Lim Yew Ming *v* Aik Chuan Construction Pte Ltd and others
[2015] SGHC 101

Case Number : Originating Summons No 1043 of 2014

Decision Date : 15 April 2015

Tribunal/Court : High Court

Coram : Aedit Abdullah JC

Counsel Name(s) : Jeffrey Ong Su Aun & Nichol Yeo (JLC Advisors LLP) for the plaintiff; Daniel Koh & Favian Kang (Eldan Law LLP) for the second to the seventh defendants

Parties : Lim Yew Ming — Aik Chuan Construction Pte Ltd and others

Companies- Meetings – Impracticability – Quorum

15 April 2015 Judgment reserved.

Aedit Abdullah JC:

Introduction

1 This case concerns the ability of the majority shareholder of a company to conduct a meeting to allow him to put to the vote essentially his vision of how the company should proceed. The minority shareholders, namely his mother and siblings opposed his plans, and declined to attend the meetings called by him, rendering these meetings inquorate. I granted his application to have a quorum of one. The minority shareholders have appealed.

2 Mr Lim Yew Ming, the plaintiff and majority shareholder of Aik Chuan Construction Pte Ltd (the first Defendant, hereafter 'Aik Chuan'), sought to have the company, previously active only in the construction industry and boarding business, move into the renewable energy sector. His desire to expand the company's activities into this new area ran up against the concerns of the 2nd to 7th defendants ("the Defendants"). The Defendants are the other shareholders of Aik Chuan, and are also the Plaintiff's family members. These Defendants chose not to attend extraordinary general meetings ("EGMs") called by him on two occasions in 2014 depriving him of the needed quorum. The case thus turns on whether the property rights of the majority shareholder should be vindicated, or whether he is constrained from pursuing his vision by the other shareholders.

3 The Plaintiff by Originating Summons 1043 of 2014 ("OS 1043/2014"), sought an order against Aik Chuan and the Defendants under s 182 of the Companies Act (Cap 50, Rev Ed 2006) ("the Companies Act") that a quorum of one be sufficient for a general meeting of the members or shareholders of the company. Aik Chuan did not take an active part in the proceedings. After hearing arguments, I granted the order. The Defendants have now pursued the present appeal.

Background

4 The Plaintiff has 51.5%, of Aik Chuan. He is also the Managing Director. The remaining 48.5% is held by other family members, namely Lim Yew Soon, Lim Yew Ghee, Lim Yew Chee, Lim Po Lin, Lim Yu Lin, and Neoh Siew Inn (the mother of the Plaintiff). Lim Yew Soon (the 2nd Defendant) and Lim Po Lin (the 5th Defendant) are the other directors. Aik Chuan Construction, as the name suggests is active

primarily in construction work in Singapore, though it has also gone into boarding and lodging houses.

5 In 2013, the Plaintiff sought to get into the renewable energy business, incorporating AC Global Energy Pte Ltd ("AC Global") in December 2013. A contract was subsequently entered into on 1 February 2014 to construct a biomass plant in Tennessee, the United States. AC Global was to invest in the biomass plant, funded by an increase in AC Global's paid up capital, and a $32m loan from Hitachi Capital Singapore Pte Ltd, which would be obtained to pay for the construction costs of the biomass plant. The Hitachi Loan in turn required a personal guarantee from the Plaintiff, a corporate guarantee, and an irrevocable banker's guarantee of $3.2m over AC Global's performance of its obligations. To provide the $3.2m bank guarantee, a first charge over Aik Chuan's fixed deposit accounts had to be given to the bank, CIMB Bank Berhad. This was signed by the Plaintiff and the 5th Defendant. The application for the bank guarantee and a letter of authorisation in respect of the bank guarantee was signed by the Plaintiff and the 6th Defendant (an authorised signatory). The bank guarantee was approved. Subsequently, the Plaintiff and the 5th Defendant signed a resolution approving the corporate guarantee.

6 The Plaintiff then considered financing the Biomass Project by other means through project financing with the United Overseas Bank ("UOB"). The project financing supposedly offered better terms, and the possibility of enrolling on to an IE Singapore supported programme. IE Singapore approved AC Global's application to be part of the programme. The UOB facility required a personal guarantee from the Plaintiff, and a corporate guarantee from Aik Chuan. However, at this point, the 2nd and 5th Defendants declined to sign the corporate guarantee.

