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

[2023] SGHC 351

Originating Application No 855 of 2023

In the matter of Sections 177, 182 and 392 of the Companies Act 1967

And

In the matter of ASTI Holdings Limited

Between

(1) Ng Yew Nam
(2) Lim Chee San
(3) Toh Cheng Hai
(4) Ng Kok Hian

… *Claimants*

And

(1) Anthony Loh Sin Hock
(2) Kriengsak Chareonwongsak
(3) Charlie Jangvijitkul
(4) Mohd Sopiyan B Mohd Rashdi
(5) Theerachai Leenabanchong
(6) ASTI Holdings Limited

… *Defendants*

Originating Application No 861 of 2023

In the matter of Section 177 of the Companies Act 1967

And

In the matter of ASTI Holdings Limited

Between

ASTI Holdings Limited

… *Claimant*

And

(1) Ng Yew Nam
(2) Lim Chee San
(3) Tong Cheng Hai
(4) Ng Kok Hian
(5) Soh Pock Kheng
(6) Raymond Lam Kuo Wei
(7) Chow Wai San (Zhao Weishen)
(8) Yap Alvin Tsok Sein

… *Defendants*

JUDGMENT

[Companies — Directors]
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v
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12 December 2023 Judgment Reserved.

Valerie Thean J:

Introduction

1 Section 177 of the Companies Act 1967 (2020 Rev Ed) ("the Act") allows two or more members of a company holding not less than 10% of the issued shares of the company to call a meeting of the company.

2 On 22 August 2023, four shareholders ("the Convening Shareholders") of ASTI Holdings Limited ("ASTI"), a public company limited by shares, called an extraordinary meeting ("the EGM") where special resolutions were passed to remove and replace ASTI's directors ("the Set A Directors") with another group of directors ("the Set B Directors") with effect from the date of the EGM.

3 The Set A Directors were not present at the EGM and refused to comply with the resolutions passed. The Convening Shareholders filed HC/OA 855/2023 ("OA 855") against the Set A Directors and ASTI to secure their compliance with the resolutions. In turn, ASTI commenced HC/OA 861/2023 ("OA 861") to seek a declaration that the EGM was not a valid EGM of ASTI and that the resolutions passed were not valid. The defendants in OA 861 are the Convening Shareholders, who are the first to fourth defendants, and the Set B Directors, who are the first and fifth to eighth defendants.

Background

4 ASTI is a company listed on the mainboard of the Singapore Exchange ("the Exchange"). On 5 June 2019, ASTI was placed on the Exchange's watchlist (effective 6 June 2019) as it had incurred pre-tax losses for the three most recently completed consecutive financial years and an average daily market capitalisation of less than $40 million over the six months prior to 6 June 2019. The Exchange gave ASTI 36 months from 6 June 2019 to meet its criteria in order to exit the watchlist. ASTI failed to do so. On 6 June 2022, the Exchange sent ASTI a notification of delisting. As part of the delisting process, the Exchange required ASTI to make a general takeover offer to all of ASTI's shareholders to purchase their shares at a fair and reasonable price. On 5 July 2022, trading of ASTI's shares was suspended until the completion of the exit offer.[1]

5 The Convening Shareholders first sought the resignation of three of the then-five directors and the appointment of five new directors by a letter to

[1] Affidavit of Ng Yew Nam dated 24 August 2023 ("NYM Affidavit") at paras 4–5.

ASTI's board of directors ("the Board") dated 24 March 2023.[2] The Board responded, stating that it did not have sufficient information to conclude that it would be in ASTI's best interests for the three directors to resign, that "doing so might destabili[s]e the Company to the detriment of (among others) its shareholders" and invited the Convening Shareholders to furnish certain additional information in order for the Board to "properly consider" their request to replace the three directors.[3]

6 On 3 April 2023, the Convening Shareholders proceeded to give notice by letter to the Board of their intention to call an EGM of ASTI pursuant to s 177 of the Act to replace ASTI's directors. The letter enclosed, *inter alia*, a copy of the circular to shareholders that attached the notice of EGM and proxy form.[4] This EGM was to be held on 5 May 2023.

7 On 13 April 2023, the Convening Shareholders wrote to ASTI to request for a copy of its shareholding list pursuant to s 192 of the Act, to be furnished by 14 April 2023. As ASTI's shares had been suspended since 5 July 2022, the list was requested "on or after 11 July 2022".[5] ASTI acknowledged the request on 14 April 2023 and noted that the purpose of the request was presumably to despatch notices to the shareholders about the EGM. The letter stated that whilst trading in ASTI's shares had been suspended, there could "likely" have been, for instance, shareholders who have changed their addresses since 11 July 2022, and urged the Convening Shareholders to provide instead "a recent or future date". Nonetheless, the letter also stated that if ASTI did not hear from the

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2 Affidavit of Anthony Loh Sin Hock dated 24 August 2023 ("1AL Affidavit") at para 13.

3 1AL Affidavit at pp 90–92 (paras 8–9).

4 1AL Affidavit at pp 94–98.

5 NYM Affidavit at para 13 and at Tab-7.

Convening Shareholders' solicitors, Rajah and Tann Singapore LLP ("R&T"), by the same day, ASTI would assume that the shareholding list was continued to be requested as of any date after 11 July 2022.[6] R&T did not respond to this. Despite this and the earlier statement that ASTI would assume the list was requested as of any date after 11 July 2022, no shareholding list was supplied. On 21 April 2023, the 5 May EGM was postponed.[7] On 12 May 2023, upon being informed by ASTI that a physical copy of the shareholding list was available for collection, R&T collected the shareholding list that was stated to be "as at 22 Jul 2022".[8]

8 A second notice to call an EGM was sent to the Board (with the Exchange copied on the notice) on 18 July 2023. This EGM was to be held on 22 August 2023. The names of the directors to be removed were changed to reflect the Board's composition in July 2023, and the names of the replacement directors were the same, save for one that was now substituted. This notice also stated that it constituted "special notice pursuant to Section 152(2) read with Section 185 of the [Act]".[9] By s 152(2) of the Act, special notice is required of any resolution to remove a director of a public company, for which ASTI is one. An electronic copy of the shareholding list was also requested as of 18 July 2023.[10] This request was reiterated by R&T on 27 July 2023.[11] The shareholding list was not provided. On 31 July 2023, notice of the EGM was issued to ASTI's

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6 NYM Affidavit at Tab 8.

