**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHC 271**

Suit No 1270 of 2014

Between

**(1) Sabyasachi Mukherjee**
**(2) Gouri Mukherjee**

*… Plaintiffs*

And

**Pradeepto Kumar Biswas**

*… Defendant*

Suit No 417 of 2017

Between

**Indian Ocean Group Pte Ltd**

*… Plaintiff*

And

**Gouri Mukherjee**

*… Defendant*

---

# JUDGMENT

---

[Banking] — [Relationship Manager] — [Investments] — [Fiduciary Duties] — [Tort of Deceit] — [Trust]

## TABLE OF CONTENTS

# Sabyasachi Mukherjee and another
# v
# Pradeepto Kumar Biswas and another suit

**[2018] SGHC 271**

High Court — Suit No 1270 of 2014 and Suit No 417 of 2017
Belinda Ang Saw Ean J
7–10, 13–16, 20–24, 27–30 November 2017; 20 April 2018

11 December 2018 Judgment reserved.

**Belinda Ang Saw Ean J:**

## Introduction

1 In Suit No 1270 of 2014 ("Suit 1270/2014"), the plaintiffs, who are husband and wife, claim to have made various investments totalling US$4.5m on the advice and recommendation of the defendant, Pradeepto Kumar Biswas ("Pradeepto"). The first plaintiff is Dr Sabyasachi Mukherjee ("Dr Mukherjee") and the second plaintiff is Gouri Mukherjee ("Gouri"). The plaintiffs are collectively referred to as "the Mukherjees". The Mukherjees are alleging that the defendant, Pradeepto, a close family friend on whom they had placed complete trust and confidence as their investment adviser of more than ten years, swindled them of US$3.45m through a complex labyrinth of financial

instruments. The subject matter of this action are seven investments which the Mukherjees entered into in 2011 and 2013:

(a) Swajas Air Charters Limited ("Swajas") investment, which involves the subscription of pre-Initial Public Offering shares ("Swajas Investment");

(b) Neodymium Holdings Limited ("Neodymium") investment, which involves project financing ("Neodymium Investment");

(c) Peak Commodities Inc. ("Peak") investment, which involves project financing ("Peak Investment");

(d) Pacatolus Growth Fund Class 6 ("Pacatolus SPV 6") investment, which involves a growth fund ("Pacatolus Investment");

(e) Trade Sea International Pte Ltd ("Trade Sea") investment, which involves a trade financing ("Trade Sea Investment");

(f) Farmlands of Africa Inc. ("Farmlands of Africa") investment, which involves a debenture ("Farmlands of Africa Investment"); and

(g) SEW Trident Global Pte Ltd ("SEW Trident") investment, which involves trade financing ("SEW Investment").

2 The Mukherjees claim that the seven investments were inappropriate for them; that as a direct result of what Pradeepto had proposed to and told Gouri, she regarded the seven investments as appropriate for the Mukherjees but it turned out not to be the case. For now, the word "inappropriate" is used to describe the investments in the context of the Mukherjees' risk profile, investment philosophy and objectives. Later on in the judgment, the

appropriateness of the investments is reviewed from the lens of certain allegations that questioned the "authenticity" of the seven investments. In these instances, the Mukherjees have chosen to describe the investments as "shams" or "purported investments".

3 According to the Mukherjees, Pradeepto and his nominated entity, Indian Ocean Enterprises Limited ("IOEL"), a British Virgin Islands incorporated entity, had used their investment monies for the benefit of various companies that he and/or IOEL had connections with or interests in. The connections and interests as described were never disclosed to the Mukherjees when they made their investments or at any time thereafter. To the Mukherjees, their investments were a means through which Pradeepto had exploited them; having treated them as his personal source of funds. The Mukherjees therefore seek recovery of the outstanding principal amounts totalling US$3.45m and reasonable returns of US$1,328,332.19. Essentially, the Mukherjees claim the rate of 7.5% per annum over a stated period to compute their reasonable returns, assuming the principal was invested in alternative investments. I will explain how this figure was arrived at below (see [52]). On this note, the Mukherjees have stated that the figures in the closing submissions supersede previous stated amounts, this judgment will proceed on the basis of the closing submissions.

4 The Mukherjees base their claims on three causes of action: breach of fiduciary duty, breach of trust and the tort of deceit. The first and second causes of action mentioned here are applicable to all seven investments whereas the last cause of action relates to only five out of seven investments. As part of what is termed as a breach of trust, the Mukherjees have also said that the circumstances surrounding the investments would attract the imposition of a *Quistclose* trust.

5 Pradeepto denies any wrongdoing. He contends that the Mukherjees, at the trial and in their closing submissions, have strayed beyond their pleaded case and have also failed to prove the very serious allegations against him. Pradeepto was critical of the seriousness of the Mukherjees' complaints; particularly, when they dropped their pleaded claim in respect of a supposed investment called Free Zone Enterprise at trial. Further, evidential shortcomings exist despite the Anton Pillar search order that had resulted in the production of voluminous bundles of documents before this court. Pradeepto contends that the allegations are speculative or conjectures, and that the Mukherjees had to resort to expert evidence to shore up their evidential deficiencies. As it turned out, their expert, so the argument develops, based his opinion on speculative and non-existence facts.[1] In sum, Pradeepto submits that the Mukherjees have failed to discharge their burden of proof in respect of the various causes of action, and the action should be dismissed with costs.

6 A related action is Suit No 417 of 2017 ("Suit 417/2017"). The plaintiff is Indian Ocean Group Pte Ltd ("IOGPL") and the defendant is Gouri. In this action, IOGPL is suing Gouri to recover a loan purportedly made to Gouri by IOEL in 2012. According to IOGPL, it has the right to sue; having assumed the rights and liabilities of IOEL. The loan amount is said to be around US$1.6m. Gouri denies the loan. IOGPL's title to sue is also disputed.

7 Pursuant to an Order of Court dated 29 August 2017, both actions were listed for hearing before this court and Suit 417/2017 proceeded immediately after Suit 1270/2014. In Suit 1270/2014, the Mukherjees are represented by counsel, Mr Eddee Ng ("Mr Ng"), and counsel for Pradeepto is Mr Liew Teck

---

[1] DCS, para 18.

Huat ("Mr Liew"). Mr Liew also represents IOGPL in Suit 417/2017 and Gouri's counsel is Mr Ng.

8 In relation to Suit 1270/2014, the discussions will focus on the question of what obligations Pradeepto owed the Mukherjees with reference to the various causes of action in the pleadings. This judgment will also discuss whether Pradeepto practiced deceit on the Mukherjees in relation to five investments and whether a trust ought to be imposed in the present circumstances. In relation to Suit 417/2017, the central question is whether the purported loan is indeed a loan to Gouri or whether the flow of funds was merely pursuant to Gouri's instructions to have Pradeepto transfer the Mukherjees' funds from one account to another.

9 It is appropriate to explain at the outset that there is some duplication in the parties' treatment of related issues even though they are brought under different causes of action. Many arguments advanced before this court that are peripheral will not be discussed at all in this judgment unless they are relevant in that they would shed light upon the central issues to be resolved. The approach taken in this judgment is to discuss factual issues, and to make findings upon them that this court considers are important to resolve the central issues in the respective actions. The same approach is adopted in respect of the many authorities cited by the parties.

10 This judgment is the court's decision in respect of Suit 1270/2014 and Suit 417/2017. I will deal with Suit 1270/2014 first.

**Suit 1270/2014**

**Overview of Suit 1270/2014**

11 Before dealing with the central issues in this action, I should say something by way of an overview. It is important to keep in mind that the parties had known each other for over ten years and the Mukherjees have not disputed Pradeepto's testimony that over the same period of time, there were as many as 700 investments that went through Pradeepto, and that by and large, the Mukherjees had made money on most of their investments. Against this background of hundreds of prior investments, an obvious difficulty with this case is that the parties' oral testimony in court was based on the recollection of events that occurred several years ago. What the witnesses recall of particular conversations and events, with passage of time, can be unreliable and the truth of the evidence becomes more difficult to gauge. It is better to base factual findings on inferences drawn for the contemporaneous documentary evidence, if any, and known or probable facts. In this vein, a number of the factual issues were matters within Pradeepto's knowledge. While the legal burden of having to prove their claims lie on the Mukherjees throughout, where the Mukherjees have sufficiently established their *prima facie* case, the evidential burden of proof shifts to Pradeepto to rebut the Mukherjees (see *Gimpex Ltd v Unity Holdings Business Ltd and other and another appeal* [2015] 2 SLR 686 at [67]).

12 One objection raised by Mr Liew is the absence of an affidavit of evidence-in-chief from the first plaintiff, Dr Mukherjee, who also did not testify at the trial. The position Mr Liew takes is not unexpected. He argues that since there is no evidence from Dr Mukherjee, the latter's claims against Pradeepto should be dismissed. Mr Ng explains that it is unnecessary for the Dr Mukherjee

to testify because Gouri represented the interests of both plaintiffs in her dealings with Pradeepto and her testimony at the trial is for the plaintiffs. Besides, the factual events involving Dr Mukherjee are limited, largely uncontroversial and undisputed by Pradeepto. With these matters in mind and in the context of the alleged false representations, I agree with Mr Ng that if representations made to Gouri were intended to be communicated to Dr Mukherjee through Gouri, and if duly conveyed, all that should suffice as a matter of law (see Gary Chan and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2017) at para 14-016). There is merit to Mr Ng's contention that the investments were for the couple, seeing that the funds for the investments came from them, and Pradeepto has not denied that the investments were made by and for the Mukherjees.

13 The next overview relates to the pleadings. The statement of claim was amended on 22 September 2017, slightly more than a month before trial started on 7 November 2017. With the amendments, the Mukherjees' case and pleadings, in parts, shifted in focus and emphasis. Be that as it may, there were complaints from Mr Liew during the trial and in the closing submissions that the Mukherjees had strayed beyond their pleaded case.

14 This judgment will review the various causes of action as pleaded in light of the essential elements relevant to the particular cause of action and the evidence relied upon in support of the existence of the cause of action, if any. This area of inquiry is important as any one cause of action can fall away. In short, a cause of action will be dismissed *in liminie* if the pleadings do not plead the essential elements and/or the evidence do not support the existence of that cause of action. For the reasons stated in [18] below, a *Quistclose* trust as pleaded fails *in liminie*.

15 On the plea of a fiduciary relationship, it is important to distinguish at the outset a general claim based upon trust and confidence that gives rise to a fiduciary relationship, and fiduciary relationships within legally established or recognised class of persons. Even though there is no plea that would label Pradeepto as the Mukherjees' agent (see [21] below), the pleadings as amended are fairly broad and, suffice to say for now, there are sufficient pleaded facts to aver dependency on Pradeepto to act for and on behalf of the Mukherjees in respect of their intended investment, since the Mukherjees were not provided with documents from the investee companies recognising their interest in the investments, and did not have a direct relationship with the investee companies. That said, it is necessary to look at the nature of the transaction in question, and the character of the parties' relationship, including the scope of Pradeepto's undertakings post the Mukherjees' decision to invest, to resolve whether in all the circumstances fiduciary obligations arise.

16 The Mukherjees appear to have overlaid a general advisory claim (*ie*, that they were dependent on Pradeepto to make investment decisions on their behalf) in their claim for breach of fiduciary duty. In short, Pradeepto recommended the seven investments and the Mukherjees accepted his recommendations. A nuanced contention is that because Pradeepto was their investment adviser (whether formal or informal) there was an "advisory/fiduciary relationship", and each time Pradeepto presented an investment opportunity to the Mukherjees, he was obliged to give, and was implicitly giving, advice as to the suitability and risk characteristics of that investment. Indeed, as the Mukherjees seek recovery of the principal sum invested and returns in respect of the investments, it appears that the Mukherjees' nuanced contention put at the highest is that Pradeepto was obliged to give, and implicitly gave, ongoing and updated advice as to the merits of

retaining every investment which the Mukherjees had purchased or invested in. That said, Pradeepto's obligation does not necessarily stem from a *wholly* advisory relationship. Instead, Pradeepto assumed for himself the role of an intermediary. The evidence showed that the Mukherjees were totally dependent and reliant on Pradeepto to ensure that their monies were actually allocated to the desired investments, properly recognised and documented by the investee companies and, at the right time, to redeem the investment for the Mukherjees. Pradeepto does not dispute his role and purpose after the Mukherjees had come to a decision to invest in an investment opportunity presented to the Mukherjees. In this paradigm, the parties' dealings were private and separate from the formal banking relationship. It was in this second role that Pradeepto occupied the position of an intermediary with capacity to contract for and on behalf of the Mukherjees with the counterparty concerned, manage and redeem the investments for the Mukherjees.

17 Related to the issue of suitability and risk characteristics of the seven investments is the question of whether or not the desired investments were authentic investments. As it turned out, so the argument develops, some of the desired investments were pretences of investment opportunities in the named counterparty that the Mukherjees thought they had contracted with. They alleged that the investee company did not exist, was struck out shortly after investment or their monies allocated to the desired investments were made to entity or entities that have no relation to the investee company concerned. Under the fiduciary relationship claim, the aforesaid question obliges Pradeepto to act honestly and in the interest of the Mukherjees. In the cause of action for deceit, the Mukherjees claim that they were dishonestly induced to enter into investments or to remain invested in investments which they now say were

"shams" or "purported investments". The deceit arose from either express representations or implicit representations on Pradeepto's part.

18 In relation to a *Quistclose* trust as pleaded, no express or resulting *Quistclose* trust arose from the facts of the case, and I so hold. Pradeepto was never a direct recipient of the Mukherjees' monies in relation to the seven investments. Property cannot be said to have been passed to Pradeepto such that he now holds the property on trust. To illustrate, in *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164, a firm of solicitors, Sims & Roper of Dorset, received money from a lender, Twinsectra Ltd, on behalf of a certain Mr Yardley pursuant to an undertaking that the money be retained until it was applied in the acquisition of property by Mr Yardley. On Mr Yardley's assurance, the firm passed the sum to another solicitor who then handed the sum to Mr Yardley whereupon the sum was misapplied. Although the money was eventually received by Mr Yardley and the entire transference of money was at Mr Yardley's behest, the House of Lords regarded the *Quistclose* trust to have been between Twinsectra Ltd and Sims & Roper of Dorset. Mr Yardley did not hold the money on *Quistclose* trust.

19 Apart from the *Quistclose* trust, any other reference to the claim for breach of trust is in the context of remedial relief and is not a cause of action *per se*. This brings me to the remedies sought by the Mukherjees. The Mukherjees are seeking the recovery of the investment capital ("the principal sums") and reasonable returns for the seven investments. To this end, a plethora of remedies are sought: damages for the tort of deceit; equitable compensation for the breach of fiduciary duty; account of profits for the breach of fiduciary duty; and the imposition of a remedial constructive trust. While the Mukherjees have sought different remedies, the sums claimed were, factually, the same. I

have therefore regarded the remedies as alternatives. It is unnecessary to discuss each remedy that is sought and it would also become clear that some remedies are inappropriate for the present case. Having regard to the findings made, no judgment is passed on the remedial constructive trust.

**Relationship between the Mukherjee and Pradeepto**

20 The nature of the relationship between the parties is an important question that requires a factual inquiry and, where appropriate, a legal inquiry as well. The inquiry undertaken here is relevant to the pleaded causes of action in deceit and breach of fiduciary duty. Findings of fact on the relationship are relevant to two other related issues, namely, the determination of the validity of the specific causes of action and thereafter, the allegations of breach thereof. These issues will be examined later in the judgment.

21 A useful starting point is the parties' characterisation of their relationship. The Mukherjees' case is that all seven investments in question are primarily based on a relationship in which Pradeepto undertook to, amongst other things, introduce investments that were appropriate for the Mukherjees as the investments would have to be held variously for income, liquidity and capital preservation. In addition, Mr Ng submits that Pradeepto "assumed the role of investment adviser" to the Mukherjees, and in this role, Pradeepto not only "advised and recommended" to the Mukherjees' investments, he also "managed and redeemed investments made".[2] In those roles, so the arguments developed, he looked after their interests; effectively making Pradeepto the Mukherjees' agent. As agent, he acted on the Mukherjees' instructions and he "was in charge of [their] investments (save for the Pacatolus [I]nvestment) and

---

2 PCS, para 1.

as such had an ongoing duty to provide [the Mukherjees] with information". He was also trusted to "coordinate the redemption of [the Mukherjees] investments".[3] While the Mukherjees have described Pradeepto as their investment adviser in the pleadings, the pleaded material facts are nonetheless broad enough to cover the conclusion in the Mukherjees' closing submissions that Pradeepto was effectively their agent. I will come to Pradeepto's pleaded case shortly. Suffice to say that he denies acting as their investment adviser and that he had not advised the Mukherjees to enter into the seven investments (see [32] below).

22 As I have foreshadowed in the overview of Suit 1270/2014, the recollection of the parties of the oral exchanges on the things said or done are unclear, and hence unreliable. Pradeepto came across as a glib witness whose testimony was at most times unreliable; often giving the impression that he was making things up as he went along, thinking that they assisted his case. It would be unsafe to accept his evidence unless it is not in dispute, supported by contemporaneous documents or consistent with probabilities. Gouri, on the other hand, was aware of the importance to the Mukherjees case that the Mukherjees did reposed trust and confidence in Pradeepto. To this end, she repeated *ad nauseam* the phrase "trust and confidence" and would unnecessarily repeat it in her answers to counsel's questions. Furthermore, there were consistent attempts at painting her husband and herself as clueless investors who merely rubber stamped Pradeepto's recommendations.

23 A picture that emerges from the evidence is that the parties' relationship is not the conventional relationship between a bank's relationship manager and customer; even though Pradeepto tries to paint it as being no different from the

[3] PCS, para 554.

usual. In the parties' dealings, there were clearly matters of a private nature quite separate and independent of Pradeepto's employment at the bank especially for non-bank products (referred to as his "second role"). It is against this backdrop that this court needs to examine the scope of the obligations which Pradeepto is alleged to have undertaken in relation to the seven investments (*ie*, Pradeepto's second role).

24 I will now elaborate on how Pradeepto came to adopt a second role *vis-à-vis* the Mukherjees. I begin with the relevant background facts before considering Mr Ng's contention as to the role(s) played by Pradeepto in relation to the seven investments.

25 The Mukherjees are an elderly couple who own a Singapore incorporated company called Sea Quest Pte Ltd ("Sea Quest"). Sea Quest is in the business of ship design, marine survey and consultancy, ship building and repair, marine air conditioning, and project management.