7 The Plaintiff sought to convene an EGM on 8 October 2014 for the removal of the 2nd and 5th Defendants as directors. General meetings are governed by Article 54 of Aik Chuan's Memorandum of Articles of Association ("Aik Chuan's Articles"), which states the following:

> Any director may whenever he thinks fit convene an extraordinary general meeting, and extraordinary meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

8 Quora at general meetings are governed by Article 57 of Aik Chuan's Articles, which state the following:

> No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, and continues to be present until the conclusion of the meeting. Save as herein otherwise provided, two members present in person shall be a quorum…

9 Article 58 specifies what happens if there is no quorum:

> If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

10 The Defendants refused to attend this EGM, and no quorum could be formed. The Plaintiff attempted to have a 2nd EGM on 1 November 2014 to consider the appointment of other persons as directors of Aik Chuan. The Defendants again refused to attend, and the meeting was again inquorate. No issues were raised as to the propriety of the requisitions for these meetings.

The Plaintiff's Case

11 Relying on s 182 of the Companies Act, and the English case of *Union Music Limited v Russell John Watson & Anor* [2003] EWCA Civ 180 ("*Union Music*"), interpreting a provision *in pari materia*, the Plaintiff contended that the inability to convene a meeting with a quorum because of the 2nd to 7th Defendants' refusal to attend amounted to an impracticability, allowing the Court to order the meeting to proceed on a quorum of one. It was further argued that minority shareholders do not have a right of veto through the quorum requirements.

12 It is said that the Defendants had in defending their position made allegations which that were irrelevant to the Plaintiff's application. The Defendants justified their stand on the ground that the agreement to invest in the Biomass Project was only on the basis that the Company would not invest more than $6.5m in the project. Any balance was to be raised by AC Global on its own. The Plaintiff contended that the Defendants, or at least the 2nd and 5th Defendants, knew all along that the financial support required went beyond $6.5m.

13 In addition, the actions of the Plaintiff are intended to further the interests of Aik Chuan. In contrast, the Defendants seek to pressure the Plaintiff into agreeing to enter a share swap between these Defendants' shares in Aik Chuan, and the Plaintiff's interests in the companies controlled by these Defendants.

The Defendants' Case

14 The Defendants argued that s 182 is not engaged as there is no deadlock in the running of Aik Chuan's business; that as Aik Chuan is a family business, the Defendants had the right to use the quorum provision to defend their interests. The Court should not grant an order under s 182 as the Plaintiff merely sought to further his personal project.

15 The Defendants also contended that there was an agreement that Aik Chuan would not need to lend more than $6.5m to a related company for the purposes of the Biomass Plant. This assurance led the Defendants to agree to that loan. Subsequently however, the Plaintiff informed them that $15m was needed. This additional sum was objected to by these Defendants as they saw this as going beyond the agreement that had been reached. As it was, a subsidiary of Aik Chuan was caused by the Plaintiff to provide the Biomass entity with funds for the project. The Plaintiff requisitioned two EGMs: the first to remove the 2nd and 5th Defendants as directors of Aik Chuan, and the second to appoint two persons friendly to him on to the board of directors. The Defendants declined to attend both EGMs, leading to the present case.

The Decision

16 The main issue in this case was whether the Plaintiff should be permitted to proceed with a quorum of one at a meeting of Aik Chuan to approve his preferred course of action. In resisting the application by the Plaintiff to do so, the Defendants relied on local cases which, they contend, recognise the right of shareholders to effectively boycott company meetings and veto proposals by their absence.

17 Grouping the issues a little differently from the parties, for ease of discussion, the issues in the present case are thus:

(a) The operation of s 182 Companies Act

(b) 'Impracticability' and the court's exercise of discretion under s 182 of the Companies Act

(c) Whether minority shareholders are entitled in Singapore to cause a lack of quorum; in particular,

(i) whether a different approach applies to family run companies; and

(ii) whether a family agreement is a sufficient basis to depart from the general position under s 182 of the Companies Act.