7 NYM Affidavit at paras 14–15.

8 NYM Affidavit at para 16.

9 NYM Affidavit at Tab 11.

10 NYM Affidavit at para 20.

11 1AL Affidavit at p 258 (para 7).

shareholders based on the list provided on 12 May 2023.[12] Notice was also given to ASTI's auditors and the EGM was advertised in the Straits Times and the Lianhe Zaobao on 31 July 2023.[13]

9 On 1 August 2023, ASTI's solicitors, UniLegal LLC ("UniLegal"), wrote to R&T, reminding the Convening Shareholders that all general meetings of ASTI must be *conducted by* ASTI, through the Board, and "not by the persons – such as [the Convening Shareholders] – who are the shareholders acting under [s 177 of the Act]". UniLegal also sought clarification as to whether notices had been properly sent to all the shareholders.[14] The next day, on 2 August 2023, R&T responded by letter stating, among other matters, that "[the Convening Shareholders] or their nominated representatives will be conducting and chairing the meeting, and unless any member of the Board are also members of the Company … he/she *will not be allowed entry* into the meeting venue and/or to participate in the meeting" [emphasis added].[15]

10 On 3 August 2023, on behalf of ASTI, UniLegal replied. Its letter asserted that the Convening Shareholders had no right to conduct the EGM, that the Company had conducted itself properly in respect of the shareholder list and reiterated that the Board had been trying to "reach out to [the Convening Shareholders] for a meeting with members of the Board directly, as well as to an open forum or dialogue".[16] On 4 August 2023, R&T replied and stated the position taken by the Convening Shareholders that "proper and sufficient notice

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12 NYM Affidavit at para 22.

13 1AL Affidavit at pp 273–274.

14 Affidavit of Anthony Loh Sin Hock dated 26 September 2023 ("2AL Affidavit") at pp 274–276.

15 2AL Affidavit at p 278 (para 3).

16 1AL Affidavit at pp 285 and 289 (paras 13–16 and 20).

of the EGM has been given to all shareholders".[17] There was no reply to the Board's offer to meet with the Convening Shareholders.

11 Subsequently, on 9 August 2023, UniLegal responded by letter. It contended that R&T's 4 August letter failed to answer whether it was Mr Ng Yew Nam ("Mr Ng"), the first defendant and one of the Convening Shareholders, who caused the notice of the EGM to be published by the newspapers on 1 August 2023, and if the Convening Shareholders were open to an open forum or dialogue with the Board.[18] On 10 August 2023, another letter was sent by UniLegal responding to the Convening Shareholders' request on 2 August 2023 to inspect ASTI's register and for ASTI to furnish a copy of the shareholding list, pursuant to s 192 of the Act.[19] R&T replied to both letters on 13 August 2013, confirming that the notice of the EGM had been sent to ASTI's shareholders based on the shareholding list provided by ASTI on 12 May 2023, and that advertisements had been put up on the Straits Times and Lianhe Zaobao on 31 July 2023. R&T also asserted that the Convening Shareholders had the right to the shareholding list under s 192 of the Act.[20]

12 On 14 August 2023, UniLegal replied, stating that ASTI was of the view that the EGM was invalid and required that the Convening Shareholders not proceed with it. The letter also stated that "the Board remains keen nevertheless to engage with your 4 clients in a private meeting (without lawyers) as well as a dialogue (which can be organised for a date after the Company has given

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17 1AL Affidavit at p 290 (para 4).

18 1AL Affidavit at pp 299–300 (paras 13–14).

19 1AL Affidavit at p 281 (para 7) and pp 302–303.

20 1AL Affidavit at pp 307–308.

notice to call the FY2021 AGM)".[21] This was reiterated in another letter sent the next day, on 15 August 2023.[22]

13 Meanwhile, the Set A Directors and ASTI repeatedly disavowed the EGM publicly as invalid:

(a) On 14 August 2023, by way of a public announcement, the Set A Directors stated that the EGM was invalid and advised all shareholders not to attend the meeting. The shareholders were also told not to be "concerned with attending or depositing any proxy form in relation to the Proposed EGM".[23]

(b) On 16 August 2023, ASTI issued a press release reiterating that the EGM was invalid and so "shareholders do not need to lodge proxy forms or attend it".[24]

(c) On the same day, by way of a public announcement, the Set A Directors reiterated that the EGM was invalid and "will not be recognized as a proper or valid extraordinary general meeting of the Company; any resolution purported to be passed at the Proposed EGM … will therefore not constitute a valid resolution of the shareholders of the Company and shall have no effect on the Company or its general body of shareholders".[25]

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21 1AL at pp 311–313 (paras 3–4 and 9).

22 1AL at p 321 (para 10).

23 1AL Affidavit at p 314 (paras 2–3).

24 1AL Affidavit at p 339.

25 Affidavit of Chow Wai San dated 15 September 2023 ("CWS Affidavit") at p 38 (para 6).

(d) This was repeated in two subsequent public announcements on 18 August 2023, 20 August 2023 and 21 August 2023.[26]

(e) Finally, on 22 August 2023 itself, the Set A Directors issued a press release reaffirming ASTI's position that the EGM was invalidly called and itself invalid, and that any resolutions passed thereat would have no effect.[27]

14 Separately, the Securities Investors Association (Singapore) ("SIAS") held a dialogue between the Set B Directors and ASTI shareholders on 16 August 2023 ("the Dialogue").[28] In UniLegal's 11 August 2023 letter to R&T, the Set A Directors conveyed their intention to attend the Dialogue.[29] This was reiterated on 14 August 2023.[30] However, they were rebuffed by the Convening Shareholders and accordingly did not attend the Dialogue.[31] SIAS held a separate dialogue between the shareholders and the Set A Directors on 21 August 2023.[32]

15 On 22 August 2023, the EGM took place as scheduled. By a majority of about 95.5% of those present and voting, resolutions were passed at the EGM to remove the Set A Directors and to appoint the Set B Directors.[33]

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26 CWS Affidavit at p 51 (para 1).

27 CWS Affidavit at pp 51–52.

28 CWS Affidavit at para 9(7)(b) and p 83.

29 1AL Affidavit at p 305 (para 9).