26 The Mukherjees first met Pradeepto in 2004/2005 at a Bengali community gathering where they learnt that the latter had recently migrated to Singapore and was working for Citibank. Soon after, the parties were on social terms as they would attend Bengali community events on a regular basis. Over time, the parties became family friends. Pradeepto does not deny that the parties developed a personal friendship over the years. Besides ties of friendship, the Mukherjees saw Pradeepto as an enterprising young man and a business relationship soon developed. The Mukherjees became private banking customers and account holders with the various banks that Pradeepto was employed at, and Pradeepto was the relationship manager assigned by the banks to the Mukherjees. Being in the private banking industry, it would be important

for Pradeepto to try to cultivate the trust of his clients. Thus, it is not inconceivable that it would be a career advantage to develop a personal relationship with clients or would be clients. I find that Pradeepto succeeded in cultivating the trust of the Mukherjees and inference of this is drawn from the objective fact that when Pradeepto moved from one bank to the next, the Mukherjees became customers and account holders of Pradeepto's employer-bank, and Pradeepto was their assigned relationship manager.

27 From January 2004 to September 2006, Pradeepto was employed as a relationship manager with the private banking division in Citibank. He later moved to Merrill Lynch and was there from October 2006 to February 2009. Pradeepto then moved to HSBC Singapore in March 2009 and remained there until April 2011. From April 2011 to June 2013, Pradeepto was with the private banking division of Barclays Bank. After Pradeepto left Barclays Bank, he joined a multi-family private investment office and financial advisory firm, Deer Creek Advisors Pte Ltd (formerly known as Deauville Private Office) ("Deer Creek") and was employed as a Managing Director of Deer Creek in October 2013. The Mukherjees did not become clients of Deer Creek but continued to maintain a relationship with Pradeepto until the parties' falling out sometime in 2014.

28 Pradeepto's case is that he was only operating as a relationship manager *vis-à-vis* the Mukherjees and that his duties to the Mukherjees were limited by his employment with the banks. Pradeepto maintained in cross-examination that in his role as relationship manager, it was his job to present or introduce to the Mukherjees any investment opportunities that he was aware of. The investment opportunities could be bank products as well as non-bank products. Pradeepto did not deny that the seven investments in question were non-bank products that

he had brought to the attention of the Mukherjees. In particular, he denies having misled the Mukherjees into believing that the Pacatolus Investment was a bank product while he was still employed by Barclays Bank. This line of argument, however, does not address the Mukherjees' case.

29 The Mukherjees are not suing Pradeepto as an employee of the banks where he had a relationship manager role *vis-à-vis* the Mukherjees. As alluded to earlier, the thrust of their complaint was against Pradeepto, personally, on what may be viewed as matters of a private nature quite separate and independent of his bank-employment. I find that there is evidence of this dual role prior to his formally joining Deer Creek. Apart from engaging the Mukherjees as a relationship manager proper (*ie*, Pradeepto's primary role), he also introduced investment opportunities that were non-bank products, which he came to learn of from, *inter alia*, business and finance contacts. In that context, the parties' dealings were private and separate from the formal banking relationship. As alluded to earlier in [23], this paradigm in the parties' relationship is Pradeepto's second role.

30 How did this second role come about? In my view, as a professional in the banking industry with extensive personal, business and finance contacts, Pradeepto was able to create a second role for himself. He was someone who could introduce to the Mukherjees investments that were non-bank products. Trade and project finance deals were such non-bank products. I find that his employment as a relationship manager with international banks gave him the opportunity and air of credulity when it came to introducing non-bank investment opportunities to the Mukherjees in his second role. Equally, I accept Pradeepto's evidence that the Mukherjees were keen investors who would readily hear him out on investment opportunities.

31 The next question is the scope of Pradeepto's activities in the context of his second role. As far as the Mukherjees are concerned, Pradeepto was their investment adviser in all manner. He was to advise them on which investments to purchase and thereafter, amongst other things, carry out their instructions, and redeem the investments on maturity or when they so desired.

32 Pradeepto maintains that he was never their investment adviser for the simple reason that the Mukherjees' account with the bank concerned was not a discretionary account where the bank would be given a mandate to invest for the customer. Accordingly, he denies that he would have introduced himself as any form of investment adviser because that was not his capacity at the banks. Pradeepto's pleaded case is that as their relationship manager, he provided the Mukherjees with key materials such as investment brochures, prospectuses, and explanations in respect of each of the seven investments. During cross-examination, Pradeepto testified to providing the Mukherjees with information and documentation on the seven investments and it was the Mukherjees who made the decision to invest. At no point did he advised the Mukherjees to invest. He insisted that the activity of providing information about investment opportunities was not the same as giving advice to take up the investment opportunities presented to the Mukherjees. Pradeepto, therefore, denies that he has responsibility to give investment advice to the Mukherjees, and denies giving investment advice.

33 In my judgment, the Mukherjees were people experienced in business. Generally, it can be said that from time to time, the Mukherjees would have funds derived from their business activities. From those funds, Gouri would allow spare cash to be invested in short-term trade finance at higher rates than time deposits. Pradeepto was someone who could introduce to the Mukherjees

investments that are alternatives to time deposits, where a better return might be obtained. Trade and project finance deals were such alternatives. There were probably other forms of investments over the years among the 700 odd investments the Mukherjees entered into. Therefore, by the time it came to the seven investments, the Mukherjees were not unfamiliar with the various investments made "through" or "with" Pradeepto. The prepositions "through" and "with" were used often and interchangeably by Pradeepto and his counsel. To this court, the connotation from the choice of prepositions is significant for the impression it conveys with regard to the seriousness of Pradeepto's participation in the seven investments. Pradeepto's role was definitely not of Pradeepto acting merely as post-box to route the Mukherjees' decision to invest in the relevant counterparty but of a more involved nature.

34 I do accept as plausible, and it would be reasonable, for the Mukherjees to expect the investment opportunities presented to them as authentic and appropriate for their investment requirements. Ordinarily, it would be important for Pradeepto to try to understand each client's own requirements on investments so that he could give them investment ideas or proposals which fitted with those requirements. It would not be in his interests, nor in his client's interests, to offer investment products to his clients in which they have no interest or which he did not think fitted their objectives. Having dealt with the Mukherjees for close to a decade, their investment requirements were known to Pradeepto. It follows that the assumption in the parties' dealings is that appropriate investments consistent with the Mukherjees' investment requirements would be presented and in that context, Pradeepto would afford the Mukherjees the opportunity to invest through or with him, and I so find.

35 Over the years, Pradeepto would introduce to the Mukherjees investments and the other would agree to go into them because the Mukherjees' interests coincided with Pradeepto's introduction of an investment opportunity. Gouri would decline if she did not want to go ahead. In the course of the parties' dealings, it is plausible that there would be recommendations, or "advice" as the Mukherjees would term it, but such recommendations would be no more than the personal recommendations to the Mukherjees as to the terms of the investment opportunity, given the investment requirements of the Mukherjees. Therefore, adherence to a client's investment requirements ought not to be strictly seen as Pradeepto assuming an advisory role. In a similar vein, the evidence supported Pradeepto's contention that the Mukherjees were capable of and did make their own decisions to invest in the seven investments in question, and I so find. I will elaborate on this finding later in the context of the pleaded causes of action. Suffice to say for now that as Pradeepto knew of the Mukherjee's investment requirements, it would be incumbent on Pradeepto not to make any misstatements, or to recommend a highly risky investment without pointing out that it was such. The relationship under examination may on occasions be affected by representations made to the Mukherjees and this would include the appropriateness of the investments introduced. While the Mukherjees made their own investment decisions, the Mukherjees nonetheless depend on Pradeepto for information to make an informed decision. This is an area to be examined in detail in the context of the allegation of deceit in respect of five of the investments in question.

36 Again with regard to Pradeepto's second role, the Mukherjees have separately contended that Pradeepto was effectively their agent. Additional obligations that were said to be imposed on him include, *inter alia*, the obligation to manage the investments (see [39] below) and to redeem the same

on behalf of the Mukherjees. I accept that a clear feature of this case – well supported by incontrovertible evidence – is that after the Mukherjees made their decision to invest, Pradeepto would step in to act on the Mukherjees' decision to invest in the desired investment. In doing so, he alone would interface with the investee company as counterparty, contract with the counterparty on behalf of the Mukherjees, monitor and on maturity (or whenever desired by the Mukherjees) redeem the investments (both the principal sum and return on investments) on behalf of the Mukherjees (collectively referred to as the "Post-Decision Activities"). The Mukherjees depended and relied on Pradeepto in respect of the Post-Decision Activities of the seven investments. In a proper case, the Post-Decision Activities may give rise to legal responsibility.

37 Even though Gouri seems to know the redemption dates and would call Pradeepto about the repayment of the principal sums invested and payment of the returns on the investments, the objective evidence supports her claim that in respect of the Post-Decision Activities, she would have to completely rely and depend on Pradeepto to make the seven investments. In particular, she relied and depended on Pradeepto to ensure that the funds allocated by her were used to invest in the seven investments she wanted, and not for extraneous matters. Plainly, the Mukherjees, in relying and depending on Pradeepto in the manner described, were vulnerable to any disloyalty by Pradeepto. They would be reliant on his good faith.

38 I accept Gouri's evidence that at all material times, her only point of contact was Pradeepto. She testified that the Mukherjees did not know anyone in the investee companies nor their contact details, and that she left it to Pradeepto to secure the investment with the investee company, manage and redeem their investments (*ie,* the Post-Decision Activities). Indeed, Gouri said

to Pradeepto on 4 July 2014 that "all my these investments [are] through you, I just know your face and that's it."[4] Her statement was not challenged.

39 Pradeepto does not deny Gouri's testimony and in cross-examination he also accepted that he managed the investments made through or with him and would redeem them for the Mukherjees. I pause here to observe that whilst the word "manage" is used, it would be with reference to the affairs of the investment in question that Pradeepto had undertaken to act in the interest of the Mukherjees. To elaborate, given the fact that Pradeepto secured the investments for and on behalf of the Mukherjees, he would "manage" the investments in the sense that he knew the number of investments made with him, how much have been invested with him and the redemption periods. He would keep an eye on the investment in question with a view to redeeming the same at the appropriate time.

40 All in all, I find that the objective evidence gathered from Pradeepto's conduct, each time after Gouri parted with the investment monies, plainly confirmed his second role as the Mukherjees' agent in connection with the investments. Put simply, it was Pradeepto who interfaced with the investee companies after the Mukherjees handed over the cheques to him or gave bank transfer instructions to their banks. Generally, there were no documents issued by or generated from the investee companies to recognise and confirm that the Mukherjees had invested in the impugned investments. The Mukherjees did not ask for documentary proof, and it was all down to Pradeepto's verbal confirmation that he had done what he was supposed to do for them.

---

4 Gouri's AEIC, para 31; PCS para 483.

41 Pradeepto has taken the position, at least in the case of some of the investments, that Gouri should go to the investee company concerned to recover the Mukherjees' investments. This remark is fanciful seeing the way Pradeepto had dealt with the Mukherjees. As stated, it was Pradeepto who interfaced with the investee companies. The Mukherjees, without proper documentary proof to identify themselves as investors, would not be able to go directly to the investee companies. Pradeepto had not given to the Mukherjees, and the latter in turn would not have in hand, any acknowledgment of receipt of funds by the named entities to whom the funds were paid or transferred to at the direction of Pradeepto.

42 The transcript of the tape-recorded conversation at the airport during a meeting between the parties would be indicative in some way of the sort of conversations the parties would have had in the ten years of their dealings with each other. Even without the tape-recorded conversation, having regard to the position at the outset (the ongoing relationship that developed over time prior to or by the time the relationship broke down), Pradeepto did hold himself out as undertaking activities for the Mukherjees post decision to invest, and that the activities covered the Post-Decision Activities in respect of the seven investment made with or through him.

43 My conclusion is that in the context of the investments made through or with Pradeepto in his second role, he would secure for and on behalf of the Mukherjees the investments they had decided to invest in, and manage and redeem the investments for the Mukherjees. The extent of the obligations or the scope of the undertakings assumed in and about the discharge of the Post-Decision Activities would include some degree of advisory activity in the nature of advising on an on-going basis the seven investments, especially on

redemption of the investments. I find that Pradeepto did position himself within this spectrum in the Post-Decision Activities in question. As to whether any legal responsibility attaches to the Post-Decision Activities, this question will be examined in the context of the various causes of action and on the facts of each of the seven investments.

**Whether Pradeepto was a fiduciary**

44 The main thrust of the Mukherjees' pleaded case is that Pradeepto owed them obligations of a fiduciary in respect of all the seven investments in question. Generally, they alleged that there was a fiduciary duty to: (a) disclose all material facts in respect of the seven investments made by the Mukherjees; and (b) avoid conflicts of interest and to disclose interests in various investments. I will touch on the relevant law briefly before examining whether Pradeepto owed the Mukherjees obligations of a fiduciary given the discussions in [26]–[42] and the factual findings thereat, and in the light of each of the seven investments.

45 Notably, a relationship that would give rise to fiduciary obligations is higher than of a relationship that would give rise to a common law duty of care. A relationship that is a purely commercial one need not give rise to the extensive fiduciary obligations on the part of Pradeepto, as contended for by the Mukherjees. Further, as *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") makes the point, whether a certain individual is a fiduciary is ultimately a fact-sensitive inquiry; even if the individual falls within a recognised class (at [207]). In that connection, it is necessary to look at the nature of the seven investments in question and the character of the parties to it in order to resolve whether fiduciary obligations have arisen.

***Law on fiduciary obligations***

46 Certain relationships have been regarded by the courts as giving rise to fiduciary obligations *per se* because of their inherent purpose or their presumed factual or legal incidents. Examples of recognised categories of fiduciary relationship include those involving trustees, agents, solicitors and company directors (see Graham Virgo, *The Principles of Equity & Trusts* (Oxford University Press, 2nd Edition, 2016) ("*The Principles of Equity*") at p 499; John McGhee QC et al, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity*") at para 7-004). That said, fiduciary obligations may be owed even if the relationship in question does not fall within one of the recognised categories, provided the circumstances in question justify the imposition of such duties (*Snell's Equity* at para 7-005). In this regard, Millett LJ's (as he then was) pronouncement in *Bristol and West Building Society v Mothew* [1998] 1 Ch 1 at 18 is commonly cited as a useful starting point:

> *A fiduciary is someone who has undertaken to act for or on behalf of another in a particular manner in circumstances which give rise to a relationship of trust and confidence.* The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. As Dr. Finn pointed out in his classic work … he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.
>
> [emphasis added]

47 The Court of Appeal in *Tan Yok Koon* endorsed Millett LJ's speech and laid down several principles. First, not every obligation owed by a fiduciary is

necessarily a fiduciary duty. Secondly, the "label" fiduciary is a conclusion that is reached once it is determined that particular duties are owed. Thirdly, in determining if fiduciary obligations are owed, the relationship between the parties is an important aspect to consider. This is because the relationship is the reason why a duty will be required to be performed in a manner which shows regard to the interests of the principal. In this vein, the hallmark of a fiduciary is that the fiduciary undertakes to act in the interest of another. It is crucial to note that such undertaking is voluntary in that the fiduciary voluntarily places himself in a position where the law can objectively impose an intention on his or her part to undertake those obligations (at [194]). At its core, a fiduciary is one who places himself or herself in a position where he or she exercises a certain quality of control over the property or affairs of another; the principal being peculiarly vulnerable to the fiduciary (see also *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and other appeals* [2018] 2 SLR 655 ("*Turf Club Auto*") at [42]). It is for this reason that the principal is entitled to the single-minded loyalty of his or her fiduciary.

48 The authorities show that a breach of fiduciary duty is established where the fiduciary has placed himself in a positon of conflict of duty and self-interest or conflicting duties; this being an aspect of the single-minded loyalty required of a fiduciary. And by virtue of the duty of loyalty, a fiduciary is expected to be honest in his dealings with his principal.

49 I state here that where the Mukherjees' arguments concern Pradeepto's dealings with the investee companies on matters that do not relate to the seven investments, these arguments are irrelevant. The scope of Pradeepto's fiduciary obligations must be in relation to the investment itself.

50 The breach of fiduciary duty is, of course, not the end of the inquiry. The Mukherjees are seeking both account of profits and equitable compensation. In my view, the remedy of account of profits is not available to the Mukherjees. An account of profits is a gains-based remedy. It is available where a defendant has profited from a breach of fiduciary duty and that profit exceeds any loss suffered by the claimant (*The Principles of Equity* at p 621). The Mukherjees have not been able to point to any discernible profits Pradeepto have made from the seven investments. Instead, their claims for the recovery of the principal sums and reasonable returns are compensatory in nature. These sums may be characterised as losses as they were sums that they were deprived of as a result of Pradeepto's conduct. To this end, the remedy of equitable compensation is the more appropriate remedy.

51 The law on equitable compensation is mired in debate and I do not propose to contend with its difficulties as the present case is not one that would call for such an undertaking. Suffice to say that the difficulties relating to the law on equitable compensation generally concern the issue of causation and the role of accounting rules (see *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 at [9]–[11]). I have not found the present case to raise issues of causation, and Pradeepto had not made causation an issue in his submissions. Even if causation were needed to be proven, I am satisfied that causation is readily established in relation to the breaches of fiduciary duty examined below. To illustrate with a simple broad point, but for Pradeepto's failure to properly redeem the investments, the Mukherjees would not have been deprived of the principal sums and returns on investments.

52 As a precursor to equitable compensation, the Mukherjees must prove that they have suffered loss. This is because in cases where the fiduciary is not

a steward of property, loss would be the basis of compensation (see *The Principles of Equity* at p 619). Here, the Mukherjees have computed the reasonable returns on investments at an interest rate of 7.5% per annum. This figure was derived from Mr Iyer's evidence that a customer of a good private bank could earn between 5% and 10% per annum depending on the year, assuming that it is not a black swan year (like the 2008 global financial crisis), and Pradeepto supposed concession that it is possible for investors of a moderate risk profile to target a return of between 8% and 10%. Considering both Mr Iyer's evidence and Pradeepto's concession, the Mukherjees submit that a return of 7.5% is "perfectly reasonable".[5] The Mukherjees' claim for reasonable returns is premised on the assumption that there would have been alternative investments entered into had the monies not been used for the seven investments or the return of the principal sums not been delayed. The Mukherjees, however, have not given evidence as to what these alternative investments could have been and that there were opportunities to go into them at the material time. Further, Pradeepto's concession can hardly to be said to be a concession at all. He qualified his concession and took it simply as an answer to a hypothetical question posed.[6] In the circumstances, the Mukherjees are not entitled to the recovery of reasonable returns for want of proof of loss, and so I hold. They are, however, entitled to the recovery of the principal sums in the event this court finds that there is a breach of fiduciary duty. For these reasons, I will only discuss the reasonable returns sought in the closing submissions where necessary.

---

5 PCS, para 476.

6 Transcript Day 16, pp 141–142.

***The presence or absence of indicia of a fiduciary relationship***

53 Mr Ng argues that the present case is one where a fiduciary relationship arose. It is said that Pradeepto undertook to act as the Mukherjees' fiduciary as he was their investment adviser and in that context, acted as an agent. In the main, the Mukherjees reposed trust and confidence in Pradeepto. In contrast, Mr Liew made two points. First, Pradeepto was not an investment adviser, and secondly, the relationship of investment adviser and client is not one of the traditionally recognised categories of relationship where a fiduciary relationship will simply be presumed by law.