18 I drew no distinction between membership and shareholding in the company in my decision as the issue did not arise.

The operation of s 182 of the Companies Act

19 The portion of s 182 of the Companies Act relevant to the present case reads as follows:

> 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 articles 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 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 proxy shall be deemed to constitute a meeting.…

20 The section thus provides in the present circumstances that:

(a) if it is impracticable to call a meeting or conduct a meeting as prescribed by the Articles or the Companies Act,

(b) the Court may on the application of any director or member entitled to vote

(c) order a meeting to be called, held and conducted in such a manner as the Court considers fit, and

(d) give consequential directions, including a direction that a quorum of one will suffice.

21 The approach has been laid down in *Union Music* in clear terms. The case looked at s 371 of the English Companies Act 1985, which is *in pari materia* with s 182:

> (1) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting in the manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any member of the company who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in any manner the court thinks fit.
>
> Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

22 The English Court of Appeal in *Union Music* ordered that a quorum requirement could be dispensed with. In the view of the Court, a provision requiring a quorum of two members' attendance

would not prevent a decision in favour of an applicant who seeks a proper order, such as the appointment or removal of a director, as that is something which a majority shareholder would have the right to effect. In the words of Peter Gibson LJ, at para 49, 'Companies should have effective boards able to take decisions'.

23 The Court of Appeal in *Union Music* took a holistic assessment in determining whether to exercise its powers. In the present case, the Defendants advocated that even where an impracticability exists, the court must find good reasons for the exercise of its discretion. This was essentially a two stage approach. The different approaches should not lead to different results. Nonetheless, the holistic assessment has the benefit of not slicing up the analysis: matters going to impracticability and the exercise of discretion will overlap considerably. This can be seen in the Defendants' list of matters establishing good reasons for the exercise of the court's discretion: deadlock affecting day-to-day management; inability of the company to comply with statutory requirements; and the death of all corporators. There is therefore little to be gained by separating out impracticability and the existence of a good reason. A holistic assessment entails an assessment of whether there is indeed impracticability and whether such impracticability is of a sufficient degree as to call for the intervention of the court.

'Impracticability' and the court's exercise of discretion under s 182 of the Companies Act

24 As noted above, what s 182 requires is that there is an impracticability in calling or conducting a meeting. An impracticability arises when the company is unable to proceed with the meeting because quorum is not met through the refusal of the members to attend. A number of other cases cited by the Plaintiff underlined what amounted to impracticability and the approach that should be adopted.

25 In *Re El Sombrero Ltd* [1958] 3 WLR 349 ("*Re El Sombrero*"), the English court adopted the position that impracticability arose if the meeting could not, as a practical matter, be conducted. Refusal to attend was found sufficient to give rise to impracticability. As emphasised in *Union Music*, the choice of a member to attend or not attend does not operate as a right of veto or the ability to frustrate the majority. This was followed in *Re Woven Rugs Limited* [2002] 1 BCLC 324.

26 A concise statement of this position is found in *Phuar Kong Seng v Lim Hua* [2005] 2 MLJ 338. In that case the plaintiff sought an order from the Malaysian High Court under s 150 of the Companies Act (1950) on the grounds that it was impracticable to conduct a meeting as prescribed by the Articles: attempts to call meetings were defeated on various occasions by lack of quorum. Zaleha Zahari J noted at para 16 to 17:

> It is a basic principle of company law that the corporate will is advanced by the resolution of the company in general meeting in matters in which the general meeting is competent to act and that the majority of members controls the decision-making in the company by the exercise of its voting power. A related principle is that voting rights are in the nature of property and members may exercise this power in their own self-interest.
>
> I am in agreement with the submission of the plaintiff's counsel that the quorum provisions cannot be regarded as conferring a form of veto on a minority party in a situation where a deadlock exists. The proposed resolutions involved the interests of the plaintiff and the defendant qua shareholders and as such shareholders they are accordingly free to exercise their voting rights to advance their own self-interest.

27 With respect, the position adopted by Zaleha Zahari J is sound, as it gives due weight to the

property rights of the shareholders, and their respective autonomy to act in their own interests.