30 1AL Affidavit at p 312 (para 6).

31 1AL Affidavit at pp 320–321 (paras 3–7).

32 CWS Affidavit at para 9(7)(b) and p 83.

33 1AL Affidavit at pp 390–391.

16 Following the EGM, on the same day, the Set B Directors passed a directors' resolution to, *inter alia*, form an interim management committee comprising Mr Ng and Mr Soh Pock Keng, who were both part of the Set B Directors, to handle a wide range of operational and management matters of ASTI.[34] The interim management committee also wrote to the Set A Directors informing them of their removal as directors of ASTI pursuant to the resolutions passed at the EGM.[35]

17 The Set A Directors continued to dispute the validity of the EGM. This prompted the Convening Shareholders to file OA 855 to seek a declaration that the EGM was validly called, held and conducted and that the resolutions passed thereat were valid. In turn, the Set A Directors filed OA 861 seeking, essentially, declarations to the contrary.

Summation of arguments, issues and decision

Arguments

18 The Set A Directors and ASTI argued that the resolutions passed at the EGM were not valid, on three grounds:[36]

(a) The Convening Shareholders did not serve or deliver the notice of the EGM to *all* of ASTI's members, contrary to Arts 48 and 141(A) of ASTI's constitution and the general law.

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34 NYM Affidavit at Tab 26.

35 NYM Affidavit at Tabs 27–28.

36 Written Submissions of the 1st to 5th Defendants in HC/OA 855/2023 dated 16 October 2023 ("SAWS") at para 1; written submissions of ASTI Holdings Limited dated 16 October 2023 ("ASTIWS") at para 7(1)–(3).

(b) The EGM was not validly constituted as it was not chaired by ASTI's chairman or any of its directors due to their unlawful exclusion from the EGM by the Convening Shareholders, contrary to Art 52 of ASTI's constitution and the general law.

(c) The Convening Shareholders conducted the EGM to the exclusion of the Set A Directors, contrary to Arts 52 to 62, 64, 66, 68 to 70 and 73 of ASTI's constitution and the general law, which amounted to the unlawful usurpation of the Set A Directors' duty to conduct such an EGM. In this connection, ASTI argues that on a proper interpretation of s 177 of the Act, while the convening shareholders could call the meeting, it is the directors who must *conduct* it.[37] Added to this, the Set A Directors assert that Art 76 of ASTI's constitution gave them a right to attend the meeting and to be heard.

19 Issues (b) and (c) are related as both relate to the conduct of the EGM. In summary, ASTI and the Set A Directors make essentially two assertions: (i) that the EGM was not validly called; and (ii) it was not validly conducted.

20 The Set B Directors refute the assertions by the following arguments:

(a) Only the notice requirements under Art 48 of ASTI's constitution were necessary and these were followed by the Convening Shareholders. Therefore, it was sufficient that written notice of the EGM was given to the Exchange on 18 July 2023 and advertised in the Straits Times and the Lianhe Zaobao on 31 July 2023.[38]

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37 ASTIWS at para 65.

38 Written Submissions of the Claimants in HC/OA 855/2023 (1st to 4th defendants in HC/OA 861/2023) dated 16 October 2023 ("CSWS") at para 15.

(b) In any case, even on the assumption that there was any procedural irregularity, no substantial injustice was caused such that the EGM (and resolutions passed thereat) is liable to be invalidated. On this score, pursuant to s 392(2) of the Act, a proceeding is not invalidated by reason of any procedural irregularity and it is therefore incumbent on the Set A Directors and ASTI to establish that substantial injustice has been caused to them by virtue of the alleged procedural irregularities, but they have not made any meaningful attempt to discharge this burden.[39] Finally, should the court find the presence of any procedural irregularity, the Convening Shareholders submit that it should exercise its power under s 392(4)(*a*) read with s 392(6)(*a*) and s 392(6)(*c*) of the Act to validate the EGM and the resolutions passed thereat.[40]

(c) Art 52 of ASTI's constitution allowed the meeting to be chaired by one of its members.[41]

(d) Section 177 of the Act allowed members to conduct the meeting. To ensure the independence of the integrity of the voting process and its outcome, the Convening Shareholders had engaged the services of an independent third party as scrutineers for the votes taken at the EGM.[42]

21 The Set A Directors[43] and ASTI[44] were of the view that neither the notice requirement nor the conduct requirement could be remedied under s 392 of the

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39 CSWS at paras 22–27.

40 CSWS at paras 55–58.

41 CSWS at para 34.

42 CSWS at paras 17, 32 and 33.

43 SAWS at paras 45–63.

44 Transcript, 23 October 2023.

Act. First, if no notice was given, the irregularity was substantive.[45] Even on the assumption that it was procedural, there was substantial prejudice to ASTI and the general body of shareholders because had the EGM been properly called and conducted, more shareholders carrying a greater number of votes would have attended and the result of the votes might have turned out differently.[46] Secondly, the absence of power on the part of the shareholders to conduct an EGM once called was not an irregularity.[47] Alternatively, the irregularity was substantive in nature as the purpose of the EGM was to remove the Set A Directors but they were denied the right given by Art 76 of the constitution to attend and participate in the meeting. Substantial injustice has been occasioned to the Set A Directors as they were unceremoniously removed, and this led to the risk of harm to their reputation and standing.[48]

Issues

22 These arguments reflect four issues in dispute:

(a) Was notice for the 22 August EGM validly served?

(b) If not, was any defect substantive or procedural, and could s 392 of the Act cure the defect?

(c) Even if the EGM was validly called, was it properly conducted?

(d) If not, whether s 392 of the Act could be utilised.

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45 SAWS at para 49.

46 Transcript, 23 October 2023; SAWS at paras 61–62.

47 SAWS at paras 45–46.

48 SAWS at paras 59–60.

Decision

23 I answer (a) and (b) in the positive. Notice was validly served under the provisions of ASTI's constitution. In so far as there was any irregularity in notice, there was no substantial injustice and s 392 of the Act could apply to validate the proceedings.