54 The correct characterisation of a relationship and whether it gives rise to fiduciary obligations is a matter of law. Whether called an investment adviser or an agent, they are titles and labels that merely serve as an indicium of the undertaking of fiduciary obligations in a relationship. The court would have to examine the specific factual matrix to determine if fiduciary obligations were indeed undertaken and the scope of such obligations. The Court of Appeal in *Turf Club Auto* clarified at [43]:

> While there are settled categories of fiduciary relationships – such as the relationship of a trustee-beneficiary, director-company, solicitor-client, between partners – it does not mean that all such relationships *are* invariably fiduciary relationships. In these relationships, there is a strong, but rebuttable, presumption that fiduciary duties are owed. … whether the parties are in a fiduciary relationship depends, ultimately, on the nature of their relationship and is not simply a question of whether their relationship can be shoe-horned into one of the settled categories (*eg*, a partnership) or into a non-settled category (*eg*, a joint venture or quasi-partnership).
>
> [emphasis in the original]

55 As noted earlier, the hallmark of a fiduciary is the fiduciary's voluntary undertaking to act in the interest of another. Therefore, fiduciary obligations

arise where B puts his property or affairs in the hands of A, and B is reliant and dependent on A to act and exercise rights or powers for the benefit of B in circumstances where B can reasonably expect A to put B's interests first. This means that A cannot make use of his position to benefit himself, or anyone else, without B's informed consent. Until then, B is entitled to single-minded loyalty from A.

56 In this case, it is necessary to look closer at the nature of an agency relationship that attracts fiduciary obligations. Teare J's explanation in *Medsted Associate Ld v Canaccord Genuity Wealth (International) Ltd* [2018] 1 WLR ("*Medsted Associate*") at [89] is apposite:

> Agency has been defined by *Bowstead and Reynolds on Agency* 20th ed (2014), para 1-001 as the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to effect his relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. … *Bowstead and Reynolds on Agency* also states in para 1-001 that a person may have the same fiduciary relationship with a principal where he acts on behalf of that principal but has no authority to effect the principal's relations with third parties. This subject is dealt with at para 1-019 where an example of such a fiduciary relationship is given, namely, the introducing agent who makes no contacts but introduces parties desirous of contracting and leaves them to contract by themselves. Such a person is not an agent in the fullest sense but can owe fiduciary duties. An example to which I was referred was that of the loan broker in *Hurstanger Ltd v Wilson* [2007] 1 WLR 2351, paras 33-44 per Tuckey LJ (though not all loan brokers are fiduciaries; see *Commercial First Business Ltd v Pickup* [2017] CTLC 1). A further example is that of the credit broker in *McWilliam v Norton Finance (UK) Ltd (trading as Norton Finance)* [2015] 1 All ER (Comm) 1026, paras 32–35, where the applicable law was discussed and explained by Tomlinson LJ. From his judgment the following statements of principle are to be noted. This form of agency is not the paradigm. The fiduciary duty arises from equity and will be found to exist where the "principal" reposes trust and confidence in the "agent"; see para 40. Thus the facts and

> circumstances of the present case must be examined to see whether the clients reposed trust and confidence in Medsted.

57 With the above propositions in mind, I propose to focus of the significant features of the parties relationship, based on the earlier findings, to determine whether the law will impose on Pradeepto obligations of a fiduciary, having regard to the Post-Decision Activities he had voluntarily undertaken in his second role (see [23]–[43] above).

58 There are important distinctive features in this case that must be appreciated and it is the existence of these features that form the critical facts for the operation of the principles of fiduciary law. I draw on the earlier salient findings on the parties' relationship in relation to the Post-Decision Activities (see [36]–[43] above). Significantly, with the agency principles set out in *Medsted Associates* at [56] above in mind, the relationship between the parties is one where Pradeepto interfaces and contracts with third parties on behalf of the Mukherjees who expressly or impliedly manifests assent that Pradeepto should act on their behalf so as to effect their relations with third parties, and Pradeepto similarly manifests assent so to act or so acts pursuant to the manifestation. Accordingly, in respect of the Post-Decision Activities, the law will impose on Pradeepto obligations of a fiduciary, and I so hold. In my judgment, Pradeepto was the Mukherjees' agent in relation to the Post-Decision Activities and in these circumstances, a fiduciary relationship exists. Thus, in relation to the Post-Decision Activities, Pradeepto had a duty to be honest and to act in good faith towards the Mukherjees, a duty to be fair and transparent with them, and a duty to act in their best interests. Such duties are those of a fiduciary (see *Medsted Associates* at [95]) and a corollary of the duty of loyalty. I will now elaborate on my findings.

59 I start with Gouri's testimony. At the trial, Gouri repeatedly asserted that the Mukherjees "trusted" Pradeepto's views, recommendations and advice. On this basis, it was submitted that the Mukherjees reposed trust and confidence in Pradeepto. In my judgment, one has to bear in mind that the mere fact one party in a business or commercial relationship "trusts" the other does not predicate a fiduciary relationship. The word "trust" like the word "advice" has a variety of meanings. In a broad sense, trust is an important element in many business or commercial dealings. The Mukherjees no doubt "trusted" Pradeepto to conduct himself in a commercially appropriate manner. However, the term "trust" should not be misused. The court must ultimately be satisfied that the relationship is of such a quality that would give rise to fiduciary obligations (*ie*, that the principal(s) had conferred a degree of control over their own affairs to another).

60 Gouri had also attempted to demonstrate her husband and herself as completely beholden to Pradeepto's suggestions and opinions on investments. As regards the seven investments, I find that the decision to invest was on the Mukherjees. The evidence does not support Gouri's claim that the Mukherjees were completely reliant on Pradeepto when it came to investment matters in that they played no part in evaluating the investments and were merely rubber stamping Pradeepto's recommendations. The Mukherjees have demonstrated themselves to be capable of exercising some degree of independent evaluation. There is evidence that on some occasions the Mukherjees rejected potential investment opportunities and the Mukherjees decided on the quantum to be invested. Gouri's answers in cross-examination are apposite:[7]

---

7 Transcript Day 2, pp 8–9.

> Q: Yes, Mrs Mukherjee. The fact is that he had no discretion to enter into any investment for you; you would have to instruct him before he can enter into an investment, is that correct?
>
> A: Correct.
>
> Q: Mrs Mukherjee, Pradeepto did not have access to your bank accounts, correct?
>
> A: Correct.
>
> Q: So you would agree with me that Pradeepto could not deal with any of your investments without your express instructions; would that be correct?
>
> A: Yes.
>
> Q: So, this would include any aspect of investment dealings such as increasing your investment or reducing your investment or redeeming your investment? All these would require your instructions; would that be correct Mrs Mukherjee?
>
> A: Yes.
>
> …
>
> Q: And in order to give him instructions to enter into any investment you and your husband would have decided first to enter into these investments, correct?
>
> A: Yes.
>
> …
>
> Q: So, as the relationship manager in the private banks, Mrs Mukherjee, Pradeepto only provided you with information as to the availability of investments which matched your investment criteria, correct? He did not enter into [sic] for you? He only provided you with the information of the availability of these investments; would you agree with me on that?
>
> A: Yes.

61 Turning to the situation *after* the Mukherjees made the decision to invest (*ie,* the Post-Decision Activities), the Mukherjees had legitimate expectations that, in executing the Post-Decision Activities, the Pradeepto would subordinate his interests to those of the Mukherjees. Correspondingly, in executing the Post-Decision Activities, Pradeepto voluntarily undertook to place the Mukherjees'

interests before his. I further find that the nature of the parties' dealings and the Mukherjees' dependence and reliance on Pradeepto in respect of each of the seven investments remained generally the same.

62 As stated, the seven investments were not bank products. It is not disputed that the only means through which the Mukherjees learnt of the seven investments was through Pradeepto. Significantly, the Mukherjees did not have any direct contact with the investee companies. The Mukherjees depended and relied on Pradeepto, who would represent the Mukherjees' interests to the investee companies. The investee companies, in turn, only interacted with Pradeepto and did not reach out to the Mukherjees directly. As a result of this described asymmetry, the Mukherjees would have to go through Pradeepto if they decided to go ahead to invest in the investment opportunity presented to them. In short, post decision to invest, the Mukherjees depended on Pradeepto to secure the desired investments by contracting with the appropriate counterparty for and on their behalf. In this capacity, Pradeepto was to ensure that the Mukherjees' investment funds were actually allocated to the desired investments. This asymmetrical relationship between the parties is exacerbated by the fact that Pradeepto did not procure documents from the investee companies recognising or confirming the Mukherjees' title to their investments at the point of investing. The Mukherjees would not be able to properly access their investments for want of proof. Even if, for the sake of argument, the investee companies did acknowledge that the Mukherjees were investors, Pradeepto nevertheless failed to provide corresponding documents to the Mukherjees. The Mukherjees, on the other hand, did not seek such documents from Pradeepto as they left it to him to secure, manage and redeem their investments. This was the degree of trust they reposed in him. Indeed, at trial,

Pradeepto accepted that the Mukherjees could trust him to liaise with the relevant investee companies and coordinate the redemption of the investments:[8]

> Q: And basically you were telling her that she can trust you to get the funds returned to her; yes?
>
> A: She can trust on me to liaise on the funds coordination for the companies to bring it back to her.

63 What defines Pradeepto's fiduciary obligations is the Mukherjees' dependence and reliance on Pradeepto *after* they made their decision to invest. From thence onwards (*ie*, post decision to invest), the Mukherjees were totally dependent and reliant on Pradeepto; who had put himself in a position of responsibility, having taken on the obligation to look after the interest of the Mukherjees. In the context of the Post-Decision Activities, trust and confidence were placed in Pradeepto, and the Mukherjees, by relying on Pradeepto, were vulnerable to any disloyalty by Pradeepto and reliant on his good faith. In this capacity as the Mukherjees' agent, Pradeepto was to ensure that the investment funds were actually allocated to the desired investments, the contract with the counterparty was properly documented and, at the right time, to redeem the investments for the Mukherjees. In his role as the Mukherjees' agent, Pradeepto contacts the investee companies and contracts with them for and on behalf of the Mukherjees. In this regard, the Mukherjees reposed trust and confidence in Pradeepto.

**Issue 1: Cause of action based on breach of fiduciary duty**

64 This part of the judgment will consider each of the seven investments in turn. The bulk of the impugned investments were entered into between May and November 2013. They were the Neodymium, Peak, Pacatolus, Farmlands of

---

8 Transcript Day 15, p 42.

Africa, Trade Sea International and SEW Trident Investments. The Swajas Investment was the only investment entered into in 2011. I propose to discuss the Swajas Investment first.

65 As an additional point, the Mukherjees run a plethora of arguments on the breach of fiduciary duty. The arguments either overlapped or were articulated on factual issues that were the manifestations of an underlying breach. In the circumstances, it would generally be better to consider the Mukherjees' arguments holistically as opposed to addressing each contention *in seriatim*.

***Swajas Investment***

66 Swajas is a non-scheduled flight operator with a presence in South India. The nature of the services provided by the company include general air charter and medical evacuation services. Pradeepto claims that sometime in September 2010, he came to learn that Swajas was preparing for listing and was offering a pre-Initial Public Offering private share placement. According to Gouri, Pradeepto orally advised the Mukherjees to invest in Swajas in or around January 2011 and made the following representations:[9]

(a) The Mukherjees should invest in Swajas as it was preparing for an Initial Public Offering ("IPO").

(b) The investment should be held for one year so that the principal sum would double in value.

(c) Pursuant to an email dated 5 January 2011, the share certificates would be issued in Dr Mukherjee's name.

9 Setting Down Bundle, Tab 7, para 10.

(d) Pursuant to the same email, the IPO would take place in "the next two months", presumably from the date on which the email was sent.

(e) A copy of the documents signed by Swajas would be sent to the Mukherjees for their records.

67 At the material time, Pradeepto was the Mukherjees relationship manager at HSBC Singapore. Gouri stated that there was a natural expectation that "any investment recommended by Pradeepto would be an investment offered by HSBC Singapore".[10] However, unbeknownst to the Mukherjees, the Swajas Investment was not an authorised investment of HSBC Singapore.

68 On 12 January 2011, the Mukherjees remitted the subscription monies of US$500,000 to an account of a company called Rising Ventures Trading Limited ("Rising Ventures") pursuant to Pradeepto's instructions in an email dated 7 January 2011. The Mukherjees subsequently found out that their shares were held by Rising Ventures and highlighted that this was contrary to the representation made in the email dated 5 January 2011 that their shares would be in Dr Mukherjee's name. Pradeepto, however, points out that the Mukherjees specifically requested the shares be held by Rising Ventures because the Mukherjees did not have a "demat" account to hold listed shares in India and furthermore, they did not want their names to be reflected in the records for tax reasons. The investment monies therefore had to be routed through Rising Ventures which had the necessary approvals to hold equity shares in an Indian company. According to the Mukherjees, they were unaware of the purpose of Rising Venture's involvement. The Mukherjees' point at trial is that there was no need for an intermediary to hold the shares as the shares could be held in

[10] Setting Down Bundle, Tab 7, para 11.

"physical format" without opening a "demat" account. In any event, Pradeepto did not provide them with the documents evidencing their investment with Swajas.

69 The Mukherjees further explained that Pradeepto had withheld key materials such as investment brochures and the relevant prospectus, and concealed his affiliation with Swajas. They later discovered that Pradeepto was associated with Swajas as he was appointed the director of Swajas Air Charters (Pte Limited) ("Swajas Singapore"), a wholly-owned subsidiary of Swajas. Further, Pradeepto's close business associate, Ms Ekta Kundra ("Ms Kundra"), was also at some point in Swajas' history, a director.

70 The IPO issue opened on 26 September 2011 and was supposed to close on 28 September 2011, but the deadline was extended to 5 October 2011 as the IPO remained under-subscribed. The IPO was eventually cancelled. The Mukherjees assert that they were kept in the dark about the cancellation of the IPO and that Pradeepto ought to have procured the return of the subscription monies then.

71 On 12 September 2012, Dr Mukherjee instructed the repayment of the US$500,000. However, repayment was less than prompt. According to the Mukherjees, Pradeepto sought to delay the repayment and gave various false assurances that the repayment was being processed.

72 The subscription monies were eventually received by the Mukherjees on or about 1 April 2013. There is no dispute that it was Swajas Singapore that issued the cheque of US$500,000 and the cheque signatory was Ms Kundra. Even though the Mukherjees received the principal sum of US$500,000, their

complaint in this action is that they did not receive any returns on the investment for the period of the delay (*ie*, from 11 January 2011 or the cancellation date of IPO to 1 April 2013 being the date of receipt of US$500,000).

73 Pradeepto disputes a number of factual allegations made by the Mukherjees. In brief, the statement that the IPO would take place in the next two months was not his representation to the Mukherjees. Whatever was informed to the Mukherjees was what Swajas had informed him. He also highlights that both parties had physically met to discuss the investment opportunity prior to the Mukherjees' decision to enter into the investment and that the relevant documents were provided at the meeting. The Mukherjees were at all material times kept apprised of the cancellation of the IPO and knew that the investment was not with HSBC Singapore. Furthermore, his involvement with the management of Swajas Singapore came about only after the Mukherjees had invested in the company. He did not wield the sort of influence over the Swajas Investment as the Mukherjees now seek to demonstrate. Critically, it is undisputed that the principal sum has been returned to the Mukherjees. As regards the returns on investment, Pradeepto explains that Rising Ventures continue to hold shares in Swajas on the Mukherjees behalf. These shares were intended for the Mukherjees in lieu of returns.

74 It is an appropriate juncture to deal with certain discrete matters gathered from the opposing arguments of the parties.

*Alleged misapplication of funds*

75 The Mukherjees placed emphasis on the allegation that, out of the US$500,000 transferred on the instructions of Pradeepto to Rising Ventures for the purchase of private equity in Swajas, only US$125,000 was used to for the

aforesaid purchase. The only basis for the Mukherjees' allegation is from their expert, Mr Ramasamy Subramaniam Iyer ("Mr Iyer") who came up with some calculations. The purport of this allegation has to do with a fiduciary's duty to act honestly towards his principal.

76 Before examining Mr Iyer's calculations, it is apt to note that the documents in court show that Swajas issued share certificates totalling 130,284 shares to Rising Ventures. These shares certificates were issued on 31 January 2011 and 25 February 2011, with 32,571 shares allotted on 31 January 2011. If Pradeepto is to be believed that Rising Ventures was the Mukherjees' nominee, his contention is that there is *prima facie* evidence that the investment monies in the sum of US$500,000 remitted to Rising Ventures was used to purchase shares in Swajas. Pradeepto makes another point – that the Mukherjees did eventually receive their principal sum of US$500,000 from, at the very least, a Swajas-related entity. It was pointed out that there would be no reason for Swajas to return the sum of US$500,000 if the entire amount was not used to purchase shares in Swajas in the first place.

77 Turning to Mr Iyer's evidence, Mr Iyer relies on the price in the Private Placement Subscription Agreement signed by Dr Mukherjee for his calculations. The document stated that the aggregate price per share was 43.75 rupees ("Rs"):[11]

> On the basis of the representations and warranties and subject to the terms and conditions set forth herein, the undersigned (the "Subscriber") hereby irrevocably subscribes for and agrees to purchase _____ equity shares of Rs. 10/-each (the "Shares") of [Swajas] at an aggregate price per Share of Rs.43.75/-(such subscription and agreement to purchase being the

[11] BAEIC Vol I, p 318.

> "Subscription"), for an aggregate purchase price of Rs. _____ (the "Subscription Proceeds").

78 According to Mr Iyer, taking Rs 43.75 to be the subscription price of each share and 130,284 to be the number of shares purchased, only Rs 5,699,925 was used to purchase shares in Swajas. At an exchange rate of US$1 to Rs 46.5, this translates to a value of about US$125,000. For the reasons I will come to, there is reasonable doubt over Mr Iyer's conclusion that only US$125,000 was used to purchase shares.

79 At the trial, Pradeepto challenged Mr Iyer's conclusion. He explained that Mr Iyer's conclusion were incorrect for two reasons. First, Mr Iyer did not take into account how Swajas sought to structure the pre-IPO shares. Mr Iyer was incorrect to have simply multiplied the total allotted shares and share price to determine if the full sum of US$500,000 was used to purchase shares in Swajas. Second and relatedly, Mr Iyer used the wrong share price. The correct price ought to have been Rs 350.

80 Pradeepto pointed to the Information Memorandum which sets out how Swajas sought to structure the allotment of shares:[12]

> Though the placement to the Investors is at a price of Rs 350/- per share, after a capital restructuring process involving the capitalisation of premiums to be collected, including the premium to be collected through IPO, the average cost per share in the hands of the investors will be around Rs.44 only. Capitalisation of premiums by issue of bonus shares will be completed immediately after IPO.