28 Similarly, in *Re Success Plan Ltd* [2002] 3 HKLRD 610 at [43], in respect of the Hong Kong equivalent of s 182 of the CA, Yuen JA stated the following:

> It is well-established law that the refusal of another shareholder to form a quorum for a meeting is an example of a situation where it would be impracticable to call a meeting of the company (eg *Re El Sombrero Ltd* [1958] Ch 900). A quorum requirement does not confer a veto power on a majority shareholder by his ability to prevent a shareholders' meeting from being held (*Re Opera Photographic Ltd* [1989] 1 WLR 634), unless the minority shareholder has a special right attached to his shares rendering his presence at meetings indispensable (eg *BML Group Ltd v Harman* [1994] 1 WLR 893).

29 Yuen JA considered whether the court's discretion should be exercised. It was noted that the possibility of unfair prejudice would be taken into account, but it was found that there was nothing before the court to show that all the resolutions sought to be passed were clearly oppressive.

30 From the above discussion, we can see that case law from various jurisdictions clearly supports the position that an inability to meet quorum requirements due to members not wanting to attend the meeting is an example of there being impracticability under s 182 of the Companies Act (or its equivalent), and can be a grounds for judicial intervention.

31 As a matter of interpretation alone of s 182, refusal to attend, causing a failure to meet quorum requirements, is an impracticability. 'Impracticability' is defined in the *New Shorter Oxford English Dictionary on Historical Principles* (Lesley Brown, ed) (Oxford University Press, 1993) as

(a) the quality or condition of being impracticable;

(b) an impracticable thing.

32 'Impracticable' in turn is defined as "[n]ot practicable; unable to be carried out or done; impossible in practice". It seems to me that all s 182 contemplates is that there be something which prevents the meeting from being conducted, though whether or not an order should be granted is for the court's assessment of the circumstances.

33 The Defendants on the other hand argued that good reasons exist in more limited circumstances than in the present case. They say that there must be general deadlock preventing day to day management, inability to comply with statutory requirements, or a situation where all members have died. It is said none of these circumstances exist here. This proposition is derived by the Defendants from cases such as *Beck v Tuckey Pty Ltd and Others* (2004) 49 ACSR 555 (Supreme Court of New South Wales) ("*Beck v Tuckey*") as well as *Re Opera Photographic Ltd* [1989] 1 WLR 634 ("*Re Opera*").

34 In *Beck v Tuckey*, while the judge found that there was insufficient deadlock as nothing stopped day-to-day operations, it was telling that in that specific case, the parties indicated that they were prepared to negotiate to resolve their differences. The judge stated (at [51]) "I believe the court should be reluctant to intervene in the dispute in a partial fashion when there is a prospect that such negotiations will take place and might succeed." The final order indicated that mediation was to be ordered under the Supreme Court Act 1970 (NSW). The strength of that case as authority for the proposition that impracticability requires the failure of day-to-day operations is therefore relatively weak. There were clearly other salient reasons that motivated the court's ultimate finding.

35 Requiring deadlock extending to day to day management is setting the bar too high. Section 182 does not actually use the word 'deadlock'. That section simply requires that there be impracticability. Certainly, deadlock would amount to an impracticability, but an impracticability is not synonymous with deadlock. The Defendants in effect seek to put a gloss on s 182 that restricts its operation to fairly extreme situations of distress for the company. The words of the provision do not support this gloss. The Defendants have not shown anything in parliamentary debates or other referable material that would compel the adoption of such a limited meaning to the word 'impracticability'. The English Court of Appeal in *Union Music* did not take on such a gloss either.

36 Both the Defendants and the Plaintiff referred to the case of *In re Opera Photographic Ltd* in support of their respective cases. That case involved an application for an order under s 371 of the Companies Act 1985 allowing a quorum of one at a meeting of the company. Morritt J after referring to *Re El Sombrero Ltd*, and other authorities, said, at p 636H to 637A:

> The plain fact of this matter is that deadlock exists between the two individuals which has to be resolved one way or another. It is either capable of being resolved by ordering a meeting, at which no doubt Mr. Martin will be removed, and which will then no doubt result either in him exercising the pre-emption rights under the articles of selling his shares, or presenting a petition for the winding-up of the company, or presenting a petition under section 459 of the Act of 1985 based on unfair prejudice to him. Equally, if no order is made the deadlock will continue because no meetings can be conducted which are going effectively to manage or procure the management of this company, and if that persists for any length of time then no doubt one or other of the individuals will again be presenting a petition based on that deadlock in order to provide some form of resolution.