24 Nevertheless, the meeting was not properly conducted. I answer (c) and (d) in the negative. Section 177 of the Act does not give the Convening Shareholders the power to conduct the meeting. Whether they could do so depended upon ASTI's constitution. Art 76 of the constitution gave the directors a right to attend the meeting and to be heard. Further, the purpose of the meeting was to discuss a special resolution to remove the Set A Directors, and s 152 of the Act also furnishes the incumbent directors a right to be heard on their removal. Despite this, the Convening Shareholders on 2 August 2023 informed the Set A Directors that they were barred from attending the EGM on 22 August 2023. In doing so, the Convening Shareholders failed to give due regard to Art 76 of ASTI's constitution. In the present case, special notice was given by the Convening Shareholders to remove the incumbent directors under s 152 of the Act, and s152 of the Act provides for the incumbent directors to be heard. The breach of Art 76 of ASTI's constitution is not of a procedural irregularity in this context, and the rights granted by s 152 of the Act are substantive in nature. Section 392 of the Act was therefore of no assistance to the Set B Directors.

25 My reasons follow.

Was notice validly issued?

26 The Convening Shareholders rely on s 177 of the Act to call the EGM. Section 177 reads:

> **Calling of meetings**
>
> **177.**—(1) Two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) or, if the company has not a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the constitution may call a meeting of the company.
>
> (2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, *must be called by written notice of not less than 14 days or such longer period as is provided in the constitution.*
>
> (3) A meeting is, even though it is called by notice shorter than is required by subsection (2), deemed to be duly called if it is so agreed —
>
> (*a*) in the case of a meeting called as the annual general meeting — by all the members entitled to attend and vote thereat; or
>
> (*b*) in the case of any other meeting — by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.
>
> (4) *So far as the constitution does not make other provision* in that behalf, notice of every meeting must be *served* on every member having a right to attend thereat in the manner in which notices are required to be served by the model constitution prescribed under section 36(1) for the type of company to which the company belongs, if any.
>
> [emphasis added]

27 It is not disputed that the Convening Shareholders possessed the requisite shareholding to call the EGM, and that the requisite number of days' notice was given. At issue is whether such notice was correctly served within the meaning of Arts 48 and 141(A) of ASTI's constitution, and ss 177(2) and 177(4) of the Act.

28 Art 48 of ASTI's constitution, under the section titled "Notice of General Meetings", reads as follows:[49]

NOTICE OF GENERAL MEETINGS

48. Any Annual General Meeting and any Extraordinary General Meeting at which it is proposed to pass a Special Resolution or (save as provided by the Statutes) a resolution of which special notice has been given to the Company, shall be called by twenty-one clear days' notice in writing at the least and an Annual General Meeting or any other Extraordinary General Meeting, by fourteen clear days' notice in writing at the least. The period of notice shall in each case be exclusive of the day on which it is served or deemed to be served and of the day on which the General Meeting is to be held and shall be given in manner hereinafter mentioned to all Members other than those who are not under the provisions of these Regulations and the Statutes entitled to receive such notices from the Company, Provided always that a General Meeting notwithstanding that it has been called by a shorter notice than that specified above shall be deemed to have been duly called if it is so agreed:

(a) in the case of an Annual General Meeting by all the Members entitled to attend and vote thereat; and

(b) in the case of an Extraordinary General Meeting by a majority in number of the Members having a right to attend and vote thereat, being a majority together holding not less than 95 per cent. of the total voting rights of all the Members having a right to vote at thereat,

Provided also that the accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate the proceedings at any General Meeting. At least fourteen clear days' notice of any General Meeting shall be given by advertisement in the daily press and in writing to the Designated Stock Exchange, Provided Always that in the case of any Extraordinary General Meeting at which it is proposed to pass a Special Resolution, at least twenty-one clear days' notice in writing of such Extraordinary General Meeting shall be given

[49] 1AL Affidavit at p 57.

> by advertisement in the daily press and in writing to the Designated Stock Exchange.

29 Art 141(A), under the section titled "Notices", reads:[50]

> **NOTICES**
>
> 141. (A) Any notice or document (including a share certificate) may be served on or delivered to any Member by the Company either personally or by sending it through the post in a prepaid cover addressed to such Member at his Singapore registered address appearing in the Register of Members or (as the case may be) the Depository Register, or (if he has no registered address within Singapore) to the address, if any, within Singapore supplied by him to the Company, or (as the case may be) CDP as his address for the service of notices, or by delivering it to such address as aforesaid. Where any notice or other document is served or delivered by post (whether by airmail or not), service or delivery shall be deemed to have been served at the time the envelope or cover containing the same is posted, and in proving such service or delivery, it shall be sufficient to prove that such envelope or cover was properly addressed, stamped and posted.

30 ASTI submits that the proper construction of Arts 48 and 141A, read with s 177(2) of the Act, is that notice must be given by delivery or post to each member or the Central Depository (Pte) Limited. Advertisement in the daily press and notice in writing to the Exchange is not sufficient. In their submission, Parliament could not have envisaged the term "written notice" in s 177(2) of the Act as capable of being satisfied by advertisement.[51] This was a bare assertion without any material or other assertion in support.

31 I reject ASTI's argument that an advertisement is not "written notice". An advertisement is a notice in writing and qualifies as written notice under s 177(2) of the Act. Section 2 of the Interpretation Act 1965 (2020 Rev Ed)

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50 1AL Affidavit at p 78.

51 ASTIWS at para 50.

defines "writing" and expressions referring to writing to include "printing, lithography, typewriting, photography and other modes of representing or reproducing words or figures in visible form". ASTI's submission has conflated the issue of the form of notice with that of the service of notice. The latter is dealt with under s 177(4) of the Act, which expressly refers to the company's constitution.

32 The salient issue is therefore the interpretation of ASTI's constitution. Here, ASTI's argument fails again for three reasons:

(a) Art 48 states specifically that "the non-receipt of notice by any person entitled thereto shall not invalidate the proceedings at any General Meeting". It further provides that "in the case of any [EGM] at which it is proposed to pass a Special Resolution, … [the notice] shall be given by advertisement in the daily press and in writing to [the Exchange]".

(b) The structure and flow of ASTI's constitution reflects that Art 48 is not applied in addition to Art 141(A). Art 141(A) comes in at a much later section of the constitution that deals with "Notices", being general notices. Art 48, on the other hand, deals with the specific situation of "Notice of General Meetings". A company's constitution is a contract between the shareholders and the company, as well as the shareholders *inter se*: s 39(1) of the Act. In construing the terms of the constitution, I am mindful of the relevance of the usual canons and techniques of contractual interpretation, including, in this case, that "a more precise or detailed provision should override an inconsistent or widely expressed provision" (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior*

Design & Construction Pte Ltd at [131]). The requirements that must be fulfilled are therefore only those of Art 48.