81 The pre-IPO shares were to be issued in several tranches. After receiving an investor's investment monies, the company would allot a certain number of par value shares at a price of Rs 350. The entire investment sum is, however,

12 AB 1, p 358.

not immediately used in this initial allotment of shares. Part of the sum would be placed into the share premium account for the purposes of capitalising bonus shares that would be subsequently issued in tranches until the successful completion of the IPO. At the end of the entire process, eight bonus shares would have been issued for each share initially issued by the company. The aim of this process is to reduce to the share price value eightfold from Rs 350 to Rs 43.75 upon listing. Thereafter, the investor stands to gain a twofold increase upon listing as the IPO listing band indicates the expected IPO share price to be between Rs 87 and Rs 90. A semblance of this structure is further borne out in the Red Herring Prospectus which stated that on 31 January 2011, shares were allotted at an issue price of Rs 350. On 25 February 2011 a bonus issue in the ratio of 3:1 was then performed. In a footnote, it was stated that: "Bonus Equity shares have been issued to all our Shareholders on February 25, 2011 out of the share premium account by capitalizing Rs 84,371,520."

82 Based on this structure, Pradeepto explained that on 31 January 2011, 32,571 shares were allotted to the Mukherjees at a share price of Rs 350. This translates to approximately US$250,000 in value. The remaining US$250,000 would have been placed in the share premium account for capitalisation during the subsequent bonus share issues. The structure also explains why the Private Share Purchase Agreement indicated a share price of Rs 43.75. Notably, Clause 8.3 of the Private Share Purchase Agreement alludes to a capitalisation process that ends with a final share price of Rs 43.75:[13]

> The Company will undertake to carry out certain corporate actions including *capitalization of its reserves in such a manner that the average cost per Share* of Shares to be allotted to the Subscriber under this Share Subscription Agreement in the hands of the Subscriber and other Subscribers who would

[13] BAEIC Vol I, pp 321–322.

> invest into the Company under the terms of this Agreement *would come to approximately Rs 43.75 per share, After the proposed IPO of the Company*.
>
> [emphasis added]

83 Mr Iyer conceded in cross-examination that in arriving at his opinion that only US$125,000 was utilised to purchase shares, he did not refer to all relevant documents connected to the Swajas Investment; namely, the Information Memorandum and Red Herring Prospectus. He also conceded that had he considered these other documents, his opinion on the misapplication of funds might have been different. These are significant concessions.

84 Pradeepto's explanation may not have been entirely clear on the details. Nonetheless, without deciding on the veracity of Pradeepto's explanation that US$500,000 was utilised in tranches, a similar explanation may be gathered from a reading of the relevant documents. The structure of the share allotment in the pre-IPO documents (which Mr Iyer admitted to not reviewing), cast doubt over the correctness of Mr Iyer's calculations. Given the incomplete premise of his expert opinion, his conclusion that only US$125,000 out of the US$500,000 transferred to Rising Ventures was used to purchase shares in Swajas is rejected. In the main, this court is not persuaded that the US$500,000 was not used to purchase Swajas shares.

85 During cross-examination, Mr Ng referred to an email of where a representative of Swajas mentioned that the share price for pre-IPO shares was Rs 43.75. Pradeepto, however, responded by stating that the email must be read in context. It was accompanied by the Information Memorandum which sets out the structure explaining why the share price was Rs 43.75. Mr Ng was not able to counter Pradeepto's evidence. Yet in the Mukherjees' closing submissions,

Mr Ng again argued that that the correct share price is the one reflected in the Private Placement Share Agreement (*ie*, Rs 43.75) as it is the operative document on which the Mukherjees will sue in any legal action between them and Swajas. Quite apart from the fact that the Private Placement Share Agreement itself alludes to the structure to allocate shares as explained by Pradeepto, Clause 5.1(a) of the Private Share Purchase Agreement specifically refers to the Information Memorandum itself.[14] On this note, the suggestion that the Information Memorandum is irrelevant as it only concerns IPO shares can easily be disposed of.

86 There was also a suggestion that the Information Memorandum and Red Herring Prospectus were not given to the Mukherjees at the material time. Whether the documents were provided to the Mukherjees at the material time is irrelevant for the purposes of Mr Iyer's calculations. The pertinent point is that the Red Herring Prospectus was exhibited in Mr Iyer's own report and ought to have been examined before making the serious allegation that Pradeepto had misapplied the investment monies.

*The IPO delay and cancellation*

87 The Mukherjees rely heavily on Pradeepto's email dated 5 January 2011 which stated that the IPO would be due in the next two months; referring to this as a "key representation".[15] In her affidavit of evidence-in-chief, Gouri claimed that her husband and herself were unaware of the fact that the IPO launch date was delayed to 26 September 2011. The IPO was supposed to close on 28 September 2011 but the closing date was extended to 5 October 2011 due to

14 BAEIC Vol 1, p 319.

15 PCS, p 171.

undersubscription. The IPO was eventually cancelled. She highlighted that Pradeepto did not inform them of the cancellation of the IPO and had concealed the cancellation of the IPO up until 2014.

88 Pradeepto's stance is that he did not personally represent nor guarantee that the IPO would open in two months' time (*per* email dated 5 January 2011) since the information on a two months' horizon came from the representatives at Swajas. More importantly, the Mukherjees had always been kept informed of developments; in particular, that the IPO was delayed and subsequently cancelled. In his affidavit of evidence-in-chief, Pradeepto said that the Mukherjees were told that the IPO was "stalled". At trial, Pradeepto further explained that the Mukherjees were orally informed of the IPO cancellation and added that they were also informed of Swajas' intention to proceed with a second attempt at an IPO on a later date. There was eventually a meeting where the Mukherjees informed him of their intention to continue with the investment in the hope of the IPO succeeding. It was in September 2012 that the Mukherjees sought redemption of their investment as by then they started to have doubts on the viability of their investment.

89 The email of 5 January 2011 reads:[16]

> Dear Gouri Mashi,
>
> Please find the saame [*sic*] enclosed. A copy of the documents signed by uncle will be further signed by the company and sent back for your records. Share certificates will be issued in the name of Sabyasachi Mukherjee and the IPO is due in the next two months.
>
> Thank you.

---

16 Gouri's AEIC, p 301.

90 Gouri accepted during cross-examination that the email was a summary of an earlier discussion. In other words, the email of 5 January 2011 was a follow up from an earlier meeting and without evidence of what transpired at the meeting, it would be unsafe to read into the email a definitive representation regarding the due date of the IPO launch. One view of the email, which is the view that Pradeepto takes, is that Pradeepto was conveying the two months' horizon as told to him by Swajas; he was not making any representation or guarantee on his own.

91 Notably, the Private Placement Subscription Agreement that was signed by Dr Mukherjee states that the IPO process would depend on variable factors and thus no specific time frame has been committed to:[17]

> The Company is planning for an Initial Public Offer (IPO) to get its shares listed in the Bombay Stock Exchange within the next 3-4 months from the date of this Share Subscription Agreement. However, completion of IPO process depends on so many regulatory approvals and the stock market conditions in general and that the company does not commit to any specific time frame in this regard.

The email dated 5 January 2011 must not be overly relied on in light of the uncertainties outlined.

92 I find that the objective evidence supports Pradeepto's explanation that the two months' horizon came from Swajas and because of that, he was in no position to make promises to the Mukherjees on the IPO launch date. The exchanges showed Swajas' timeframes to be working ones with no definitive end date in mind. In an April 2011 email thread with the subject heading "Swajas IPO – Status", certain exchanges took place between Pradeepto and Swajas. Pradeepto expressed concern over the delay in the IPO process and

[17] BAEIC Vol 1, p 321.

queried when the IPO would be launched. He can also be seen making reference to earlier IPO launch dates that had lapsed; in particular, the month of March:[18]

> Dear Sir,
>
> Please send the copy of the DRHP. Also appreciate if a timeline can be put to the process and we stick to the same.
>
> Both March 18th and 4th April which were the earlier dates have lapsed. Please revert urgently.
>
> …

Swajas' representative replied acknowledging that Swajas "appreciate[ed] the need to stick to deadlines". I pause here to mention that a finding on the question of whether the two months' time horizon as the IPO launch date was tantamount to a representation is important as it disposes the issue of whether Pradeepto harboured a dishonest intention in making the representation.

93 The Mukherjees claim not to have read the Private Placement Subscription Agreement and that they depended solely on Pradeepto for information. It is not disputed that the Private Placement Subscription Agreement, a six-page document, was signed by Dr Mukherjee. In my view, there is no mileage to be gained from the excuse that the couple did not read. Legally speaking, a party who signs a document is deemed to know the contents of the same (see *Marty Limited v Hualon Corporation (Malaysia) Sdn Bhd (receiver and manager appointed)* [2018] SGCA 63 at [77]). Gouri represented her husband in investments made by both of them and it would not be unreasonable to impute knowledge of the contents of Private Placement Subscription Agreement on Gouri.

---

[18] AB 2, p 703.

94 Pradeepto's testimony that the Mukherjees were apprised of the delay and cancellation of the IPO is plausible. The Mukherjees entered into the Swajas Investment on or around 12 January 2011, when a sum of US$500,000 was transferred to Rising Ventures for the purposes of purchasing the shares in Swajas. This much is undisputed. On the Mukherjees' own case, the IPO should have been launched two months from January 2011, that is to say, sometime in March 2011. The Swajas Investment has a lock-in period of one year. Assuming that there was no IPO cancellation, the Swajas Investment is expected to mature sometime in March 2012. The Mukherjees, however, only sought to redeem the Swajas Investment sometime in September 2012. It is unlikely that the Mukherjees would have remained silent for six months if they had expected the IPO to open at an earlier date, and any listing of the shares in the Bombay Stock Exchange would be easily known. The more probable explanation for the six months of silence would be that the Mukherjees were anticipating the second IPO.

95 Pradeepto's account that Swajas had made plans for a second IPO is supported by contemporaneous evidence. Pradeepto's oral testimony was that between the time the first IPO was cancelled to the time the Mukherjees decided to recall the investment, Swajas had plans for a second IPO and sought to expand its business operations. It was during that period that Pradeepto became more involved with Swajas – he advanced a loan to the company, introduced a previous associate whom he worked with during his tenure in the private banks and a director of IOEL, Ms Kundra, to spearhead Swajas' growth plans and to aid in the recovery of the pre-IPO for some other investors, and assisted in brokering deals as part of the growth plan. Although these aspects of Pradeepto's evidence were not clearly delineated in his affidavit of evidence-in-chief, they are not inconsistent with contemporaneous documents. In certain

email exchanges in October 2012, Swajas was seen corresponding with Pradeepto on expansion plans in East Timor. Notably, in an email dated 2 October 2012, Pradeepto mentioned the growth plans together with a Swajas listing: "We should target to get to turnover of INR 200 CR and profit of INR 10 CR … . That will give us the required bandwidth to list safely with the correct fundamentals."[19] The same East Timor expansion was conveyed to Gouri in response to her query on an update on the Swajas Investment. This is borne out in an email which bore the subject "RE: Details: Swajas Fund" dated 26 October 2012:[20]

> Everything is fine the local team is in East Timor and Indua [*sic*] preparing for a tender and I have been in and out as well of Singapore when they had time and now in London, Spain, Switzerland and India over the next ten days.
>
> I am meeting the person in Chennai on my way back and will be collecting the draft on my way back.
>
> We continue holding the shares of the company through Rising Ventures.

96 Pradeepto made reference to a local team from Swajas being in East Timor and India and that he was unable to meet them to collect the repayment of the Swajas Investment because he had been travelling for the period that the team was free. He then explained to Gouri that he would be meeting a Swajas representative in India on his way back from his overseas trip in about 10 days' time. Gouri then replied stating:

> Noted the below contents; hence expected the fund after next 10 days. kindly revert once DD collected in Chennai.

These pieces of evidence point in favour of Pradeepto's account of the events.

---

19 PCB 1, p 427.

20 PCB 1, p 430.

97 At the trial, Gouri maintained that Pradeepto concealed the IPO cancellation until January 2014. She, however, eventually accepted during cross-examination that Pradeepto informed her that the IPO was "delayed" and that both her husband and her knew this by August 2012:[21]

> Q: Mrs Mukherjee, do you maintain that position or that very serious allegation that he dishonestly concealed the IPO cancellation until January 2014.
>
> A: Yes, at a much later point we understand that the IPO was already cancelled. The same year we had invested in January and in November the IPO was already cancelled. However, throughout the next year all the time whenever we check that when can we get back the money, we were told that everything is doing fine. We were never told that IPO was cancelled.
>
> …
>
> Q: … Mrs Mukherjee, that Pradeepto did tell you that the IPO was delayed, did he?
>
> A: Delayed, yes.
>
> …
>
> Q: When did Pradeepto tell you that the IPO was delayed, Mrs Mukherjee?
>
> A: Now, your Honour, I don't exactly recall, but it was around the time when I asked him to refund the money. And September some time he sent me an email where this form, ID form, was attached. We took a print out, signed and sent back to him.
>
> …
>
> Q: … So, the one thing that is clear, Mrs Mukherjee, and you would have to agree, that as at August 2012 you knew that the IPO had not taken place, right?
>
> A: Yes. IPO was delayed.

98 Pradeepto's evidence is that he used the term "defer" or "delay" as he understood the IPO to have been cancelled but Swajas was intending to attempt a second IPO. He also indicated that the "deferment" was told to the Mukherjees

---

[21] Transcript Day 7, pp 4–7.

much earlier when the IPO was cancelled. There is a dispute over the precise point in time at which Pradeepto communicated the "deferment" of the IPO. There also appears to be some misunderstanding over what "deferment" meant to the respective parties. Regardless, the Mukherjees' assertion that Pradeepto had concealed from them the cancellation of the IPO until 2014 is doubtful. It is clear, and I find that the Mukherjees knew that the IPO plans had been derailed as there was no successful IPO sometime in 2011 or 2012, and they had not substantiated their claim that they did not discover the cancellation until much later in 2014.

99 From the reasons stated above, I find that the two months' timeline in the 5 January 2011 email was not Pradeepto's representation or guarantee as to when the IPO would be launched, and I also find that delay and cancellation of the IPO was communicated to the Mukherjees. Additionally, I accept and find that the Mukherjees had decided to continue holding the shares in anticipation of the second IPO and only sought redemption in September 2012 as the viability of the second IPO appeared bleak.

*Did Pradeepto act in breach of fiduciary duty*

100 The Mukherjees submit that Pradeepto was obligated to avoid any conflict of interests with the Mukherjees and to make full disclosure of material facts to them. Specifically, the Mukherjees argue that Pradeepto had breached his fiduciary duty as he failed to: (a) disclose his status as an investor in Swajas; (b) disclose his interests and connections in Swajas; (c) inform them of the dire financial state of Swajas; (d) disclose that Swajas was not an authorised investment of HSBC Singapore; (e) obtain the returns earned on the Swajas Investment.

101 The principal sum of US$500,000 was returned to the Mukherjees on 1 April 2013. The Mukherjees are only claiming for reasonable returns. For the reasons stated at [52] above, the Mukherjees are not entitled to the sum claimed. In any event, the various findings in [99] above would cumulatively militate against the Mukherjees' claims , and I so hold. Moreover, the Mukherjees have not shown that it was Pradeepto who had delayed the return of the principal sum. Accordingly, the pleaded cause of action in breach of fiduciary duty for the Swajas Investment fails. For the same reasons, a reasonable return on investment based on the pleaded causes of action in the tort of deceit and/or trust would also fail. Having reached these conclusions, it is sufficient for me to now turn to examine the other investments. However, as the parties have spent time arguing on issues of disclosure, I will make brief comments on them.

102 As regards Pradeepto's alleged failure to disclose his personal investment(s) in Swajas, the Mukherjees submit that Pradeepto has conceded in his defence and his affidavit of evidence-in-chief that he had invested a substantial amount of his own monies in Swajas, and that this was not disclosed to them. The Mukherjees also pointed out that Pradeepto sought to suggest during cross-examination that he was not an investor. Regardless of whether or not Pradeepto was an investor, his failure to disclose his personal investment with Swajas is not a breach of his fiduciary duty as his investment did not result in a conflict with the Mukherjees interests. As Pradeepto explained, his investment was for the purposes of supporting Swajas' second attempt at an IPO. This is evident in the email thread bearing the subject "Swajas expansion plan".[22] Far from coming into conflict with the Mukherjees' interests, it would

---

22 PCB 1, p 427.

be beneficial for the Swajas Investment to have fresh funds to support Swajas' growth plans to improve its chances at a second IPO.

103 Turning to Pradeepto's failure to disclose his interests and connections in Swajas, this is also not a breach of fiduciary duty as his interests and connections were not in conflict with the Mukherjees' interests. The Mukherjees submit that Pradeepto was involved in the operations and management of Swajas. The earliest documentary evidence the Mukherjees rely on to demonstrate Pradeepto's interests and connections in Swajas are certain emails in 2012. These emails show Pradeepto introducing Ms Kundra to spearhead Swajas' growth plans and Pradeepto actively involved in discussions over Swajas' East Timor expansion plans. Pradeepto explained that his involvement was to revive the distressed Swajas. He introduced Ms Kundra to Swajas to not only spearhead Swajas' growth plans but to also later assist in the recovery of the investments of investors such as the Mukherjees. It is difficult to imagine how Pradeepto's involvement (or that of Ms Kundra for that matter) in the affairs of Swajas was in any way in conflict with the Mukherjees' interests. Crucially, in April 2013, Ms Kundra was able to procure a cheque which represented the Mukherjees' principal sum to pay the Mukherjees. Moreover, Pradeepto's involvement with Swajas appears to be in relation to setting up of Swajas' subsidiary, Swajas Singapore. The growth plans were eventually undertaken by the Swajas Singapore. Similarly, Ms Kundra was not made director of Swajas but of Swajas Singapore. Pradeepto's involvement with Swajas is therefore one step removed from the Swajas Investment itself.

104 The Mukherjees also place emphasis on Pradeepto's directorship in Swajas Singapore to show a conflict of his interests with theirs. There is nothing to this argument. His directorship was in 2014. Not only have the Mukherjees

already recovered their principal sum by the time of his directorship, Pradeepto was not a director of Swajas itself. Mr Ng attempted to suggest that while the Mukherjees have recovered their investment, Pradeepto continued to owe them obligations of a fiduciary as they held onto shares in Swajas. This brings me back a similar point earlier made. Swajas Singapore is a separate legal entity from Swajas. Pradeepto's directorship alone does not *ipso facto* mean that he was placed in a position of conflict *vis-à-vis* the Mukherjees' interests.

105 In relation to the failure to disclose the dire financial state of Swajas, the Mukherjees submits that there were two points in time at which the alleged poor financial health of Swajas ought to have been disclosed to the Mukherjees. The first is at the time the Swajas Investment was introduced to them. The Mukherjees rely on Mr Iyer's report where, having considered the assets of Swajas and Swajas' financing activities, he concludes that Swajas was in no position to launch a successful IPO. It was therefore argued that Pradeepto ought to have conducted a due diligence exercise to ascertain if the Swajas Investment was suitable for the Mukherjees. The second time period referred to is in August 2013 where there were indications that Swajas was facing financial and operational difficulties.