37 Morritt J was concerned with a situation of deadlock in the meeting of members. His Lordship's remarks were made in the context of a failure between members to agree. There is nothing in those remarks dealing with day-to-day operations or management; rather the focus was on 'management' in the sense of the setting of a direction for the company by its members. Furthermore, Morritt J was dealing only with an aspect of impracticability. There is nothing in His Lordship's judgment which could be read as equating impracticability with the existence of deadlock. This case therefore did not assist the Defendants.

38 The Defendants also referred to *Re Sticky Fingers Restaurant* [1992] BCLC 84 as support for the proposition that something of the nature of an obstruction of the business of the company is required. In that case, the inability of the company to conduct meetings of the members or the board resulted in the company having difficulties in dealing with its accounts and tax issues. Again, that would be a specific instance of when the discretion should be exercised. It was not meant to limit the discretion to only those situations.

39 The Defendants cited *Jenashare Pty Ltd v Lemrib Pty Ltd* (1993) 11 ACSR 345 (Supreme Court of New South Wales) ("*Jenashare*"), for the proposition that impracticability is made out where the corporators (presumably the members) are all dead, having been killed in an accident. That would be one example of impracticability. But *Jenashare* itself recognised that was but one instance. What Young J said was, at p 349 to 350:

> Section 251 [the equivalent of s 182] permits the court to order meetings in case of impracticability. Impracticability will cover a wide range of circumstances, from the case where all the corporators have been killed in an aircraft accident, down to situations where it is extremely inconvenient for a meeting to be called.

40 A wide range of circumstances was thus recognised in that case. Young J went on to note that the court has discretion, but would not intervene unless there is evidence of "a good reason to do so" (at p 350). In particular, where there is a prescribed procedure to deal with the impracticability the company faces, the court would ordinarily not make an order unless there is strong evidence. It is also noteworthy that in that case, at the time of the hearing, it was purely a matter of speculation whether a meeting held would be inquorate (at p 350).

41 The other restricted circumstances identified by the Defendants are just instances where the power under s 182 should be exercised. But these instances cannot circumscribe the ambit of that section. That would be unduly restrictive.

Whether minority shareholders are entitled to cause a lack of quorum

42 The Defendants pointed to cases which they contend show that minority shareholders can legitimately cause a lack of quorum. These were primarily those that engaged s 392 of the Companies Act, which deals with irregularities, including absence of quora, such as *Chang Benety and ors v Tang Kin Fei and ors* [2012] 1 SLR 274 ("*Chang Benety*"). These cases are concerned with whether there has been such an irregularity in compliance with requirements that a substantial injustice results.

43 In the High Court in *Tang Kin Fei and others v Chang Benety and others* [2011] 1 SLR 568 ("*Chang Benety HC*") at [39], Justice Woo Bih Li, at first instance, noted that the defensive tactic referred to is legitimate, at para [39]:

> I was of the view that the starting point should be that where there is a provision which allows one party to engage in the defensive tactic mentioned above, he is, *prima facie*, entitled to do so. Where there is a deadlock in the sense that no quorum can be formed for a board meeting, I was of the view that to allow one party to push ahead with his agenda in the absence of the other party was *prima facie* an injustice which was substantial because he was denying the other party the right to stop the proposing party from proceeding with his agenda, a right which the parties had agreed to beforehand.

44 These remarks were in the context of an application under s 392, on irregularity. The position stated by Justice Woo was that there would be *prima facie* injustice thereby requiring the party seeking an order of court to show that grounds existed for validation. In such a s 392 application, the Court would need to consider whether an irregularity has caused or will cause substantial injustice which cannot be remedied. The court, adopting the approach in *The Oriental Insurance Co Ltd v Reliance National Asia Pte Ltd* [2008] 3 SLR (R) 121, as noted by Woo J, would consider a holistic weighing and balancing of the various interests. This is demonstrated by his analysis of the different prayers sought in the case before him: vide paras 41 to 48. The approach is thus different from that under s 182. Authorities such as *Re El Sombrero* and *Union Music* were not considered by Woo J.