(c) My conclusion at [32(b)] above is further confirmed by the text of Art 141(A). The opening text of Art 141A is drafted in a way that suggests it is allowing a manner of serving documents where no other provision applies: "Any notice or document (including a share certificate) *may* be served …" [emphasis added]. The use of "may", in context, suggests it functions as a default provision for notices or documents not previously listed. The section does not mandate that such notice is required for all notices and it does not impose any specific requirement for notices of general meetings. The section in which Art 141A is located contains other articles that deal with procedures to be followed for the sending and receipt of notices or documents pursuant to that article.

33 Therefore, reading Art 141(A) in its proper context, the provision does not impose a requirement for notices *of general meetings* to be delivered personally to the shareholders. There is no necessity for notices of general meetings to be served under Art 141(A). Only the requirements of Art 48 need to be fulfilled, and accordingly, the notice given for the 22 August EGM was properly served.

Would s 392 in any event apply to cure any irregularity of notice?

34 In any event, s 392 of the Act would apply to deficiencies of notice. It reads as follows:

Irregularities

392.—(1) In this section, unless the contrary intention appears, a reference to a procedural irregularity includes a reference to —

(*a*) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(b) *a defect, irregularity or deficiency of notice or time*.

(2) A proceeding under this Act is *not* invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

…

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is *not invalidated* by reason only of the accidental omission to give notice of the meeting or *the non-receipt by any person of notice of the meeting*, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(*a*) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a corporation;

…

and may make such consequential or ancillary orders as the Court thinks fit.

…

> (6) The Court is not to make an order under this section unless it is satisfied —
>
> (*a*) in the case of an order mentioned in subsection (4)(a) —
>
> (i) that the act, matter or thing, or the proceeding, mentioned in that paragraph is essentially of a procedural nature;
>
> (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
>
> (iii) that it is in the public interest that the order be made;
>
> (*b*) in the case of an order mentioned in subsection (4)(*c*), that the person subject to the civil liability concerned acted honestly; and
>
> (*c*) in every case, that no substantial injustice has been or is likely to be caused to any person.
>
> [emphasis added]

Section 392(1) makes clear that any deficiency of notice is a procedural irregularity. Section 392(2) specifies that proceedings are not invalidated by such irregularities save where there has been substantial injustice.

35 There is no evidence of substantial injustice in this case. Shareholders on the shareholding list as of 22 July 2022 (the "July 2022 list") were notified. On 23 September 2023, after OA 855 and OA 861 were filed, Unilegal on behalf of ASTI wrote to the Convening Shareholders to provide a copy of the company's shareholding list as of 10 August 2023.[52] ASTI alleges that the shareholding list as of 10 August 2023 ("the August 2023 list") should have been used.[53] However, I am satisfied that there is no substantial difference

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52 Affidavit of Ng Yew Nam dated 26 September 2023 at para 25.

53 ASTIWS at para 52.

between the two lists such that substantial injustice was occasioned to ASTI by the use of the older list. I note the following:[54]

(a) there were ten shareholders that are on the July 2022 list but not on the August 2023 list; and

(b) there were 37 (out of 3,925) shareholders[55] whose addresses stated in the August 2023 list differed from the July 2022 list. These shareholders owned a total of 2,240,700 shares.

ASTI had 3,295 shareholders. For (a), there is no information that the additional ten shareholders voted on 22 August 2023 despite no longer being shareholders. For (b), there is also no indication that any of the 37 who have changed addresses has complained about the non-receipt of the notice nor asserted that any substantial injustice was occasioned.

36 In this context, s 392(3) of the Act is also relevant as it specifically stipulates that the *non-receipt by any person of notice* would not invalidate any proceeding save where there is a Court order on an application of a person entitled to attend. ASTI submitted that s 392(4) of the Act only applies to cases of accidental omission to give notice. However, the preceding subsection makes clear that there are two disjunctive situations where the subsection would apply. Aside from accidental omission, the non-receipt by any person is a separate scenario. There is nothing in the section that precludes the operation of s 392(3) to instances where, for the want of an updated shareholder list, notice was not sent to a person entitled to attend, or where such notice was sent to an incorrect address.

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54 Affidavit of Ng Yew Nam dated 26 September 2023 at para 26.

55 CSWS at footnote 39.

37 Therefore, in the event that, and in so far as there was any irregularity in notice, s 392 of the Act could apply to validate the resolutions passed.

Was the EGM validly conducted?

38 The conduct of the meeting is a more complex matter. ASTI made two related contentions in respect of the conduct of the EGM: first, that the Chairman of its Board ought to have presided, and second, that the meeting ought to have been conducted by its Board. The chairing of the meeting by Mr Ng and his conduct of the meeting invalidated the proceedings. The Set A Directors emphasised that directors have a right to be heard. As I explain below, the need for directors to conduct the meeting and the need for directors to be heard are separate and yet related issues.

Could the EGM be conducted without the directors' presence?

Relevance of s 177 of the Act

39 The Convening Shareholders assert that s 177 of the Act permitted them to conduct the meeting. They argue that their ability to call the meeting includes an ability to conduct the meeting. In response, ASTI and the Set A Directors emphasise that s 177 only furnishes a right to call a meeting and this right does not include a right to conduct the meeting so called.

40 In interpreting a statutory provision, the court must have regard not just to the text of the provision but also to the context of that provision within the written law as a whole. The court should strive to ascribe significance to every word in an enactment as it is taken that Parliament shuns tautology and does not legislate in vain: *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37]–[38].