106 First and foremost, it is unclear how the duty to disclose in this context arose – whether it was due to a potential conflict of interests or from the duty of honesty. In his second role, Pradeepto's duty was simply to act in the Mukherjees' interests, post decision to purchase pre-IPO shares. As far as he is concerned, the pre-IPO package (containing the Information Memorandum) was prepared by Swajas with the assistance of chartered accountants. The Information Memorandum was disclosed to the Mukherjees and, critically, the IPO was eventually approved by the Bombay Stock Exchange and the IPO

failed because of the market's placid response. In these circumstances, it cannot seriously be argued that Pradeepto had to conduct a due diligence exercise to ascertain state of Swajas' financial health.

107 There was a further suggestion that Pradeepto had sought to conceal the various matters above as the true reason for why he recommended the Swajas Investment was because he needed money to be invested in Swajas so as to effect its revival. This suggestion is patently unsustainable. The Mukherjees have not pointed to evidence that would have put Pradeepto on notice of Swajas' purported poor financial health at the time he introduced the investment to the Mukherjees. On the contrary, in an email dated 13 September 2010 sent to Pradeepto regarding the Swajas Investment opportunity, the representative in the email conveyed a strong sense of enthusiasm over the viability of the investment; stating that there were "tremendous upside possibilities".[23]

108 As regards the financial health of Swajas in August 2013, the simple point is that the Mukherjees have already recovered their investment.

109 Moving to consider the allegation that Pradeepto had failed to disclose the delay and cancellation of the IPO. The finding (see [99] above) is that Pradeepto did disclose these matters. There is, accordingly, no breach.

110 On the issue of Pradeepto's failure to disclose the fact that the Swajas Investment was not an authorised investment of HSBC Singapore, the Mukherjees submit that it was only natural for them to expect that the investment was authorised by HSBC Singapore as Pradeepto was their then relationship manager at HSBC Singapore. I have already concluded that

---

[23] AB 1, p 91.

Pradeepto had two roles in his dealings with the Mukherjees, namely a primary role and a second role (see [29] above). On the stand, Gouri accepted that Pradeepto did not expressly represent to her that the Swajas Investment was an HSBC Singapore authorised investment. The Mukherjees' case therefore rests on their assumption that it was so. There were various indicators that the Swajas Investment was not an HSBC Singapore authorised investment. There were no voice logs done pursuant to Gouri's instructions to transfer the principal sum to Rising Ventures and her bank statements did not reflect the Swajas Investment as an investment with HSBC Singapore. No questions were raised as to why the Swajas Investment did not appear in the bank statements. In my view, this complaint that the Swajas was not an HSBC Singapore product does not advance the Mukherjees' case based on breach of fiduciary's duty.

111 Finally, the Mukherjees argue that Pradeepto breached his fiduciary duty in failing to procure the prompt return of the principal sum and returns on the investment. This argument cuts no ice. There is no evidence to counter Pradeepto's testimony which sounded plausible. He explained that he had attempted to recover the Mukherjees' investment but it was not easy to do so as there were regulatory hurdles pertaining to the return of foreign direct investments in Indian companies, and Swajas could not immediately provide the repayment it had suffered from the IPO failure. Recovery of the Mukherjees' principal sum was only made possible when another investor participated in the revival of Swajas.

*Conclusion on breach of fiduciary duty in relation to the Swajas Investment*

112 In summary, Pradeepto did not breach the fiduciary obligations argued by the Mukherjees. Accordingly, the Mukherjees' claim for equitable

compensation in respect of returns on the Swajas Investment fails (see [101] above).

***SEW Investment***

113 Chronologically, the investments in 2013 were the Neodymium and Peak, Pacatolous, Farmlands, Trade Sea and SEW Trident Investments. I propose to first deal with the SEW Trident Investment since the events that developed there probably precipitated the redemption of the other investments that led to the eventual breakdown of the relationship.

114 SEW Trident is a Singapore company operated by SEW Group. The SEW Investment was a trade financing deal the Mukherjees entered into with SEW Trident in November 2013. According to the Mukherjees, in or around October 2013, Pradeepto advised them to invest in SEW Trident. The details of this investment is set out below.

*Background to the SEW Investment*

115 The decision to go into the SEW Investment took place over a period of time. The picture that emerged is one where Pradeepto was constantly pursuing Gouri to come to a decision to invest. At first, Gouri passed Pradeepto a cheque of US$300,000 to be allocated to the SEW Investment, but shortly thereafter, she changed her mind and she asked for the cheque to be cancelled. She eventually made the decision to allocate US$500,000 to SEW Trident in November 2013. It is this eventual allocation of US$500,000 that became the SEW Investment. Throughout the entire episode, Pradeepto's persistence in having Gouri invest in SEW was palpable.

116 Pradeepto introduced the SEW Investment to the Mukherjees on 4 October 2013 in an email addressed to Gouri:[24]

> Dear Gouri Mashi,
>
> I have the following opportunity for a trade finance cycle:
>
> SEW Trident Pte Ltd
>
> Period of investment on month/three months
>
> Return: 1.5 percent flat.
>
> Amount: In USD 250K lots maximum USD1M.
>
> …

117 On 21 October 2013, after many follow-ups by Pradeepto, Gouri finally agreed to allocate US$300,000 to SEW Trident. On 21 October 2013, sometime around noon, Gouri made out a cheque in SEW Trident's favour and she passed the cheque to Pradeepto. Later that same evening, Gouri told Pradeepto not to deposit the cheque: "Deep, really sorry; I am bit troubled now. [Please] don't deposit the [cheque] now! So sorry, hold on first."[25] Digressing for a moment, "Deep" was Gouri's familiar name for Pradeepto. Having received Gouri's message, Pradeepto acknowledged Gouri's instructions.

118 On 23 October 2013, Pradeepto asked Gouri if he could deposit the cheque. Gouri responded as follows: "Deep morning, not now. I am so sorry [about] this whole thing … [PLEASE] CANCEL this [cheque]."[26] In reply, Pradeepto informed Gouri that her decision not to invest would put a US$2.8m trade in trouble. Gouri, however, told Pradeepto that she was having cash flow

---

24 AB8, p 4335.

25 AB 8, p 4348.

26 AB 8, p 4349.

difficulties and had no appetite for more investments but will look forward to future opportunities.

119 Despite Gouri's clear instructions, Pradeepto nonetheless banked in her cheque. On 1 November 2013, Gouri found out that her cheque was cleared and, upon being queried, Pradeepto claimed that a mistake was made by a staff member of SEW Trident. This excuse is unconvincing. Not only did Pradeepto acknowledge Gouri's instructions to hold onto the cheque, she also made it clear that she wanted the cheque cancelled after Pradeepto sought her permission to deposit the cheque. As it turns out, the cheque was deposited into SEW Trident's account on 31 October 2013. During cross-examination, Pradeepto was confronted with an email from a representative of Trade Sea informing him that the US$300,000 was deposited into SEW's account on 31 October 2013. Mr Ng raised two points. First, the relevance of leaving the cheque with Trade Sea and secondly, Pradeepto's apparent failure to have the cheque destroyed or returned.

120 It is plain that Pradeepto was anxious to have the Mukherjees allocate funds to SEW Trident. As he stated in his text messages to Gouri, the relevant trades have already been committed to and the trades would face trouble without the Mukherjees' participation. Obviously, Pradeepto chose to ignore Gouri's instructions to cancel the cheque. It also stands to reason that Pradeepto's excuse that a staff made a mistake in depositing the cheque was untrue.

121 As matters panned out, the US$300,000 was eventually returned to the Mukherjees. On 26 November 2013, Pradeepto approached Gouri once again to have her allocate funds to SEW Trident: "Hello Mashi. Any updates for me? Any quantum we can use for one week to rotate and send in a running trade

cycle. [T]hanks much". This time Gouri agreed to allocate US$500,000 and indicated that she would make the transfer by cheque. When she queried about the reference to be written on the back of the cheque, Pradeepto told her to indicate "[s]tructured trade finance Iron ore 015/2013-2014".

122 The trade allocation was for one week only. Gouri sought redemption a week or so after the investment was made, sometime in December 2013. From December 2013 to July 2014, the parties discussed the redemption of the investment. Pradeepto, at various junctures, indicated that the funds were already redeemed or that the redemption would be closed out shortly. Notably, on 20 December 2013, a cheque for the sum of US$500,000 was issued by Peak in the Mukherjees' favour (hereafter referred to as the PCI Cheque). The PCI Cheque was subsequently dishonoured. The Mukherjees claim that Pradeepto had attempted to have Peak repay the SEW Investment. Pradeepto, on the other hand, stated that the PCI Cheque concerned the redemption of the Mukherjees' Peak Investment and that the cheque was dishonoured as the Peak Investment had not yet matured.

123 Following the dishonour of the PCI Cheque, Pradeepto continued to assure the Mukherjees of the redemption. On 25 February 2014, he told Gouri that the funds had been remitted to IOEL as there were issues with having the funds sent to the Mukherjees directly. On 26 February 2014, Pradeepto then told Gouri: "[i]f all goes well you will get it late tonight / tomorrow or latest on Friday. The money is now in my nominated entity control so not to worry. Alls well that ends well :)".[27]

---

27 AB 8, p 4375.

124 Soon after, Pradeepto told Gouri that she would be receiving the sum of US$500,000 in two lots of US$250,000 each. Sometime in March 2014, US$250,000 was remitted from IOEL to the Mukherjees' bank account. That was the last of the principal sum the Mukherjees received from Pradeepto. The remaining US$250,000 and the returns on the investment continue to remain outstanding. Pradeepto's contention is that IOEL only received US$250,000 from SEW Trident. The balance of US$250,000 is with SEW Trident and the Mukherjees should look to SEW Trident to recover this amount.

125 The Mukherjees' case is that Pradeepto was motivated by his own personal agenda when he presented the SEW Investment to the Mukherjees. In their closing submissions, they highlight that Pradeepto sought to put SEW Trident in funds to make an interest-free loan to IOEL so that he could pay off his company's dues. They further argue that on Pradeepto's case, he induced them to invest in the SEW Investment even though SEW Trident had trading difficulties and needed their funds to simply have trades proceed. The relevant question is whether the funds allocated to SEW Investment by the Mukherjees were made used of for other matters. I will consider this question and Pradeepto's involvement later on (see [137]–[142]).

*Circumstances surrounding the redemption of SEW Investment*

126 Gouri's efforts at redeeming the SEW Investment spanned across late December 2013 to July 2014. As can be seen from [120]–[124] above, Pradeepto gave various reasons during this period for the less-than-forthcoming redemption process. It should be noted that during this time, Gouri was also engaging with Pradeepto on issues regarding the Trade Sea Investment and a related banker's guarantee that she required for her company.

127 Specifically, on 13 December 2013, Pradeepto informed Gouri via text message that the SEW Investment was "already redeemed" and indicated the returns to be US$6,200.[28] He further informed Gouri that she can expect to receive US$506,200 on or around 18 December 2013. Gouri, however, did not receive any monies on or around 18 December 2013.

128 Both Pradeepto and Gouri continued to engaged each other over the weeks that followed. The conversations were largely similar – Pradeepto would indicate that redemptions would be transferred to Gouri in due course and she would respond stating that no monies were received. The following text messages that were exchanged on 23 December 2013 are illustrative:[29]

> [Gouri]: Deep, what [account] did [you] indicate on the reverse side of the [cheque]? There is nothing floating!!! What do [you] want me to do now??
>
> [Gouri]: You said you deposited in uob/orchard.
>
> [Gouri]: Last Thursday evening. If that's correct, then it sh[ould] be in floating now!!
>
> ]Gouri]: Reply ASAP!!
>
> ]Pradeepto]: [Account] indicated is ….
>
> [Pradeepto]: It must have gone in on Friday morning as it was Thursday evening. Suggest you check today afternoon Mashi.
>
> [Gouri]: Correct. That I [have] duly discounted. Ask SEW for [photocopy] of the [cheque].
>
> [Gouri]: No, Friday 2pm it sh[ould] show floating n monday aft[er] 2pm the fund sh[ould] be in.

Gouri was chasing Pradeepto regarding the redemption of the SEW Investment. After several unsuccessful attempts at communicating to Pradeepto that the

---

28 CB 2, pp 914–915.

29 AB 8, pp 4362–4363.

monies were not transferred to her account, Gouri began seeking proof that SEW Trident had indeed taken steps to redeem the investment.

129 As stated, on or around 20 December 2013, Gouri received the PCI Cheque of US$500,000. That cheque was dishonoured on presentation. It is useful to refer to the text messages between Gouri and Pradeepto dated 24 December 2013 on this point:[30]

> [Gouri]: Deep, [your] 500k has bounced. They [have] issued [cheque from] an [account] that is closed!! Can [you] imagine??
>
> ]Pradeepto]: Must be an error let me check asap and revert
>
> …
>
> ]Pradeepto]: Have already checked Mashi. The accountant sent in from the wrong account book. Sincere apologies from their side. Will be sorted on Thursday.

130 As stated, at the trial, Pradeepto's position is that the PCI Cheque represented the redemption of the Peak Investment. That investment had not become due and that was the reason why the cheque was dishonoured. On further questioning, Pradeepto explained that Peak and SEW Trident shared the same accountant and that the accountant had made a mistake as to the redemption date of the Peak Investment. The Mukherjees submit that Pradeepto was not telling the truth. He had sought to use Peak to provide the redemption for the SEW Investment. Gouri was never informed by Pradeepto that it was Peak that would be issuing the redemption on behalf of SEW Trident. On balance, the Mukherjees' version was the more probable one.

131 As can be seen from the text messages above, the PCI cheque was issued from a bank account that had been closed. Pradeepto's explanation then was

---

30 PCB 2, pp 919–920.

that the accountant responsible for the redemption had made use of the wrong bank account. However, the parties were speaking on the basis of SEW Trident as the company to provide the redemption. Nowhere in the text messages is the explanation that there was a mix up with the Peak Investment. In my view, the explanation that the accountant responsible for the redemption of the SEW Investment was the same accountant responsible for the redemption of the Peak Investment and had gotten the two redemptions mixed up is an afterthought. It is more likely than not that Pradeepto had made use of Peak to issue a cheque purporting to be the SEW Investment redemption to temporarily pacify the Mukherjees. Pradeepto could do so as some of Peak's cheque books were left with Ms Kundra of IOEL. To make use of a cheque from a closed account smacks of dishonesty.

132 Returning to the narrative, Pradeepto continued to make empty promises as regards the redemption. On 30 December 2013, Gouri once again sought an update on the redemption: "Deep, where is the 500k now? Also check [and] let me [know] what's the premium [amount]."[31]

133 Pradeepto replied stating that he had requested a copy of the telegraphic transfer and that the "[p]remium amount [was] US 57.5K". There is some confusion as to what the US$57,500 represents. According to the Mukherjees, this is the updated figure of the returns due on the SEW Investment; Pradeepto had changed the SEW Investment returns from US$6,200 to US$57,500. According to Pradeepto, the US$57,500 represented the returns on the Neodymium, Peak and Trade Sea Investments, and not the returns on the SEW Investment. It is not necessary for this court to decide what this figure represents. Suffice to say that Gouri did receive US$57,500.

[31] AB 8, p 4365.

134 It bears repeating that eventually, sometime in February 2014, Pradeepto informed Gouri that SEW Trident had transferred a sum of US$500,000 into IOEL's Hong Kong bank account. On 26 February 2014, Pradeepto stated: "[i]f all goes well you will get [the monies] late tonight/tomorrow or latest on Friday. The money is now in my nominated entity control so not to worry. Alls well that ends well :)".[32] Pradeepto confirmed, at trial, that IOEL did receive the full sum of US$500,000.[33] This is supported by a credit advice from SEW Trident to IOEL. Shortly after, Pradeepto indicated that the transfer from IOEL to Gouri would take place in two lots of US$250,000 each. He added that both lots will be sent at the same time.

135 On or around 3 March 2014, Gouri received US$250,000. Curiously when Gouri asked Pradeepto for a copy of the debit advice showing the remittance of the balance sum of US$250,000 by an email on 4 March 2014, Pradeepto attached the same debit advice as the one dated 3 March 2014 to give the impression that two lots were transferred. Be that as it may, the parties continued to discuss the recovery of the remaining US$250,000 in the months following. These discussions bore no fruit.

136 Pradeepto was questioned on the status of the remaining US$250,000. His evidence is that after SEW Trident transferred the US$500,000 to IOEL and IOEL had paid the Mukherjees the sum of US$250,000, SEW Trident requested that the remaining US$250,000 be transferred back. The purpose of this was so that SEW Trident could itself transfer the monies to Gouri. This explanation is incredulous. It is simply absurd for SEW Trident to transfer US$500,000 to IOEL with the intention of having IOEL return the full sum to the Mukherjees

---

32 CB 2, p 4375.

33 Transcript Day 15, p 112.

and then have part of the sum returned so that SEW Trident could transfer the balance sum itself. This makes no sense; over and above incurring unnecessary bank charges in the process. Further, in his reply to Gouri's query as to why the remaining US$250,000 had not been transferred into her account, Pradeepto told her that the sum was pending clearance at the bank. At no point did he explain that the sum was sent back to SEW Trident. This was also not indicated in his affidavit of evidence-in-chief. I find that the remaining US$250,000 was not returned to SEW Trident nor to Gouri and so I find.

*Transactions behind the SEW Investment*

137 Pradeepto, in his affidavit of evidence-in-chief, explains that the SEW Investment involves an iron trade deal between SEW Trident, IOEL and Magnum.[34] The Mukherjees, on the other hand, submit that the true purpose of the SEW Investment was to put SEW Trident in funds for the purposes of providing a loan of US$1m to IOEL. This loan was to allow Pradeepto to pay his dues to another client of his, one Mr Vaibhav Kanade ("Mr Kanade"). Having considered the available evidence, I am of the view that the evidence is sufficiently cogent for the Mukherjees to make out their case.

138 First and foremost, there is little to indicate that the SEW Investment was for purposes of an authentic trade (or trades). There were no documents evidencing the Mukherjees' title to their investment; there were no emails from SEW Trident acknowledging that they recognise the Mukherjees as the investors who allocated US$500,000 for one week. In the absence of documentary evidence, the Mukherjees have a *prima facie* case that their monies were not applied towards the desired investment.

---

[34] BAEIC Vol 4, Tab 4, para 378.