45 The distinction between the two requirements under s 182 and 392 is there because of the different perspectives involved. Section 392 operates *post hoc*. Where an irregularity arises such as a decision taken at an inquorate meeting, the question that is examined is whether a substantial injustice has arisen, because of the conduct of the party proceeding in breach. In contrast, when the court's intervention is sought under s 182, the issue is whether the meeting should be permitted to go ahead, and the prescribed criteria under that section is impracticability. No decision has yet been made; the only question is the holding of the meeting. The decision may yet be influenced by those choosing to attend. They are given that opportunity, slim though it may be at times, and it is for them to decide what to make of it.

46 At the Court of Appeal in *Chang Benety*, the Court of Appeal was concerned with not just a quorum requirement, but representation reflecting a position reached under a shareholder's agreement, at para [48]:

> It bears noting that the quorum requirement in the present case was not merely an ordinary one specifying a minimum *number* as such but also one which related, in fact, to the issue of *representation* on the board of directors. This requirement was to ensure that parties would have their interests represented at board meetings and could thus prevent the Company from making any decision which would prejudice them. The importance of this requirement is evident as it was not only provided for in the articles of association but enshrined in the Shareholders' Agreement as well. In our view, where such a quorum requirement is breached, there will *prima facie* be substantial injustice to the side which exercised its deadlock rights.
>
> [emphasis in the original]

47 In contrast, there is no shareholder agreement in the present case. The Defendants instead rely on a family understanding, which will be dealt with below.

48 The next case relied upon by the Defendants to illustrate that the minority's refusal to attend meetings is acceptable in the local context is the High Court decision in *Re Goodwealth Trading Pte Ltd* [1990] 2 SLR(R) 691 ("*Re Goodwealth HC*"). The Defendants argued that that case established a principle that a refusal to attend a meeting is a recognised defensive strategy. *Re Goodwealth HC* was however a case concerned with winding up on just and equitable grounds under s 254. At the High Court, a preliminary point had arisen as to whether solicitors were properly appointed, as there was no quorum at the relevant meeting. In recounting the facts of the case, Yong Pung How CJ (sitting as a Judge of the High Court) stated:

> Within the company, one defensive tactic which was used by the petitioner throughout this confrontation was to refuse to attend directors' meetings, so that there could not be the necessary quorum of two for a valid directors' meeting. The result of the use by the petitioner of this defensive tactic was that, while the restaurant business could be continued in some sort of way, no corporate decisions of the board of directors could be made.

49 In my view, this was not an endorsement of the use of absenteeism from meetings. It merely described what happened in the company as a matter of historical fact. The rest of the judgment was concerned with whether winding up on just and equitable grounds was made out. For the reasons above, I was of the view that this case bore little relevance to the present one. As for the decision on appeal in *Chua Kien How v Goodwealth Trading Pte Ltd and another* [1992] 1 SLR(R) 870 ("*Re Goodwealth CA*"), the focus was specifically on winding up on just and equitable grounds. .

50 I next consider *Sum Hong Kum v Li Pin Furniture Industries Pte Ltd* [1996] 1 SLR(R) 529 ("*Sum Hong Kum*"), which concerned a company which had been incorporated specifically to take over the business of a partnership. The partners' respective positions in the partnership were to be carried over into the company. The relationship between them *qua* shareholders was thus governed by their prior relationship as partners. As they each held equal shares and equal say in the running of the partnership, the holding by the judge that a proper quorum had to include all three of the founding members is understandable. That situation is however different from the present case.

51 The above cases thus do not establish a general rule that impracticability under s 182 does not capture inquorate meetings. What is required is that the court should make a holistic assessment, considering whether the events, omission or other actions require its intervention. As a matter of

principle, impracticability is made out in the present case as the refusal of members to attend meetings perverts the point of membership and the meeting process. As has been emphasised in the English cases discussed above, a minority shareholder or member cannot use the quorum provision as a *de facto* veto mechanism, allowing him to obstruct the desires of the majority shareholder. A meeting is a mechanism to allow decisions to be made. Proposals are meant to be put, debated and voted upon. The quorum is to ensure only that there is at least a minimal opportunity to debate and convince. It is part of the structure of a proper meeting. On the other hand, allowing the minority to cause the meeting to fail by staying away gives them a *de facto* veto, allowing them to scupper the mechanism of decision-making. The proposal is not defeated through persuasion and tallying of those empowered to decide, as it should be; instead, it is defeated by the minority by their refusal to allow the matter to go to a vote at all. Veto by lack of quorum is nothing more than the imposition of the will of the minority on the majority. In my view, such impracticability justifies the court exercising its powers under s 182 of the CA.