41 In the present case, the plain words of s 177 use "call", which refers ordinarily to convening or arranging a meeting. In contrast, "conduct" would refer to the running of the meeting. Of relevance is that in the same Act, s 182 makes a distinction between calling a meeting and conducting it:

> **Power of Court to order meeting**
>
> **182.** If for any reason it is impracticable to *call* a meeting in any manner in which meetings may be called or to *conduct* the meeting in the manner prescribed by the constitution or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy is deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he or she were present at the meeting.
>
> [emphasis added]

That these are distinct concepts was explained by Hoo Sheau Peng JC (as she then was) in *Naseer Ahmad Akhtar v Suresh Agarwal and another* [2015] 5 SLR 1032 at [31]:

> … The calling of the meeting refers only to the process by which a general meeting of the members is *formally convened*. By contrast, the *conduct* of the meeting refers to all matters pertaining to the carriage of the meeting. This includes the procedural requirements governing the transaction of business at the meeting (*eg*, quorum requirements). …
>
> [emphasis original]

42 The Australian Federal Court decision of *Wun v CellOS Software Ltd* [2018] FCA 1947 ("*Wun*") is pertinent. There, ten shareholders of CellOS Software Ltd ("CellOS"), holding almost 7% of the issued shares, called for an EGM of the company under s 249F of the Corporations Act 2001 (Cth). However, the board of directors of CellOS sought to postpone the proposed

EGM so as to coincide with the same day the annual general meeting was to be held. The dispute therefore centred around the validity of this postponement. Section 249F reads:

> **Calling of general meetings by members**
>
> (1) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
>
> (2) The meeting must be called in the same way — so far as is possible — in which general meetings of the company may be called.
>
> (3) The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

In turn, cl 14.1(d) of CellOS's constitution granted its board the power to postpone a general meeting or change the place at which it was to be held.

43 An issue for the court's determination was whether s 249F, which confers upon the shareholders the right to "call, and arrange to hold, a general meeting", prevented a postponement by a company's board pursuant to its constitution. Middleton J answered the question in the negative, finding (at [50]) that a distinction exists between the calling and holding of a meeting and s 249F did not confer on shareholders the additional right to hold or conduct a meeting. Middleton J stated (at [48]) that "[o]nce the meeting is held, *in the normal course* it would be conducted by the chair of the existing board, according to *the normal procedures applicable to* the general meeting of shareholders" [emphasis added]. He therefore concluded that "[t]he provisions of the constitution of the company or the general law dealing with such matters as adjournments, quorum, voting and proxies will apply to the meeting".

44 The Convening Shareholders argue in their supplemental submissions that *Wun* is neither binding nor persuasive because of the material differences

in the legislative provisions between the Singapore and Australian legislation.[56] That the provisions are different is not disputed. Middleton J's reasoning in *Wun* is, notwithstanding, useful and relevant. Middleton J's distinction between calling and conducting a meeting is consistent with the same distinction being drawn in s 182 of the Act. It is also consistent with the ordinary understanding of the words "call" and "conduct".

45 As a further point, the Convening Shareholders argue that on a harmonious interpretation of s 177 of the Act, Parliament must have intended a right that is meaningfully different from that accorded under s 176 of the Act.[57] No particular extraneous material evincing Parliament's intention was relied upon. The material parts of s 176 read:

> **Convening of extraordinary general meeting on requisition**
>
> **176**.—(1) The directors of a company, despite anything in its constitution, must, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.
>
> …
>
> (3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any

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56 Supplemental Submissions of the Claimants in HC/OA 855/2023 (1st to 4th defendants in HC/OA 861/2023) dated 30 October 2023 ("CSFWS") at paras 9–15.

57 CSFWS at para 20.

> meeting so convened must not be held after the expiration of 3 months from that date.
>
> (4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting must be paid to the requisitionists by the company, and any sum so paid must be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.
>
> …

46 On a plain and ordinary reading, ss 176 and 177 of the Act do function harmoniously to give meaningfully differentiated relief, without the additional need for s 177 to provide a power to shareholders to conduct the meeting. My conclusion in this regard is confirmed by the legislative purpose of the two provisions that emanates from their clearly-drafted words. There is no need for the additional power suggested by the Convening Shareholders. Section 177 allows shareholders to call a meeting themselves. If they choose instead to requisition a meeting using s 176, their expenses incurred by the directors' failure to call such a meeting must be paid by the company.

47 In this context, s 176 allows shareholders to require directors to "convene" an EGM, while s 177 provides for shareholders to "call" a meeting. In its ordinary meaning, "convene" and "call" are synonyms, save that because directors ordinarily have the power and duty to arrange meetings, convene is an appropriate word to be used in the context of directors. Shareholders, on the other hand, do not ordinarily arrange for meetings, and thus the word "call", which carries the meaning of a summons to attend, is more appropriate to be used in the context of shareholders. In my opinion, both ss 176 and 177 are consistent and there is nothing within them to suggest that the shareholders who have requisitioned directors or called a meeting may conduct the meeting so arranged. Both sections are silent on the matter.

48 I deal here with the authorities which the Convening Shareholders cited to argue for an expansive reading of s 177, namely, that "call" encompasses the entire process of convening a meeting and the conduct of that meeting.[58] The Convening Shareholders rely on the Supreme Court of New South Wales decision of *Beck v Tuckey Pty Ltd* [2004] NSWSC 357 ("*Beck*"). *Beck* involved a plaintiff seeking an order of the court, under s 249G of the Corporations Act 2001 (Cth), to call a meeting of the first defendant, Tuckey Pty Ltd, so as to deliberate the removal of two other defendants as directors of the company. Section 249G(1) reads, "[t]he Court may order a meeting of the company's members to be called if it is impracticable to call the meeting in any other way."

49 At issue was whether the court's power to grant relief arises only when it was impracticable to *call* a meeting or included the situation when it was impracticable to *conduct* a meeting. The court noted (at [39]) that the statutory provision had previously contained a second alternative condition, which read "… if for any reason it is impracticable to call a meeting of the company in any manner in which meetings of that company may be called, *or to conduct the meeting of the company in manner prescribed by the articles or this Act*" [emphasis added]. This second alternative condition was removed by an amendment in 1998 (at [44]). However, the court was satisfied (at [45]) from the explanatory memorandum to the 1988 bill that the 1998 amendments were meant to simplify drafting and not meant to make any substantive changes to the law. In the result, the court held (at [45]) that even though the second alternative condition was removed, the phrase "it is impracticable to call the meeting in any other way" in the present provision should be read to implicitly include the second alternative condition. It was in this context that the court

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58 Supplemental Submissions of the Claimants in HC/OA 855/2023 (1st to 4th defendants in HC/OA 861/2023) dated 30 October 2023 ("CSFWS") at para 23.

opined that "it is possible to read the word 'call', in the new simplified language, as a word of more expansive meaning than the word 'convene' in the immediate predecessor legislation, or even the word 'call' in the older legislation" (at [46]). The legislative history relevant to *Beck*, as stated above, is not applicable to our Act. Further, the statutory provision at issue in *Beck* deals with the court's supervisory jurisdiction. This supervisory width ought in principle to be expansive wherever shareholders require assistance. Otherwise, company matters would be stymied. As an example of statutory width in this area, our own s 182, as mentioned at [41] above, gives the court power to give directions both on the call and conduct of a meeting.