139 According to Pradeepto, Mr Kanade is a long-standing client. Pradeepto owed Mr Kanade monies arising out of certain commercial transactions and thus needed to take an advance from SEW Trident. Now it would appear that around the time the Mukherjees made their investment, Mr Kanade had earlier been pressuring Pradeepto for monies and was displeased with how Pradeepto had been handling his affairs. On 27 November 2013, Pradeepto communicated with Mr Kanade's representative regarding the invoices of certain iron ore transactions between SEW Trident and Peak. In that email, Pradeepto indicated that there would be one more invoice to expect and that he would follow up and ensure closure of the relevant transaction. In response, Mr Kanade's representative stated that only part of the expected sum had been received and highlighted that the balance remained outstanding.[35] On 4 December 2013, Mr Kanade sent Pradeepto an email expressing discontent at the fact that the loan of US$1m provided by SEW Trident had been remitted to the wrong account and was thus returned. On 28 December 2013, Mr Kanade took umbrage with Pradeepto's empty promises of having monies returned. It is clear from the emails during this period that Pradeepto's relationship with Mr Kanade was rocky. Mr Kanade was applying increasing pressure on Pradeepto to have his monies returned. It is likely that this motivated Pradeepto to pursue the Mukherjees for the SEW Investment.

140 Gouri's cheque for US$500,000 for the SEW Investment was handed to Pradeepto on 27 November 2013 (this coincides with the exchanges between Pradeepto and Mr Kanade above). The very next day, SEW Trident entered into a loan agreement with IOEL. Under the terms of the agreement, SEW Trident would lend IOEL a sum of US$1m for three years at no interest (the document

---

35 PCB 2, p 1015.

itself indicated a loan period of nine months, Pradeepto's testimony on the loan period was that of three years; nothing turns on this difference). The sum would be transferred directly to Mr Kanade. According to Pradeepto, SEW Trident indicated that it was facing a "very bleak and difficult outlook" at the time the Mukherjees sought redemption; which notably, was merely one week from the time the Mukherjees subscribed to the SEW Investment.[36] It would be atypical for SEW Trident to extend a three-year interest-free loan to IOEL when SEW Trident would be having difficulties repaying the Mukherjees. On balance, it was likely that the SEW Investment contributed to the US$1m loan that was given by SEW Trident to IOEL.

141 Pradeepto's response to the Mukherjees' case was that it would take at least a few days for a bank to clear the Mukherjees' cheque. Hence, the loan agreement could not have arisen out of the Mukherjees' investment. The loan from SEW Trident can instead be explained on the following basis:

(a) IOEL had existing commercial transactions with SEW Trident which Mr Kanade provided funds for.

(b) As a result of losses from personal real estate dealings, Pradeepto had to take out an advance from SEW Trident to repay Mr Kanade.

What Pradeepto's explanation does not account for, however, is the situation where SEW Trident agreed to loan Pradeepto US$1m in anticipation of the Mukherjees' investment. It is also questionable how losses arising out of Pradeepto's personal real estate dealings were relevant to monies owing to Mr Kanade for providing funds to commercial transactions between SEW Trident and IOEL.

[36] BAEIC Vol 4, Tab 4, para 384.

142 Continuing with the narrative, Pradeepto's evidence was that the SEW Trident loan was repaid in three tranches: US$450,000 in 2014, US$400,000 in 2015 and US$150,000 in 2016. The Mukherjees were, coincidentally, only able to receive US$250,000 sometime in March 2014 despite having been told since December 2013 that monies were being sent to their account. It is likely that SEW Trident was only able to provide the redemption when Pradeepto repaid the first tranche of the loan. Pradeepto might have obtained funds from other sources to make the repayment which required him to withhold the remaining US$250,000 to meet the other liabilities. In the round, I am satisfied on a balance of probabilities that monies from the SEW Investment assisted Pradeepto to pay his or his nominee-company's dues (*ie* IOEL's dues).

*Returns*

143 While the Mukherjees cannot recover reasonable returns for want of proof of loss, I will nonetheless make some observations on their claim.

144 On 13 December 2013, Pradeepto indicated that the returns on the SEW Investment was US$6,200. A cheque was made out to the Mukherjees dated 20 December 2013 and this cheque was handed to the Mukherjees on 23 December 2013. The Mukherjees acknowledge that this sum was received in their closing submissions.[37] Pradeepto told the Mukherjees that this was the returns on the SEW Investment and that the earnings were better than expected. Curiously, the figures do not add up. At the outset, Pradeepto represented that the returns would be at a rate of 1.5%. On a principal sum of US500,000, the returns ought to have been US$7,500. Unless the rate of returns changed subsequent to

37 PCS, para 446(b).

Pradeepto's initial representation, the US$6,200 does not represent the full returns.

145 Here, the Mukherjees are claiming for reasonable returns based on alternative investments, and it seems odd to make such a claim based on alternative investments bearing in mind the receipt of US$6,2000. In any case, as explained in [52] above, the claim for reasonable returns based on alternative investments fails.

*Did Pradeepto act in breach of fiduciary duty*

146 The Mukherjees submit that Pradeepto breached his fiduciary duty in: (a) failing to disclose material information when introducing the SEW Investment; (b) failing to procure documents evidencing their title to the SEW Investment; (c) failing to disclose his connections with or interests in SEW Trident; (d) and failing to procure the outstanding principal sum of US$250,000 and returns on the investment.

147 As regards the overall contentions, the real issue relates to Pradeepto's disloyalty in obscuring the true purpose of the SEW Investment from the Mukherjees. The earlier finding is that Pradeepto was responsible for Post-Decision Activities. In relying on Pradeepto to carry out their decision to invest in the SEW Investment (*ie*, the Post-Decision Activities), the Mukherjees were vulnerable to Pradeepto's disloyalty and the events show that Pradeepto did not act in good faith. As their agent and the means through which the Mukherjees procured investments, Pradeepto owes the Mukherjees the duty of loyalty which notion encompasses a duty to be honest and to act in good faith towards the principals, a duty to fair and transparent with the principals, a duty to act in the principals' interest, and the rule against self-dealing. Yet, far from being loyal,

in purportedly carrying out his instructions, the funds allocated to the SEW Investment were used in a way that involved Pradeepto's undisclosed personal interests, or which possibly conflicted with the Mukherjees' interests. In my view, this is a clear breach of Pradeepto's fiduciary duty.

148 I should add that Pradeepto's obligation as a fiduciary was to redeem the SEW Investment on maturity of one week. The facts outlined above (see [126]–[136]) demonstrated his false promises and subsequent failure to cause IOEL to pay the other US$250,000. The fact of the matter is that on Pradeepto's own testimony, US$500,000 redemption money meant for the Mukherjees was received by Pradeepto's company, IOEL, and only half of that sum was returned to the Mukherjees and the other half was returned to SEW Trident for a reason that was spurious. In my view, the evidence demonstrated that Pradeepto had clearly not acted in the interests of his principals. Whether US$250,000 was returned to SEW Trident or retain by IOEL, on any view, Pradeepto was in breach of duty since he had placed himself is a position where his duty to the Mukherjees, which is to the handover US$500,000 received from SEW Trident to the Mukherjees, conflicted with his own interests. He acted in breach of his fiduciary duty in relation to the sum of US$250,000, and I so hold.

*Conclusion on breach of fiduciary duty in relation to the SEW Investment*

149 I conclude that the case against Pradeepto in relation to breach of fiduciary duty is made out. The evidence is quite clear that the funds for the SEW Investment were utilised in a way which involved Pradeepto's personal interests or that of IOEL. In relying on Pradeepto to carry out their decision to invest in the SEW Investment (*ie*, the Post-Decision Activities), the Mukherjees were vulnerable to Pradeepto's disloyalty and the events recounted above show that Pradeepto did not act in good faith. The Mukherjees suffered loss as they

were deprived of the outstanding US$250,000 principal sum because of Pradeepto's disloyalty as a fiduciary. According, I grant judgment against Pradeepto in the sum of US$250,000, I will deal with the question of interest under s 12 of the Civil Law Act (Cap 43, Rev Ed 1999) ("CLA") later in this judgment. As explained at [52] above, the claim for reasonable returns based on alternative investments fail.

***Trade Sea Investment***

150 The Trade Sea Investment is a trade finance which the Mukherjees decided to invest in on 12 August 2013. Gouri asserts that in or around July 2013, Pradeepto brought to her attention the Trade Sea Investment and made the following representations:[38]

(a) By an email dated 29 July 2013, Pradeepto represented that the Trade Sea Investment was for a sum of US$350,000 for a holding period of three months. It was subsequently agreed that the amount of funds invested would be reduced to US$200,000.

(b) Pradeepto orally represented that the investment was a "great structure" which would earn a premium of between 14 to 18% per annum.

151 Gouri was initially hesitant to invest in Trade Sea owing to liquidity issues faced by her business. She eventually relented and issued a cheque dated 12 August 2013 made out to Trade Sea for the sum of US$200,000. Pradeepto collected the cheque from Gouri but was said to have not provided the Mukherjees with the relevant documents evidencing their title to Trade Sea

[38] Setting Down Bundle, Tab 7, para 103.

Investment in return. The Mukherjees were also unaware that funds would be transferred down the line to finance trades involving IOEL.

152 According to Pradeepto, the Trade Sea Investment involved trades between Trade Sea, Magnum and IOEL. The Mukherjees specifically sought to investments which involved IOEL.

*Terms of the Trade Sea Investment*

153 As stated, the Trade Sea Investment was a trade finance. Typically trade finance involves a trading company seeking funds from private investors to provide funds upfront to carry out trade. The investor recovers his investment along with returns at the end of a trade cycle.

154 There is some dispute over the precise terms of the Trade Sea Investment. According to Gouri, the holding period of the investment was for three months with an amended principal sum of US$200,000 and relies on the email dated 29 July 2013 for the terms of the Trade Sea Investment. In his closing submissions, Pradeepto explains that the email on 29 July 2013 (which stated a principal sum of US$350,000) involved a finance allocation with Flevum Asia. The Mukherjees decided not to participate in that trade and instead allocated US$200,000 for Trade Sea's trade finance which involved an entity known as Magnum and IOEL. Hence, the Mukherjees entered into a different investment with the same entity on new terms.

155 Regardless of whether the 29 July 2013 email embodied the terms of the Trade Sea Investment, Pradeepto accepted during the trial that the holding period was for three months. Thus, there is no longer any controversy that the

Trade Sea Investment was for a holding period of three months and the principal sum was US$200,000.

156 Gouri also asserts that Pradeepto had orally represented that the Trade Sea Investment would yield returns of between 14% to 18% per annum. Pradeepto denies having made that representation. This denial was, however, not seriously pursued at trial or in closing submissions. There must have been some representation regarding the premiums. It is only natural as the whole reason for the Mukherjee's trade allocation was to earn some returns. As the parties did not seriously dispute the terms of the premium, I accept Gouri's position.

*Transactions behind the Trade Sea Investment*

157 It transpires from the evidence that the funds allocated to the Trade Sea Investment were not used for a trade finance deal with Trade Sea as the Mukherjees' intended counterparty. Instead, upon Pradeepto's instructions, the Mukherjees' funds were used for other trade(s) between Magnum and IOEL, with IOEL trading down the line with SEW Trident. Notably, the Director of Trade Sea, Mr Bharat Mekani ("Mr Mekani") (who is Pradeepto's factual witness) stated during the trial that when he first approached Pradeepto in June 2013, there was no specific trade discussed.[39] Further, as can be seen from Mr Mekani's answers, upon transfer of the US$200,000 to Magnum, Trade Sea was absolved of "responsibility", and the said transfer was effected the next day to Magnum on Pradeepto's instructions:[40]

> Q: … what happened to the 200,000 that was invested in Trade Sea?

[39] Transcript Day 11, pp 11–12.

[40] Transcript Day 11, pp 37–40.

> A: There was no money in Trade Sea. It was -- you yourself saw that it was sent to Magnum the next day after it was received. So Trade Sea never had any money.
>
> Q: So after Trade Sea sent the money on to Magnum, it has got no further responsibility --
>
> A: That's right.
>
> Q: -- in respect of this 200,000?
>
> A: That's right.
>
> Q: So if the [Mukherjees] had put money where Trade Sea deposited a cheque with Trade Sea for the purposes of this trade and trade-related services, by passing it on to Magnum, Trade Sea becomes absolved of all responsibilities?
>
> A: Because it was done on the instruction of the person who brought the cheque.
>
> Q: And the person who brought the cheque is?
>
> A: As I mentioned in my affidavit, the cheque was handed over by Pradeepto.
>
> …
>
> Q: If you have no responsibility, who is the party that has responsibility to return the money, Mr Mekani?
>
> A: Magnum is doing the trade and trade-related services; at the end of trade, Magnum would return the money.
>
> Q: … So Trade Sea falls out of the picture entirely?
>
> A: Trade was never in the picture after the money was transferred.

158 Pradeepto could not properly explain the transfer of the Mukherjees' funds by Trade Sea since the Mukherjees could have simply invested directly with Magnum as their counterparty if that was intended:[41]

> Q: … Why wasn't the money from Trade Sea transferred directly to Indian Ocean? Why was there a need to go through Magnum?
>
> A: Because Magnum was the counterparty in the trade.

---

41 Transcript Day 11, pp 66–67.

Q: Right. Then why couldn't the [Mukherjees] have invested in Magnum as opposed to Trade Sea?

A: That was a possibility, but the [Mukherjees] decided to move ahead with Trade Sea.

Q: They went ahead with Trade Sea because you brought this Trade Sea opportunity to them?

…

A: No.

Q: No? Please explain.

A: Yes. I have been bringing opportunities to the [Mukherjees] for a very long period of time, and Trade Sea was one of the opportunities that was brought to them. So it's not just the opportunity. Just to rephrase your question.

….

Q: So, again, given the fact that the underlying trade which you claim was a trade engaged in between Magnum and [IOEL], and eventually [SEW], why didn't the [Mukherjees] invest directly in Magnum?

A: As you would see, which is also one of the disputed claims that the [Mukherjees] have, the [Mukherjees] have directly invested in SEW Trident. Maybe at a later point they could have even invested directly in Magnum Business.

Court: Mr Pradeepto, please answer the question asked.

…

A: Okay. To basically explain to you, Trade Sea was the entity that received the funds and moved it to Magnum to get the trade done.

Court: Please answer the question asked.

A: They could have directly invested into Magnum, but they chose not to.

Q: They chose not to. Were they ever informed that this particular trade or this particular allocation in Trade Sea would move to Magnum?

A: Yes, they were.

159 Pradeepto did not point to any evidence to support his bald assertion that the Mukherjees were aware of the underlying trade with Magnum and IOEL. He stated that the Mukherjees were provided with the relevant documents at a meeting with the Mukherjees, and that the Mukherjees chose to allocate funds for the Trade Sea Investment because they knew and took comfort in the fact that IOEL would be involved. There is every reason to believe that Pradeepto made up his story that the Mukherjees knew of the trade between Magnum and IOEL. First, Mr Mekani said that Trade Sea was not carrying out any specific trades at the material time. When Mr Ng queried Mr Mekani on what would happen to monies that were not deployed for a trade, Mr Mekani said that it would "go back … [t]o the person who was giving the money".[42] It would be superfluous to give the Mukherjees the option of allocating funds between Trade Sea and Magnum if Trade Sea was not carrying out specific trades in the first place and would return the monies to the sender. Secondly, assuming that the Mukherjees were aware of the underlying trade between Magnum and IOEL, Pradeepto's explanation that the Mukherjees had a choice between allocating funds in Trade Sea and Magnum would make little sense. It is difficult to understand why the Mukherjees would choose to have their monies transferred to Trade Sea only to expect the sum to be immediately transferred to Magnum, an unknown entity.

160 Significantly, the fact remains that based on Mr Mekani's evidence, Trade Sea was not the counterparty to the Trade Sea Investment and at the time the cheque was received, Trade Sea had no specific trades that required trade finance. I accept Mr Ng's submission that far from disclosing the true state of affairs in relation to the identity of the counterparty for the trade finance,

---

42 Transcript Day 11, pp 8–9.

Pradeepto concealed the underlying trade between Magnum and IOEL. Certainly, Pradeepto had misled the Mukherjees into allocating the sum of US$200,000 to a trade finance with Trade Sea that was not in existence, and I so find. At this level, it does not make any difference to the analysis and outcome to not fully accept Mr Iyer's opinion on how the funds were used to offset Pradeepto's existing liabilities in a transaction involving Trade Sea and Trilogy.

*Delay in redemption of the Trade Sea Investment*

161 Sometime on or around 27 November 2013, Gouri sought Pradeepto's assistance to procure a banker's guarantee. Both sides proffered conflicting reasons as to why Gouri turned to Pradeepto for help. It matters not which version is true as nothing turns on this. The fact of the matter is that Gouri sought Pradeepto's assistance to procure a banker's guarantee. She wrote:[43]

> … A BG to be issued preferably under Sea Quest … alternat[ively] direct under my name.
>
> Collateral – investment fund under my name.
>
> If the above is possible, how long will need and what are the charges.

162 Two things should be noted. First, Gouri was cognisant that one of the Mukherjees' investments might be used as collateral. Indeed, at trial, Gouri accepted that she gave Pradeepto latitude to decide on which particular investment to use as collateral. Secondly, Gouri sought a banker's guarantee around the time the three months holding period of the Trade Sea Investment would have matured, if Pradeepto had placed the allocated funds with Trade Sea.

---

[43] AB 9, p 4912D.

163 Pradeepto was able to enlist the assistance of Mr Mekani to procure the banker's guarantee. One of Mr Mekani's other companies, CIS Agriferts Pte Ltd ("Cis Agriferts") (now known as Cistech International Pte Ltd), had an ongoing credit line with Habib Bank that could issue banker's guarantees. The condition of the banker's guarantee was that collateral security would have to be provided. Habib Bank issued the banker's guarantee on 23 December 2013. This guarantee was amended and reissued on 17 January 2014 with 17 April 2014 as the expiry date.[44]

164 On 20 December 2013, a representative of Cis Agriferts wrote to Pradeepto seeking the remittance of US$100,000. Habib Bank required a collateral of US$100,000 (initially US$88,000) for the banker's guarantee. At trial, Mr Mekani stated that all monies for the collateral came from IOEL:[45]

> Q: Mr Mekani, we have heard from you that the deposit that was required for collateral for the banker's guarantee was 100,000; yes?
>
> A: That's right.
>
> Q: Of the 100,000, the 88,000 actually came from the investment in Trade Sea?
>
> A: It came from Indian Ocean, IOEL.

While US$100,000 was sought, IOEL only provided US$88,000. There remains an additional US$12,000 outstanding, pending settlement with IOEL.

165 Insofar as Mr Mekani was concerned, whatever monies that were required for the purposes of the banker's guarantee came from IOEL. It is for this reason that when Gouri sent Cis Agriferts an email stating that the banker's

---

44 Transcript Day 6, p 53.

45 Transcript Day 11, p 37.

guarantee had expired in April 2014 and sought the return of the US$200,000, Mr Mekani wrote an email with Pradeepto in copy stating:[46]

> Please note that Pradeepto has only given us USD 88 K inspite of our having to put USD 100 K in the fixed deposit – Please note that you need to clarify this to SEA QUEST that we *have not received any USD 200 K* and neither has HBL received any funds which they are mentioning.
>
> [emphasis added]

Mr Mekani was puzzled as to why Gouri was seeking the return of US$200,000 as he was probably unaware that the Mukherjees were told that the Trade Sea Investment was used as collateral for the banker's guarantee.