52 It may be otherwise, if the minority could point to some basis that it would be inequitable or cause a substantial injustice, such as a shareholders' agreement requiring specific representation at a meeting, or even enshrining a general position that decisions are to be made on a cooperative or consensual basis among the members or shareholders.

53 There is no shareholders' agreement in the present case, but the Defendants rely on: a) a different approach for family run companies to the position; and b) an agreement between the family members in the present case.

Whether a different approach applies to family run companies

54 The Defendants cited a number of local cases which they contend point towards a different approach, permitting them to avoid attending EGMs without triggering the operation of s 182. It was contended that local law recognised rights under the quorum provisions. The cases relied upon by the Defendants are in particular, *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 ("*Chow Kwok Chuen*") and *Sum Hong Kum*.

55 *Chow Kwok Chuen* was cited for the proposition that family run companies are in a special class of their own. It is true that the familial relations, expectations and duties underlying the incorporation and management of companies held by family members can in some circumstances provide a special context for the interpretation of rights and obligations between such family members. However, I do not understand the Court of Appeal in *Chow Kwok Chuen* to go beyond this. How the familial context influences the outcome of a particular case will depend on the facts of the particular case.

56 In *Chow Kwok Chuen*, three brothers holding interests of roughly similar sizes in various companies founded by their father were in deadlock. The case came before the court because one brother sought to wind up the companies on the just and equitable ground. There are several important factual distinctions between *Chow Kwok Chuen* and the present case. They are as follows:

(a) The family arrangements in *Chow Kwok Chuen* were much more elaborate.

(b) The deadlock was between roughly equal shareholders.

(c) The case was concerned with winding-up.

These reasons point to distinguishing factors.

57 The family arrangements in *Chow Kwok Chuen* were much more elaborate than in the present case. The Court of Appeal noted at para 32 that

> In the present case, the Companies were incorporated by Mr Chow with the intention of using them to hold properties for the family's benefit, and he made special provision in the articles of association of each company to ensure that his wishes of wealth distribution and management involvement for male descendants were achieved. This was described by the Judge in the GD as follows (at [6]):
>
> > Mr Chow devoted most of his life to building up his fortune, acquiring real properties and incorporating the companies to hold the properties. He intended the companies to be family companies and he made special provision in the articles of association of each company in order to ensure that his wishes were achieved. In ADPL, the articles provided that Mr and Mrs Chow would be the governing directors and could not be removed from office by any director or shareholder. Further, every male descendent of Mr Chow in the male line who turned 21 years of age and notified ADPL of his desire to be appointed had to be appointed as a director of the company. In CCPL too, Mr Chow was the governing director who could not be removed and his adult male descendents in the male line were entitled to be appointed as directors of the company. In Lee Tung, Mr and Mrs Chow were the governing directors. Membership in that company was restricted to Mrs Chow, male descendents of Mr Chow in the male line and Mr Chow's lawful daughter. It can be discerned that, all in all, Mr Chow was a very traditional man.

58 The arrangements in *Chow Kwok Chuen* were intricate, encompassing restrictions on who could become directors or members, and clearly limiting or excluding the involvement of outsiders to the family in the high level supervision of the companies. Indeed, the restrictions were in favour of the male descendants of the founder. All of that is absent in the present case. There is no restriction on membership or directorship, and certainly no restriction to a specific line of descent. *Chow Kwok Chuen* thus is case determined on very special facts and very special circumstances.

59 In addition to the specific family arrangements underlying the corporate structure, *Chow Kwok Chuen* is also distinguishable as the competing shareholders in that case held roughly equal holdings. In contrast, here, the Plaintiff holds a majority in Aik Chuan. In other companies, the position is reversed, with various Defendants holding the majority interests, while the Plaintiff holds clearly minority stakes. The inference is that each party would be in control of a different company. A diversity of interests, and objectives is thus accommodated.