50 Reliance is also placed on paragraph 4403 of *Woon's Corporations Law* (Walter Woon SC gen ed) (LexisNexis Singapore, 2022) ("*Woon's Corporations Law*"), which reads:

> **S 177(1) convening extraordinary general meetings**
>
> Any general meeting other than the annual general meeting is an extraordinary general meeting. The constitution may provide that the directors have power to convene extraordinary general meetings. This section gives members holding the specified proportion of the voting rights in the company the power to convene a meeting themselves. It differs from the previous section in that the directors are not involved. …

51 This extract does not support the position that shareholders are entitled to *conduct* a meeting called under s 177. *Woon's Corporations Law* merely restates the principle in s 177 of the CA that the shareholders are entitled to convene a meeting of the company by themselves. It does not go further to say that they are entitled to conduct that meeting without the involvement of the directors. The Convening Shareholders' reliance on the sentence, "[i]t differs from the previous section in that the directors are not involved", is misconceived. What is meant by the extract is that, unlike the process under

s 176 of the Act, the directors are not involved in *calling* the meeting in the process under s 177. This adds nothing to the text as s 177 is a mechanism to empower shareholders to call a meeting of the company *without* first requisitioning the directors to do so as required under s 176 of the Act.

52 Finally, the Convening Shareholders rely on an article issued by the Singapore Exchange Regulation (also known as "SGX RegCo") on 27 April 2023 entitled "Regulator's Column: What boards and requisitionists should take note of in shareholder-requisitioned meetings". However, nothing in the article says that the requisitionists under s 177 should have sole conduct of the meeting to the exclusion of the directors. The article states:

> Where requisitionists decide to avail of the mechanism in Section 177 of the Companies Act, they should note that the burden falls on them to ensure that all applicable procedural requirements relating to the convening, and conduct, of the Requisitioned Meeting … are adhered to …

This extract does not assist the Convening Shareholders. To the contrary, it is a reminder that all requirements relating to the conduct of the meeting must be met, and the onus of fulfilling the conditions would be on the Convening Shareholders.

53 I sum up my views on s 177 of the Act. The section enables the Convening Shareholders to call a meeting. To call a meeting and to conduct it are separate concepts under the Act, however, and therefore the right to conduct the meeting may not be implied from the right to call the meeting. Nevertheless, the section does not expressly disentitle shareholders from conducting a meeting they have called. The section is silent on the matter, which then becomes an issue to be decided by reference to the company constitution. In the present proceedings, therefore, the relevant inquiry is that concerning ASTI's constitution.

ASTI's constitution

54 ASTI relied on Art 52 of the constitution for its assertion that the Chairman of the Board of Directors ought to have chaired the EGM. Art 52 reads as follows:[59]

PROCEEDINGS AT GENERAL MEETINGS

> 52. The Chairman of the Board of Directors, failing whom the Deputy Chairman, shall preside as Chairman at a General Meeting. If there be no such Chairman or Deputy Chairman, or if at any General Meeting neither be present within five minutes after the time appointed for holding the meeting nor willing to act, the Directors present shall choose one of their number (*or, if no Director be present* or if all the Directors present decline to take the chair, the Members present shall choose one of their number) to be Chairman of the General Meeting. If required by the listing rules of the Designated Stock Exchange, all general meetings shall be held in Singapore, unless prohibited by relevant laws and regulations of the jurisdiction of the Company's incorporation, or unless such requirement is waived by the Designated Stock Exchange.
>
> [emphasis added]

55 Art 52, on its face, does provide for a scenario where no director is present. ASTI and the Set A Directors contend that the circumstances took them out of the ambit of Art 52. In particular, they were told on 2 August 2023 not to turn up at the EGM. Nevertheless, from the words of Art 52, the constitution did envisage a situation where a meeting could validly continue "if no Director be present". The remainder of the section also does not mandate that any number of directors be present. Two members present would be sufficient for a quorum. One consideration is that in relation to proxies, the Company has rights and duties, which must be exercised by its directors. The directors also have various powers in relation to proxies and security measures. There is nothing in the

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[59] 1AL Affidavit at p 58.

constitution that states a meeting cannot go on without the Company exercising proxy rights, or directors exercising their discretionary powers. While ASTI and the Set A Directors contend that Art 52 only applies where they were voluntarily absent or declined to chair, the article itself is factually expressed and does not explicitly so specify.

56 Art 76, however, is a different matter. This furnished incumbent directors with a right to receive notice, attend and speak at General Meetings. It reads as follows:[60]

DIRECTORS

…

> 76. A Director shall not be required to hold any shares of the Company by way of qualification. A Director who is not a Member of the Company shall nevertheless be entitled to receive notice of and to attend and speak at General Meetings.

57 The Set A Directors do not dispute that they received notice of the EGM. Their dispute is that the Convening Shareholders had informed them on 2 August 2023 that they were not to attend the EGM.

58 In this context, while the Set A Directors relied on Art 76 because of its broader width, I also note that the EGM was one for which special notice had been given under s 152 of the Act and the section itself provided for the Set A Directors to be heard. Subsections 152(1)–(3) read as follows:

> **Removal of directors**
>
> **152.**—(1) A public company may by ordinary resolution remove a director before the expiration of his or her period of office, despite anything in its constitution or in any agreement between it and the director but where any director so removed

[60] 1AL Affidavit at p 64.