166 On the other hand, to Gouri, Pradeepto was responsible for making the necessary arrangements for the banker's guarantee. It was in the month of January 2014 that the Mukherjees began seeking the redemption of the Trade Sea Investment in the belief that Pradeepto had invested US$200,000 in Trade Sea. Pradeepto then explained that the investment could not be redeemed as it was linked to the banker's guarantee. This was clearly a lie as there was no investment in Trade Sea to use as collateral. Gouri was told that the Trade Sea Investment could not be decoupled from the banker's guarantee as they were linked and there was a delay in the closure of Mr Mekani's credit lines.

167 Mr Mekani was queried about the current status of the US$88,000 at trial:[47]

> Q: Who is holding on to this 88,000 which you said came from [IOEL]?
>
> A: It is being held in CIS Agriferts, pending settlement with [IOEL].

46 PCB 3, p 1618A.

47 Transcript Day 11, pp 42–45.

> Q: Pending settlement with [IOEL]. Settlement of what?
>
> A: You see, when the banker's guarantee expired, Habib Bank had to cancel our lines and refund the collateral, which took time. When the lines were cancelled and the collateral was refunded, we approached Pradeepto for this to be done, Pradeepto mentioned that this matter is sub judice, so he says there are no instructions.
>
> …
>
> Q: Right. So if IOEL does not give you instructions where to refunded, that 88,000 less these bank fees and service charges, CIS Agriferts would do nothing; correct?
>
> A: Yes.

From Mr Mekani's evidence, the sum of US$88,000 remained with Cis Agriferts pending the settlement of the additional US$12,000 he had to provide to meet the collateral requirement of US$100,000 and bank charges. When the banker's guarantee lapsed and the credit line on which the banker's guarantee was issued was cancelled, instructions were sought from Pradeepto on the refund of the US$88,000 less the bank charges. Pradeepto, however, gave no instructions and informed Mr Mekani that the refund was "sub judice [*sic*]". By this time the Mukherjees had issued a letter of demand, Pradeepto saw no reason to assist them.

168 One version of the evidence is that US$88,000 was with CIS Agriferts and the remaining US$112,000 with IOEL. During cross-examination, Pradeepto's story changed. He claimed that US$112,000 was with Magnum. While IOEL came into possession of the sum in June 2014, the sum was then passed onto Magnum as part of ongoing trades. As the full sum of US$200,000 was used for trades, Pradeepto had to take out a loan from Magnum to provide the sum needed for the collateral.

169 Pradeepto's position on the ongoing trade (*ie*, that the US$200,000 continued to be involved in trades after the holding period) along with the loan-to-value ratio arrangement with Magnum only surfaced at the trial. The story of a loan from Magnum was explained as follows. At the time Gouri sought the banker's guarantee on 27 November 2013, the entire US$200,000 and returns were used for trades and could not have been taken out until December 2013.[48] Thus, a loan had to be taken from Magnum to put up the necessary amount for the collateral. The loan from Magnum amounted to about US$90,000 based on a 45% loan-to-value ratio.

170 There is nothing about the loan from Magnum and how the loan was repaid in the affidavits filed by Pradeepto. In fact his affidavit of evidence-in-chief states that "[he] arranged for the trade cycle to be broken for funds to be provided to Habib Bank to be used for the [banker's guarantee] as collateral".[49]

171 With the inconsistencies shown above, Pradeepto's testimony on using Trade Sea's monies as collateral is unreliable. Pradeepto has no excuse for not returning the Mukherjees' monies.

*Did Pradeepto act in breach of fiduciary duty*

172 Like the SEW Investment, a number of breaches have been raised. The Mukherjees argue that Pradeepto breached his fiduciary duty as he: (a) failed to provide them with documents evidencing title to the Trade Sea Investment; (b) failed to disclose his connections with Trade Sea; (c) failed to properly advise them on the banker's guarantee; (d) failed to redeem the Trade Sea Investment as instructed; and to (e) introduced an investment that was not authentic.

48 Transcript Day 11, p 74.

49 BAEIC Vol 4, Tab 4, para 325.

173 I draw from the findings above. Much like the SEW Investment, the funds allocated for the Trade Sea Investment were not used as intended by the Mukherjees in that Trade Sea was never the counterparty to the trade finance for which the cheque of US$200,000 was issued. Unbeknownst to the Mukherjees, Pradeepto instructed Trade Sea to send the funds to Magnum and the funds were used in a way that involved Pradeepto's undisclosed personal interests, or which, more probable than not, conflicted with the Mukherjees' interests. As the evidence showed, Pradeepto did not act in good faith. There is a clear breach of Pradeepto's fiduciary duty in respect of the events which had occurred.

174 When it came to the return of the principal sum, Pradeepto was again untruthful about the true state of affairs and his belligerence was in bad faith to deny the Mukherjees their monies. Again, from the evidence dealing with the delays in redemption set out in the paragraphs above, the Mukherjees have made out a case of breach of fiduciary duty in respect of the return of the principal sum. Here the Mukherjees are claiming for reasonable returns based on alternative investments. As explained above at [52], the claim for reasonable returns based on alternative investments fails.

*Conclusion on breach of fiduciary duty in relation to the Trade Sea Investment*

175 As a result of Pradeepto acting in a way that brought his interests in conflict with that of the Mukherjees, the latter were deprived of the return of their principal sum of US$200,000. Consequently, I grant judgment in favour of the Mukherjees for the principal sum of US$200,000. Again, I will deal with the question of interest under s 12 of the CLA later in this judgment. As explained at [52] above, the claim for reasonable returns based on alternative investments fail.

***Farmlands of Africa Investment***

176 Besides the Trade Sea Investment on 12 August 2013, the Mukherjees had also allocated funds to the Farmlands of Africa Investment on the same date. The Farmlands of Africa Investment involves the subscription of a debenture. As the principal sum of US$300,000 (or a significant part of the sum, US$299,820.86) was repaid, in this action the Mukherjees are claiming reasonable returns on the investment. For the reasons at [52] above, the Mukherjees are not entitled to equitable compensation in respect of the reasonable returns as sought. However, it bears to examine the circumstances in relation to the Farmlands of Africa Investment as it sheds light on the pattern of Pradeepto's behaviour *vis-à-vis* the Mukherjees.

177 The Mukherjees claim that in or around July 2013, Pradeepto advised them to invest in Farmlands of Africa and made the following representations:[50]

(a) By an email dated 29 July 2013, Pradeepto represented that the investment was for a sum of US$300,000, "fully redeemable 3 month debenture at 16% per annum coupon".

(b) In that same email he further presented that the funds were to be paid to Buddhavarapu Investments Ltd ("BIL") as it was the majority owner of Farmlands of Africa.

178 The Mukherjees subsequently decided to enter into the investment and issued a cheque dated 12 August 2013 for the sum of US$300,00 made payable to BIL. The Mukherjees said that Pradeepto insisted that the words "Buddhavarapu Investments Ltd" and "FARMLANDS OF AFRICA INC

[50] Setting Down Bundle, Tab 7, para 118.

DEBENTURE INVESTMENT" be written by him on the reverse side of the cheque for accuracy. It was also said that Pradeepto did not provide any relevant documents evidencing the Mukherjees' interest in the Farmlands of Africa Investment.

179 On the expiration of the three-month holding period, in or around November or December 2013, Gouri instructed Pradeepto to redeem the investment. The Mukherjees claim that Pradeepto thereafter gave the false impression that the repayment was being processed and made false assurances to stall repayment.

180 The Mukherjees later ascertained from documents obtained during discovery that Pradeepto was in a position to exercise control and influence over Farmlands of Africa at the material time. They now assert that Pradeepto did not disclose his connection and/or interest in Farmlands of Africa and omitted to disclose that Farmlands of Africa had outstanding liabilities and ran the risk of insolvent trading. In addition, the Mukherjees say that Pradeepto omitted to inform them that Farmlands of Africa was heavily undercapitalised, with a paid up share capital of only US$75,000.

181 Pradeepto claims that there was a meeting with the Mukherjees sometime in 2013 where he provided the Mukherjees with the project profile relating to the Farmlands of Africa Investment and a debenture agreement that governed the investment. He explained that the maturity date in the debenture agreement was stated to be 360 days from the date of issue. In other words, the debenture would only mature in July 2014. The Mukherjees, however, sought early redemption. The redemption was eventually brought forward to March

2014. As the Mukherjees were seeking to redeem the debenture prematurely they would have to forgo all returns.

182 As regards his connections with Farmlands of Africa, Pradeepto said that he was relied upon as a financial broker to raise capital for the company, and was trying to mediate a dispute between the shareholders of Farmlands of Africa and a Chief Executive Officer. He does not exercise any form of control over the company.

*Pradeepto's relationship with Farmlands of Africa and BIL*

183 Pradeepto had a complex relationship with Farmlands of Africa, BIL and the principals behind these companies. He not only acted as a capital introducer (or financial broker) but also played an involved role in the affairs of the two companies. In cross-examination, Pradeepto accepted that in as early as 2012, he was involved in the fundraising activities of BIL (or a predecessor entity prior to the merger and acquisition deal with Pacatolus Growth Fund).[51] The objective evidence also show Pradeepto having dealings with the principals behind Farmlands of Africa and/or Buddhavarapu, Dr Anil Koneru ("Dr Koneru") and Mr Kumar SN Buddhavarapu ("Mr Buddhavarapu") in 2013. This is evident from an email dated 3 March 2013 from Dr Koneru, with Mr Buddhavarapu copied, where Dr Koneru sought financial advice from Pradeepto on Farmlands of Africa's acquisition of a company by the name of Buddhavarapu Farms SA. Further, in or around May 2013, Pradeepto introduced Mr Buddhavarapu to one Mr Saumyendra Mehra ("Mr Mehra"), the fund manager of Pacatolus Growth Fund. This led to BIL becoming one of the underlying investments of Pacatolus Growth Fund.

---

[51] Transcript Day 13, pp 190–191.

184 Through Pradeepto, Deer Creek eventually became involved with BIL and Farmlands of Africa. Deer Creek not only acted as a capital introducer of the two companies (which it billed introducer fees for) but had itself, through an anchor investor from the Deer Creek Geneva office, invested in the two companies. At the same time, Mr Mehra was also encouraged to establish a relationship with Deer Creek. Digressing for a moment, Deer Creek is a private investment office that consists of a small group of families who manage their wealth together and provide certain financial services.

185 During cross-examination, Pradeepto attempted to distance himself from BIL and Farmlands of Africa by stating that his relationship with them were through the financial institutions he was employed at. This characterisation does not take Pradeepto very far. While the two companies dealt with the institutions he worked for (Barclays Bank and Deer Creek), Pradeepto had at the very least maintained a separate relationship with the companies. It is for that reason that the companies continued to work with Pradeepto as clients of Deer Creek after he left Barclays Bank.

186 There were two particular projects undertaken by BIL and/or Farmlands of Africa that became the main subject at trial. Pradeepto had a significant hand in both projects.

187 The first project was the intended acquisition of Emvest by Farmlands of Africa.The Emvest acquisition is, however, unrelated to the Mukherjees' Farmlands of Africa Investment. The second project concerned certain developments in Guinea. The Farmlands of Africa Investment is related to this project ("Guinea Project"). Apart from the Mukherjees, Pradeepto also introduced Deer Creek to this project; which Deer Creek eventually found an

anchor investor for and billed BIL (and/or Farmlands of Africa) introducer fees.

*Transactions behind the Farmlands of Africa Investment*

188 Pradeepto claims to have given the project profile for the Farmlands of Africa Investment to the Mukherjees. As stated in the project profile, the Farmlands of Africa Investment concerned the development of land, irrigation systems, agricultural machinery and equipment, and civil infrastructure in Guinea. One would expect that an undertaking of this scale require an investment with a substantial holding period. Yet, Pradeepto purportedly informed the Mukherjees that their investment would be a three-month debenture in his email dated 29 July 2013. This calls to question the purpose of the funds from the Mukherjees.

189 The Farmlands of Africa Investment was part of Pradeepto's fundraising activities for BIL and/or Farmlands of Africa. What appears to have transpired is this – Pradeepto was tasked by BIL and Farmlands of Africa to raise funds for the Guinea Project. With that mandate, Pradeepto approached the Mukherjees to have them invest with Farmlands of Africa (and/or BIL). Pradeepto had intended to use the Mukherjees' money to improve the financial position of the Guinea Project so as to attract investors. Pradeepto expected to find sufficient funds three months from the time he introduced the Farmlands of Africa Investment to the Mukherjees. The Mukherjees would be paid out when the fresh funds came in with an interest for the period pending the inflow of these funds. However, as matters panned out, there were delays in the return of the principal sum.

190 At trial, Pradeepto explained that a sum of US$2.5m was sought by BIL and/or Farmlands of Africa as the first tranche of funds for the Guinea Project. Through IOEL and the Mukherjees' investment, Pradeepto was able to raise an initial sum of US$450,000.

191 Pradeepto introduced the Farmlands of Africa Investment to the Mukherjees in July 2013, pending the commencement of his employment at Deer Creek.[52] It was likely that he expected to obtain full financing from Deer Creek to meet the US$2.5m required for the Guinea Project but needed to find some funds in the interim to shore up the Guinea Project's financial position. The Mukherjees' monies were used for this interim purpose.

192 On 30 October 2013, by way of an email, Pradeepto introduced Mr Simon Woods ("Mr Woods") of Deer Creek to BIL and/or Farmlands of Africa in an attempt to seek funding from Deer Wood for the Guinea Project. Pradeepto indicated that US$450,000 had been raised thus far and an additional US$2.05m was needed. While the email appears to suggest that Pradeepto was seeking additional funding of US$2.05m on top of the existing US$450,000 already raised (to make up a total of US$2.5m), Pradeepto insisted during the trial that Deer Creek had to raise the full US$2.5m. The US$450,000 previously raised was to be excluded from Deer Creek's fundraising mandate.[53] It is likely that this mandate arose after Pradeepto sent the introductory email to Mr Woods.

193 The Guinea Project was eventually brought to the attention of Mr Hubert-Lance Huet ("Mr Huet"), one of the founders for Deer Creek and an investor from the Deer Creek Geneva office, sometime in November 2013. In

---

52 Transcript Day 13, p 200.

53 Transcript Day 14, p 26.

the email exchanges that followed, it is apparent that Deer Creek was looking to invest in Farmlands of Africa and/or BIL through Pacatolus Growth Fund.[54] The discussions between the various interested parties continued into 2014, with Mr Mehra's involvement. An agreement was eventually reached; Mr Huet would provide funding for the Guinea Project through Pacatolus Growth Fund.

194 Despite earlier difficulties at redemption (see [200] below), on 17 February 2014, Pradeepto informed the Mukherjees that they were able to redeem their investment in March 2014. On 27 March 2014, a representative of Buddhavarapu Holdings SA wrote to Pradeepto informing him that they had honoured his request to pay the Mukherjees US$300,000. The representative then informed Pradeepto to complete the funding of US$2.5m and to make up the shortfall of US$500,000 pursuant to his previous commitment. This shortfall appears to have arisen partly from the return of the Mukherjees monies.

195 Separately, on 20 February 2014, an Introducer Agreement was signed with Deer Creek for an agreed management fee of 5% of the total amount raised by Deer Creek for the Guinea Project.[55] A bill of US$125,000 as introducer fees was sent to Deer Creek on 10 March 2014. This was presumably done pursuant to Mr Huet's agreement to provide funding; which at some point Mr Huet did provide, although a certain amount remained outstanding (which from emails in April 2014, appears to be in the region of US$500,000). Disagreements subsequently arose between Deer Creek and BIL (and/or Farmlands of Africa) sometime in March 2014, after the return of the Mukherjees' monies. BIL refused to pay Deer Creek the introducer fees and Deer Creek, on the other hand, refused to release the remaining funds to BIL as it had not received the

54 AB 13, p 6630.

55 PBD 1, p 555.

introducer fees. The emails during this period between the parties are particularly revealing of the purpose behind the Farmlands of Africa Investment.

196 In an email dated 3 April 2014, Pradeepto instructed Mr Woods to have US$500,000 transferred to BIL (through Pacatolus Growth Fund):[56]

> BIL is due another round of USD 500000 for completion through fund as direct entries were reversed and the fund will debit balance and send it across so we can have this closed. In effect net BIL will receive 2.375M.

The direct entries that were reversed refers to the return of US$300,000 to the Mukherjees. Deer Creek was supposed to top up the shortfall after the monies were returned. The statement that BIL will in effect receive a net sum of US$2.375m can be explained on the basis that US$125,000 was billed as introducer fees. Thus, while Deer Creek was to advance a total of US$2.5m, the introducer fees can be deducted from the total sum thereby bringing the net sum to be transferred down to US$2.37m. It is for this reason that Pradeepto insisted during the trial that the funds to be raised by Deer Creek and the US$450,000 were separate.

197 Subsequently, in a series of emails between Pradeepto and Mr Buddhavarapu in April 2014, Mr Buddhavarapu expressed displeasure at the unresolved shortfall and Deer Creek's refusal to release the remaining funds. In the emails, Mr Buddhavarapu alluded to the initial capital of US$450,000 that was provided to BIL and/or Farmlands of Africa, and was subsequently returned to IOEL and the Mukherjees. In response Pradeepto stated that the initial capital:[57]

---

56 PBD 1, p 725.

> *was to help your image sir*. Unfortunately my financial situation has changed and I cannot invest along side.
>
> …
>
> If you wish to finger pint [*sic*] then please return the monies and then we can discuss.
>
> [emphasis added]

198 Pradeepto was informing Mr Buddhavarapu that the US$450,000 was to improve the "image" of the Guinea Project and that he had to pull his US$100,000 contribution (out of the US$450,000 initially raised) from the Guinea Project as his financial circumstances had changed. Pradeepto's explanation is significant. In stating that the initial capital was to "help [Mr Budhhavarapu's] image", Pradeepto was effectively acknowledging that the Mukherjees' investment monies were used as a mere placeholder to improve the financial position of the Guinea Project.

199 Considering the evidence in the round, the fundraising exercise was structured such that Mr Huet would have provided the full US$2.5m needed for the first tranche of the Guinea Project. This would have allowed BIL and Farmlands of Africa to return the Mukherjees' principal sum. An interest would also be paid for the period that the Mukherjees' monies were held in the account of BIL (and/or Farmlands of Africa), pending the inflow of Mr Huet's money.

