants pointed to Mr Sahni's appointment by Mr Prabodh and Mr Rashmi to handle the liquidation of Arpee Gem as another instance in which Mr Sahni continued to act as Arpee Gem's director. In this regard, they pointed to two letters of engagement, each by Mr Prabodh and Mr Rashmi separately, appointing Mr Sahni for this task and paying him US$100,000 in professional fees. The defendants also exhibited an indemnity form for the appointment of Enterprise Management Pte Ltd as liquidator for Arpee Gem dated 7 March 2018. Here, both Mr Sahni and Mr Bhavin Mehta signed off as directors of Arpee Gem.[52]

78 Mr Bhavin Mehta did not deny that Mr Sahni was instructed by Mr Prabodh and Mr Rashmi to assist in the winding up of Arpee Gem, but contended that Mr Sahni was not engaged as a director, but as a neutral third party or consultant. The US$100,000 in fees from each of Mr Prabodh and Mr Rashmi, Mr Bhavin Mehta argued, was received in Mr Sahni's advisory capacity. It was also contended that Mr Sahni could not have been a director at

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51 PWS at para 30.

52 DWS at paras 37 and 91.

that point, as it would have been a conflict of interest for him to act and receive payments in respect of the winding up of Arpee Gem.[53]

79 To the contrary, there was no conflict of interest in Mr Sahni assisting with the winding up of the company. This was a course of action agreed upon by the board. That Mr Sahni received fees for his work in the liquidation of Arpee Gem did not assist Mr Bhavin Mehta's argument, as it would not be reasonable for Mr Sahni to otherwise be put out of pocket for these additional services. While Mr Bhavin pointed out that there was no specific document indicating disclosure to the board, it was clear from the documents that Mr Sahni was dealing with various members of the family who were involved in Arpee Gem, including Mr Bhavin Mehta's father. The documentation reflected that of a small family run company as Arpee Gem was, and if Mr Bhavin Mehta's assertion was that the board of Arpee Gem did not as a fact know of Mr Sahni's work in the liquidation, that was his assertion to substantiate.

Significance of the course of conduct

80 Mr Bhavin Mehta bore the burden of proof to show from the affidavits that he ought to receive the various remedies without a trial of the matter. He did not discharge this burden. The defendants' case had a valid legal premise. In light of this, the facts before the court were not sufficient for Mr Bhavin Mehta to establish that Mr Sahni resigned as director of Arpee Gem in either 2015 or 2018. What was apparent was that even after the 2018 Resignation, Mr Sahni engaged liquidators for the winding-up of Arpee Gem, signed off on various Financial Statements as a director, and continued to receive directors' renumeration. Mr Bhavin Mehta's explanation that he was unaware of

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53 PWS at para 31.

Mr Sahni's active involvement in the management of Arpee Gem was untenable. His own signature was placed next to Mr Sahni's in multiple Financial Statements. He had further been copied in various correspondence where Mr Sahni was held out as director. This course of conduct could, objectively, reflect a withdrawal of his resignation with the company's consent, or could found the objective facts which Mr Bhavin Mehta could be estopped from acting contrary to.

Appropriateness of the requested remedies

81 It is in the light of this factual context that I return to the legal one. Both the defendants' arguments as to withdrawal with the consent of the company, and estoppel by convention against the company were substantive, factual, disputes. A proper resolution of the issues would require trial and its attendant processes of discovery, witnesses and cross-examination. But conversion of the action to a writ action would not have been apposite in the present case. This dispute was essentially a shareholder dispute between two factions of Arpee Gem. Whether Mr Sahni was a director or not should be a matter to be asserted by Arpee Gem, not Mr Bhavin Mehta. This context was also important given that the remedies requested were discretionary. In particular, in respect of the specific prayers:

(a) For prayers 1 to 6, there was no basis for the declarations prayed for. They did not pertain to any personal right of Mr Bhavin Mehta. In any case, they were superfluous given the other remedies sought: see [36] and [37] above.

(b) Regarding the injunctions at prayers 7 to 9, only prayer 7 fell for consideration under ss 399(2) and 409A of the CA. However, in the light of my conclusion at [80] above, it was not shown that the failure to

register Mr Sahni's resignation was a contravention of the CA. Granting Mr Bhavin Mehta prayer 7 would not, in this context be appropriate: see [29] above.

(c) Granting him any of prayers 7 to 9 pursuant to the court's general discretion under the SCJA would be even less so. Wrongful participation by Mr Sahni as a director, if any, ought to be an infringement of Arpee Gem's rights, and the harm sought to be prevented, if any, ought to be that of Arpee Gem's. For this reason, I did not allow the Oral Application.

82 In my judgment, the facts of this case well illumine the rationale for the rule in *Foss v Harbottle*: see [1]–[2] above.

Conclusion

83 For the above reasons, Mr Bhavin Mehta's application was dismissed. On 15 June 2022, I awarded the defendants costs fixed at $25,000 excluding disbursements, which were agreed at $8,500 by the parties. These costs included the costs wasted by SUM 433 being no longer required upon my disposal of the OS.

Valerie Thean
Judge of the High Court

Clement Julien Tan Tze Ming and Luis Inaki Duhart Gonzalez (Selvam LLC) for the plaintiff;
Ashok Kumar, Lim Khai Chong and Berwin Chua (BlackOak LLC) (instructed); Rajan Menon and Harjeet Kaur Dhaliwal (RHTLaw Asia LLP) for the first to third defendants
The fourth defendant unrepresented.