> was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove the director does not take effect until the director's successor has been appointed.
>
> (2) Special notice is required of any resolution to remove a director of a public company under subsection (1) or to appoint some person in place of a director so removed at the meeting at which the director is removed, and on receipt of notice of an intended resolution to remove a director under subsection (1) the company must immediately send a copy thereof to the director concerned, *and the director, whether or not he or she is a member of the company, is entitled to be heard on the resolution at the meeting.*
>
> (3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the public company, not exceeding a reasonable length, and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so —
>
> (*a*) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
>
> (*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,
>
> and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may, without affecting the director's right to be heard orally, require that the representations must be read out at the meeting.
>
> [emphasis added]

59 Therefore, because of Art 76 of ASTI's constitution and s 152 of the Act, the Set A Directors had a right to attend and speak at the 22 August 2023 EGM and to be heard on the special resolution relevant to their removal as directors.

60 In this context, the 2 August 2023 letter disallowing the directors to attend the EGM becomes important. The Set A Directors emphasise that they

were told on 2 August not to turn up. This letter ignored both Art 76 of ASTI's constitution and s 152 of the Act. The Convening Shareholders make the point that the Set A Directors did not exercise their right to be heard. The Set A Directors conceded at the hearing that they did not state they had a right to be heard under Art 76 nor did they insist that s 152(2) of the Act implied they could not be refused permission to attend the meeting. Confusingly, their communications with the Convening Shareholders centred on the validity of the notice, and thereafter, on their right to conduct the meeting (see [9]–[12] above). The right that the Set A Directors asserted was not the right to be heard on the special resolution, but the right to conduct the meeting and their responsibility to deal with proxy issues or to exercise their discretion in relation to issues as to security.

61 Section 152 of the Act prescribes a process that must be followed whenever a resolution is proposed for a director to be removed. Special notice was sent as required. The section then gives the director a right to be heard on the matter. There was therefore some cogence to the Convening Shareholders' argument that the Set A Directors ought to have asserted any right to be heard against their removal. In the present case, special notice was issued as required and the Set A Directors did not assert their rights under that section. Nevertheless, the Convening Shareholders' letter of 2 August 2023 interrupted the schematic flow that the section envisaged. It was also followed on with further letters to rebuff attempts to meet to discuss the conduct of the meeting.

62 In this context, Art 76 of ASTI's constitution goes further than s 152. It furnished the incumbent directors with rights *to attend and to speak* at General Meetings, which the 2 August 2023 letter denied. Reading the constitution as a unified whole, if the Chairman of the Board had attended the meeting, as was his right under Art 76, Art 52 also furnished the Chairman of the Board with a

first option to chair the meeting if he so wished. This right then devolves to other members of the Board present, prior to that of any shareholder present. Therefore, ASTI's and the Set A Directors' assertion that the Chairman of the Board or the incumbent directors had the right to conduct the meeting, if he wished to do so, reflected the practical effect of Arts 76 and 52, when considered together. The right to conduct the meeting, if the Chairman of the Board so chose to exercise it, followed from his right to attend the meeting. The effect of Arts 76 and 52, when read together, is that other shareholders could only conduct the meeting if, having been notified, the directors omitted to attend or declined to conduct the meeting.

63 The Convening Shareholders make the point that the Set A Directors could have attended on 22 August 2023, notwithstanding their letter of 2 August 2023. Instead, they encouraged shareholders not to attend. Nevertheless, the Convening Shareholders had brushed aside Art 76 and also rebuffed efforts made by the Set A Directors to set up meetings to discuss conduct of the EGM. Prior to the EGM, the Set B Directors had barred Set A Directors from a meeting with SIAS. The Convening Shareholders point out that the Set A Directors were of the view that the meeting on 22 August 2023 was not a valid EGM. But the issue as to notice of meeting and the issue as to conduct of the meeting are two separate issues and the parties could have dealt with the issues in that light. It would be speculative to assume that, if Art 76 had been given due recognition, the two sides could not have worked out an orderly manner of procedure and argument at the meeting. The Set A Directors had not been given an opportunity. Further, in the event that the opportunity had been granted and it became impossible for the two sets of directors to work together such that any conduct of the meeting became impracticable, they could have applied under s 182 of the Act for guidance from the court. ASTI's AGM is an illustration where such

court direction was sought, and 60.7% of ASTI's shareholders attended, whereas the EGM was attended by only 34.29% of shareholders.

Section 392 in this context

64 In my view, s 392 of the Act may not be used to validate resolutions passed without due account being given to Art 76 of the constitution or s 152 of the Act. The right to attend and to speak conferred by Art 76 could not be characterised as procedural in this context, where the incumbent Directors and the Convening Shareholders had deferring views. The agenda on 22 August 2023 was the removal of the Set A Directors, the very persons who were not granted the right to attend and speak. Section 152 rights are substantive in nature as they allow the director to protest his removal (see *Monnington v Easier plc* [2005] All ER (D) 265 at [39], dealing with the English equivalent of s 152(2)).

Conclusion

65 Accordingly, OA 855 is dismissed. At the hearing, the Convening Shareholders drew my attention to an alternative Prayer 5 for the court to give directions under s 182 of the Act. However, the section may only be used on the specific criterion that to call or to conduct a meeting would be impracticable. The facts show that to call a meeting is not impracticable; and there is insufficient evidence to show that the proper conduct of such a meeting would be impracticable.

66 In respect of OA 861, I grant a declaration that the resolutions passed at the meeting on 22 August 2023 are invalid and of no legal effect, being the second of the two alternatives in prayer 2. Prayers 1 and 3 are not necessary in light of the declaration granted.

67 Parties are to write in regarding their position on costs within three weeks of this judgment, such submissions being no more than seven pages. In the meanwhile, I direct under O 19 r 4(1) of the Rules of Court 2021 that the time for filing a notice of appeal against this decision should run from today.

Valerie Thean
Judge of the High Court

Kelvin Poon SC, Mark Cheng Wai Yuen, Ho Zi Wei, Timothy Ang Wei Kiat and Ryan Mao (Rajah & Tann Singapore LLP) for the claimants in HC/OA 855/2023 and the first to fourth defendants in HC/OA 861/2023;
Favian Kang Kok Boon (Adelphi Law Chambers LLC) for the first to fifth defendants in HC/OA 855/2023;
Ranvir Kumar Singh, Shiv Kumar Singh and Yoong Nim Chor (UniLegal LLC) for the sixth defendant in HC/OA 855/2023 and for the claimant in HC/OA 861/2023;
Sim Chong (Sim Chong LLC) for the fifth to sixth defendants in HC/OA 861/2023.