60 Finally, the fact that *Chow Kwok Chuen* was concerned with winding-up is significant. The Court of Appeal had to consider winding-up on just and equitable grounds. While winding up on that basis is not confined to quasi-partnerships, it is easier to establish a sufficient basis if the company in question is a quasi-partnership of the sort found in *Chow Kwok Chuen*. With roughly equal holdings, and an expectation of adherence to family values, any departure from a common understanding would probably make out a basis for the winding up of the family's corporate enterprise. The focus is different from that in an analysis under s 182. In a winding-up, the issue is whether the basis for the enterprises still remains. That examination of the existence of the basis is broader than whether an impracticability in holding a meeting exists requiring the intervention of the court.

61 None of these cases thus support the Defendants' contention that a special rule applies for family companies on the facts such as the present. The only rule, or principle laid down is that there needs to be an appreciation of the context of the incorporation of a company in construing the contract between its members.

Whether a family agreement provides a sufficient basis to depart from the general position under s 182

62 The Defendants submit that the Plaintiff was pursuing his personal project, and that he should not be allowed to pursue it as it was not in the family's contemplation or with the family's agreement. The Defendants also submit that there is a family arrangement or agreement that decision-making should be collective. It is this agreement that the Defendants seek to ask the court to uphold.

63 As noted above, there may be instances in which the court may impose additional obligations on the parties even if such obligations cannot be found in the formal agreement between the members (*i.e.* in the Articles and Memorandum of Association). For instance, where the company succeeds a partnership, as in a situation similar to that in *Sum Hong Kum*, with the parties holding similar interests in the company as they did in the partnership, even if there were no formal agreement, it may possibly be inferred that the relationship and balance of power between the parties are to remain as when they were partners.

64 Although the Defendants attempted to argue that the facts of the present case are similar to that in *Sum Hong Kum*, it was clear to me that additional obligations restricting the Plaintiff's freedom of action as shareholder to decide what he wanted to do with his interest in the company, and how to use his shareholding to direct the activities of the company, should not be imposed. The Defendants pointed to the fact that the company was founded by the Plaintiff's father, as well as to the fact that each of the children held majorities in different companies, with the rest of the shareholding in each company split among the siblings. It was argued that it was the intention of the family and the father of the Plaintiff, Mr Lim Lam Hong, who founded Aik Chuan, intended that the family should further the family's interests collectively. This, they argued, requires collective consultation.

65 There was certainly nothing in the nature of a Shareholder's Agreement, capturing all the parties' express or implied acceptance that there would be constraints, expressly or impliedly. *Sum Hong Kum*, in particular, involved a situation of another degree altogether. The position of the partners was crystallised in the company as the company effectively succeeded to the structure of the partnership. There is no such crystallisation in the present case. Furthermore, unlike *Sum Hong* Kum, the interests of the parties are not equal, and one person is clearly in control of Aik Chuan. There was nothing to show that that control ought to be effectively lessened in any way. The arrangements that were made in the companies held by the Defendants and the Plaintiff, with differentiated shareholdings and control of different companies by different family members, did not lead to the conclusion that there was a common basis between the parties that would be given legal effect. The wishes and hopes that may have been reflected in the differentiated shareholdings did not create a definite obligation between the Defendants and Plaintiff that should be given effect to by the Court. A definite binding bargain, whether between shareholders or partners in a joint enterprise, is what is needed.

Miscellaneous Issues

66 The parties recounted the financial arrangements and agreements between themselves. Save as some aspects may be material to the determination of the s 182 application, I did not address the status or impact of all of these. The Defendants are free to consider if there are other avenues to pursue and other provisions to invoke to protect their interests. All that I was concerned with in this case was the application by the Plaintiff for an order on the quorum at the meeting of the Company.

Conclusion

67 In the present case, the Defendants have chosen not to attend two EGMs called by the Plaintiff. There is no shareholders' agreement. The effect of their absence is that matters could not be put to the vote; while the agenda of the two EGMs relate to different matters, the upshot of the boycott of the EGMs is that investments in the biomass project could not be effected. That to my mind is sufficient impracticability, and it is of an appropriate degree as to call for the court to intervene.

Costs

68 Costs were not ordered as the Plaintiff took the position that it was not necessary.