*Holding period and returns due*

200 On 26 November 2013, Gouri asked for an update on all the investments under Pradeepto's oversight. It was then that Pradeepto informed Gouri that the Farmlands of Africa Investment was due in July 2014. Despite so, on 20 December 2013, three months after the Farmlands of Africa Investment was

---

[57] AB 13, p 6941.

executed, Gouri asked Pradeepto if she could withdraw the investment. On 5 February 2014, Pradeepto then informed Gouri that the redemption of the Farmlands of Africa Investment "cannot be brought forward unless we do early redemption in which case we lose out".[58] He then encouraged Gouri to continue to hold onto the investment. On 17 February 2014, Pradeepto told the Mukherjees the following: "[Farmlands of Africa Investment] brought forward to close in March 2014". The following day, he stated that the redemption will be on 15 March 2014. The Mukherjees received their principal sum sometime on or around 24 March 2014.[59]

201 Pradeepto maintains that the Mukherjees are not entitled to claim for returns as they sought an early redemption. His case rests on two planks. First, the debenture agreement (dated 24 June 2013) states that the investment had a lock in period of 360 days from the day the debenture was issued. An early redemption would mean that the returns were forfeited. Secondly, and in any event, while his email initially stated a time horizon of three months, the Mukherjees eventually accepted that the lock in period was for a year. They did not object to his email when he indicated that the investment could only be withdrawn in July 2014. Further, in an email dated 31 July 2013, after the principal sum had already been returned, the Mukherjees indicated that the Farmlands of Africa Investment was "[c]losed".

202 Gouri, on the other hand, insisted that she never knew of the lock in period and was surprised when Pradeepto informed her of the same. She explained that she did not raise issues regarding the change in redemption dates as she was busy pursuing Pradeepto for the other investments at the material

[58] AB 12, p 6152.

[59] AB 13, p 6826.

time. Had she known that the maturity period was not three months but one year, she would not have made the investment. Gouri also emphasised that she had never seen the debenture agreement. As regards the indication in the email that the matter was closed, Gouri said that she was referring to the principal sum but not the returns. This was because Pradeepto had previously indicated in an email dated 12 March 2014 that he was arranging for the redemption of the principal sums of all the investments he was overseeing and to then work out the premiums.

203 Having reviewed the evidence, there was no lock in period of one year and thus no issue of an early redemption. The debenture agreement was used as an excuse for the delay in the redemption.

204 The debenture agreement cannot be relied upon as the basis of a lock in period. The starting point must be Pradeepto's email where he indicated a holding period of three months. It would be unusual for Pradeepto to have represented the holding period to be three months if, as he asserts in his affidavit of evidence-in-chief, the Mukherjees were provided with the debenture agreement before they decided to invest. In my judgment, it was more probable than not that the debenture agreement was not shown to the Mukherjees and Gouri had not signed on the document. Whilst the debenture agreement named Gouri and BIL as parties, her signature was conspicuously missing from the debenture agreement. This is significant because the agreement was extracted from BIL. Being the company that received the Mukherjees' investment monies, it ought to have a properly signed and completed copy of the debenture agreement. The ramification of an unsigned debenture agreement confirms that the Farmlands of Africa Investment was never about a redeemable debenture as Gouri was misled to believe. The Mukherjees investment was used as a mere

placeholder to improve the financial position of the Guinea Project during the time Pradeepto was seeking to fundraise US$2.5m for BIL and/or Farmlands of Africa (see [198]–[199]).

205 Notably, BIL (through its related entity) acknowledged that the Mukherjees had earned returns of US$30,630; the Mukherjees did not forfeit their returns by having the redemption date carried forward. This is alluded to in an email dated 18 September 2014:[60]

> Dear Sir,
>
> Greetings..
>
> Cash received (DBS): 01/08/2013: 300000 USD
>
> Cash paid to Gouri Mukherjee (DBS): 21/3/2014: 300000 USD
>
> As per last [discussion] about 300000 USD interest @ 16 per Annum
>
> Total interest time: 07 months 20 days
>
> Total Interest amount USD: 30630$ USD (Thirty thousand Six hundred Thirty Only)

Pradeepto was cross-examined on this email. He explained that he sought the information because he needed to respond to the letter of demand served by the Mukherjees, and had therefore discussed the returns on investment with Mr Buddhavarapu. This explanation is unconvincing. First, on Pradeepto's own case, it would be unnecessary to clarify the issue of returns since the Mukherjees had forfeited the sum in the first place. Second, following Pradeepto's evidence, the query would be along the lines of whether returns were due or not. However, the contents of the email went further to address the quantum of the returns.

---

60 Plaintiff's Core Bundle ("PCB") 4, p 2231.

*Did Pradeepto act in breach of fiduciary duty*

206 The Mukherjees submit that Pradeepto breached his fiduciary duty as he: (a) dishonestly represented that the holding period of the investment was for three months; (b) failed to disclose that Deer Creek received introducer fee from the Farmlands of Africa Investment; (c) failed to disclose the poor financial affairs of Farmlands of Africa; (d) failed to properly execute the investment documents; (e) failed to disclose his involvement with Farmlands of Africa; (f) failed to procure the returns on the Farmlands of Africa Investment; and (g) introduced a sham investment.

207 The alleged breaches raised by the Mukherjees are simply symptoms of the underlying factual circumstances stated above. Much like the earlier investments (*ie* SEW Investment and Trade Sea Investment), these alleged breaches speak to a common concern – that Pradeepto had used the Mukherjees' allocation intended for a redeemable three-month debenture for something that was entirely different (see [199] above). Again, the facts show that in respect of the Farmlands of Africa Investment, Pradeepto did not act in good faith and the Mukherjees, being dependent and reliant on Pradeepto in the events relating to the Farmlands of Africa Investments, were vulnerable to Pradeepto's disloyalty. Pradeepto had not been truthful about the returns that were due to the Mukherjees when they sought redemption. This is a breach of his duty of loyalty and honesty towards the Mukherjees.

*Conclusion on breach of fiduciary duty in relation the Farmlands of Africa Investment*

208 The Mukherjees have not sought the recovery of the returns due to them on the basis of the terms of the Farmlands of Africa Investment but instead, on

alternative investments. As the Mukherjees have not provided evidence of such alternative investments (see [52] above), the Mukherjees have not proven the loss they seek to be compensated for. Hence, the Mukherjees' claim, for reasonable returns fails.

***Neodymium and Peak Investments***

209 Neodymium was a BVI company which operated out of the Free Trade Zone in Dubai. The Neodymium Investment involved project financing. The other investment was with Peak. In an email dated 12 March 2014 to Gouri, Pradeepto explained that the Peak Investment was a trade finance allocation for the purposes of supporting the Sri Lanka port project; the premise of the investment is therefore the financing of a trade (or trades).

*Circumstances surrounding the Neodymium and Peak Investments*

210 The facts in relation to the two investments are relatively short. The Neodymium and Peak Investments were introduced to the Mukherjees in May 2013. The Mukherjees claim that Pradeepto represented that the investments would earn a premium of between 14% and 18% per annum. The Mukherjees claim that in presenting the investments, there was implicit representation that the investments were authentic and thus came with the expectation of generating returns. They also claim to have held the expectation that the Neodymium and Peak Investments were Barclays Bank's products as Pradeepto was their relationship manager at Barclays Bank when he introduced the investments.

211 According to Pradeepto, Neodymium was seeking to raise funds for projects involving copper mining and agricultural projects in Zambia undertaken by SEW Trident Zambia Private Limited. He asserts that this was

told to the Mukherjees. In the reply to a request for further and better particulars of the defence, Pradeepto lists several documents that he claims were disclosed to the Mukherjees.

212 As regards the Peak Investment, Pradeepto explains that the investment involved trade financing that was tied to a petrochemical project in Sri Lanka. Like the Neodymium Investment, Pradeepto points out that the Mukherjees had previously invested with Peak. He further asserts that Dr Mukherjee had in fact previously accompanied Pradeepto to Sri Lanka to inspect the Sri Lanka project sometime in 2011. Additionally, in the reply to a request for further and better particulars of the defence, Pradeepto lists several documents that he claims were disclosed to the Mukherjees.

213 Two letters were sent on 16 May 2013 instructing Barclays Bank to make the relevant transfers. In one letter, Gouri instructed Barclays Bank to transfer US$250,000 to Neodymium for a "[p]roject investment allocation". In another letter, Gouri instructed Barclays Bank to transfer US$500,000 to Peak for a "[s]tructured trade finance allocation for SL project". SL project was later clarified at the hearing to refer to a certain development project in Sri Lanka.

214 Sometime in November 2013, Gouri requested Pradeepto to provide a statement of all her running investments and to indicate the status of each investment. As regards the Peak Investment, Pradeepto informed her that the investment had a 16% interest and that the returns were due second week of December 2013. As regards the Neodymium Investment, Pradeepto informed her that the investment had a 14% interest and the returns were due first week of December 2013. During the period from December 2014 to the point at which the Mukherjees commenced this action, the parties had discussions over the

redemption of the Neodymium and Peak Investments. Pradeepto consistently represented to them that redemptions were forthcoming. As it turned out, the redemptions never came to past.

215 On Pradeepto's account, the investments met with difficulties. Sometime in November 2013, as part of a corporate restructuring exercise to become subsumed under SEW Group (which is a company related to SEW Trident), Neodymium was struck off the register. As Neodymium's contingent liabilities were taken over by SEW Group, the Mukherjees' investment money is with SEW Group. SEW Group itself faced trading difficulties in early 2014 and was unable to return any funds to its investors in the interim. Thus, the Mukherjees were not able to redeem their investment. Similarly, Pradeepto asserts that the Peak Investment remains with Peak and that he has no control over the investment. Pradeepto also stresses that the Mukherjees have previously dealt with Neodymium and Peak, and must therefore know that the Neodymium and Peak Investments were not Barclays Bank's products and the allegation that the Neodymium and Peak Investments are shams is unfounded.

216 There are serious doubts as to whether the Neodymium Investment is held by SEW Group, as Pradeepto asserts. It appears that up until December 2014, Pradeepto was in contact with the relevant entities that have utilised the Mukherjees monies and that he knew where the Mukherjees monies went. For the Neodymium Investment, in particular, SEW Group does not appear to be the relevant entity. This can be gleaned from the following email sent by an entity bearing the name "Royal Indo Metalics" to Pradeepto on 29 December 2014:[61]

---

61 AB 16, p 8284.

> Dear Sir,
>
> Per advise of our account, we have identified the payment instructions and the same is attached in this email.
>
> Regards
>
> …
>
> :33B:USD375000,00
>
> NEODYMIUM HOLDINGS LIMITED
>
> …
>
> GOURI MUKHERJEE
>
> :70FEE AS PER AGREEMENT FOR FACILITIES
>
> …
>
> … BOON LAY PLACE
>
> //SINGAPORE

This email states that there were payment instructions and referred the payment instructions to Neodymium and Gouri. Curiously, Pradeepto was the only individual the email was sent to. This email contradicts his case that the Neodymium Investment is beyond his reach and that only the SEW Group is responsible for the Neodymium Investment.

217 As regards the Peak Investment, Pradeepto cannot similarly disavow his responsibility in assisting the Mukherjees to recover their investment. Pradeepto voluntarily assumed the responsibility of the Post-Decision Activities in respect of the Peak Investment. Pradeepto had not provided much details as to why the recovery of the Peak Investment was not forthcoming. He simply asserts that he had approached Peak indicating that the Mukherjees wanted to close out their investment and have relayed the information Peak informed him to the Mukherjees. In my view, Pradeepto is well-placed to provide explanations but have not done so. As will be explained below, Pradeepto has a close relationship

with the principal of Peak, Mr Abhijit Sen ("Mr Sen"). There is no reason why Pradeepto could not give detailed reasons as to why the investment could not be redeemed.

*Did Pradeepto act in breach of fiduciary duty*

218 The Mukherjees argue that Pradeepto breached his fiduciary duty as he: (a) failed to disclose material information when he recommended and advised the Mukherjees; (b) failed to disclose his connections with Peak; (c) failed to inform the Mukherjees that Neodymium was struck off; (d) failed to redeem the investments; (e) and introduced investments that were not authentic.

219 Whilst this court's finding of fact above is that Pradeepto did not undertake the role of an investment advisor, it does not mean that he was without any obligations when an investment opportunity that he presented was eventually accepted by the Mukherjees. In this case, Pradepto knew of the Mukherjees' investment criteria and risks but he nonetheless proceeded to introduce the investments as if the proposed investments were suitable for the Mukherjees. By relying on Pradeepto to introduce to them suitable investment opportunities that they went on to accept eventually, the Mukherjees were vulnerable to any disloyalty by Pradeepto and were reliant on his good faith. Thus fiduciary obligations are attracted in Pradeepto's performance of his second role. The Mukherjees' dependency and reliance on Pradeepto come into sharp focus in respect of the Post-Decision Activities undertaken by Pradeepto (see [36] above).

220 Contrary to Pradeepto's contention that he had provided the Mukherjees with the necessary documents for them to make an informed decision to invest in Neodymium and Peak, the documents referred to in his reply to the

Mukherjees' request for further and better particulars, do not support his contention. Documents that were allegedly provided to the Mukherjees include the following:

(a) For the Neodymium Investment – licences issued to SEW Trident Zambia or related companies, the maps of licences, and a document referred to as SEW Corporate Presentation – Zambia Mines.

(b) For the Peak Investment – rig details, including equipment list and specifications, and historical financials and other relevant information relating to Sen Pet (India) Limited, the petrochemical project.

Notably, none of the documents described made any reference to Neodymium and Peak, and say nothing of the Mukherjees' title to the investments. Apart from Gouri's transfer instructions to Barclays Bank, no other documents from Neodymium and Peak as respective counterparties to the Neodymium and Peak Investments have been adduced as evidence. As agent of the Mukherjees, who contracted with the investee companies on behalf of the Mukherjees, it is surprising that Pradeepto could not produce any documents evincing the Mukherjees' title to the Neodymium and Peak Investments.

221 In short, Pradeepto could not refute the *prima facie* evidence that Neodymium and Peak were not the Mukherjees' counterparties in respect of the funds allocated by them for the Neodymium and Peak Investments. This last point segues to Mr Iyer's opinion that neither Neodymium Investment nor Peak Investment had the characteristics of an investment as there were no agreements showing that they were actual investments. I will come to Mr Iyer's evidence in due course.

222 There is force in the point that Pradeepto's unfulfilled promises to redeem the investments despite assurances are consistent with the conclusion that there were no actual investments. Pradeepto had on multiple occasions over more than eight months made repeated empty promises that the return of the Mukherjees' funds was forthcoming:

(a) On 26 November 2013, Pradeepto stated in an email that the Peak Investment was due second week of December whereas the Neodymium Investment was supposedly due first week of December.

(b) On 7 January 2014, Pradeepto stated that the Peak funds will be available in the middle of February 2014 and that he had already indicated closure to Peak.

(c) The assurances that there would be redemption of the investments continued throughout until July 2014.

223 Objectively, Pradeepto has not established that he had contracted with Neodymium and Peak for and on behalf of the Mukherjees. One related question that arises is what has happened to the funds that the Mukherjees have allocated for the Neodymium and Peak Investments. Mr Iyer opined that contemporaneous email trails and text messages suggest that Pradeepto induced the Mukherjees to enter into these investments to fund Pradeepto's obligations to make payments. Put simply, the funds allocated by the Mukherjees did not go to the Neodymium and Peak Investments as intended but the funds were utilised elsewhere. In his report, Mr Iyer highlighted that there were trading transactions involving IOEL, SEW Trident and Peak, and that IOEL had previously billed Peak for advisory and consultancy fees. Mr Iyer, however, did not demonstrate how the evidence he surfaced related to the Peak Investment.

Indeed, he candidly accepted that as regards the advisory and consultancy fees, "[i]t is not apparent if this billing is in any way linked to the US$500,000 raised from the [Mukherjees] for [the Peak Investment]".[62] In respect of the Neodymium Investment, Mr Iyer did not show how Pradeepto had concealed the true state of affairs behind the investment.

224 The weaknesses of Mr Iyer's opinion, however, do not detract from the fact that Pradeepto had not contracted with Neodymium and Peak for and on behalf of the Mukherjees. Pradeepto's contention that funds allocated by the Mukherjees went to Neodymium and Peak as the Mukherjees' counterparties is not made out.

225 Pradeepto's case is that corporate restructuring took place between Neodymium and SEW Group. Pradeepto maintained at the trial that the Neodymium Investment had been taken over by SEW Group. As SEW Group had experienced trading difficulties, the Mukherjees were not able to redeem the Neodymium Investment.

226 As observed above, there are serious doubts as to whether the Neodymium Investment was truly taken over by SEW Group. However, even on Pradeepto's own position, he would have breached his fiduciary duty. First, as an agent with obligations of a fiduciary, Pradeepto has to be fair and transparent with his principals. There is no evidence that Pradeepto disclosed to the Mukherjees the corporate restructuring that took place between Neodymium and the SEW Group. In his affidavit of evidence-in-chief, Pradeepto asserts that "[t]he restructuring exercise in the SEW Group involving Neodymium and SEW Group, was … known to the [Mukherjees] when they subsequently

---

62 BAEIC Vol 2, Tab 3, para 23(e).

allocated in SEW Trident as well".[63] A similar reason was also given in his defence. Pradeepto's explanation only goes so far as to show that the Mukherjees knew of the restructuring because of their subsequent investment and not because Pradeepto disclosed the fact to them. Further, it is unclear how mere execution of the SEW Investment would lead to the conclusion that the Mukherjees were informed of the restructuring. At the trial, Pradeepto attempted to re-characterise the position taken in his affidavit of evidence-in-chief. He explained that he made the necessary disclosure independent of the Mukherjees entering into the SEW Investment:[64]

> Q: Right. So at this point in time, you see Neodymium being subsumed within the SEW Group. We know that according to you, you were telling them, late November, that returns were due in December of 2013. Why didn't you go to them and tell them about this particular restructuring, because that would have affected the returns that they were owed; yes?
>
> A: I did. And if I can explain, Mr Ng, [the defence] states very nicely that the [Mukherjees] were aware of this restructuring. So I did mention it to them. We can't say that I haven't mentioned it to them.
>
> Q: The only reason they were made aware of the restructuring is because you say they subsequently made an allocation in SEW Trident; yes?
>
> A: No.
>
> Q: This is what you say at paragraph 28.2?
>
> A: It's a line that has been written -- or drafted in that format. That's about it. They were aware of --
>
> Q: What has the format got to do with the content of what you were saying.
>
> A: Yes, the content of what I was trying to say was that they were made aware of the restructuring. And post which, they have made an allocation. That's what it means.

---

63 BAEIC, Vol 4, Tab 4, para 187.

64 Transcript Day 16, pp 30–31.

Pradeepto could not give a coherent answer to the change in his position at trial. The position that the restructuring was disclosed was an afterthought. Pradeepto was under a duty of loyalty. Yet, he was not fair and transparent with the Mukherjees, having not disclosed the fact that Neodymium was struck off the register.

227 Secondly, even if SEW Group were truly suffering from trading difficulties and thus could not accede to the redemption of the Neodymium Investment, he should have been fair and transparent with the Mukherjees about this. According to Pradeepto, SEW Group's trading difficulties lasted from the final quarter of 2013 to August 2014.[65] During this period, far from being honest about these difficulties to the Mukherjees, Pradeepto gave consistent assurances that redemption would be forthcoming. Indeed, on 14 February 2014 Pradeepto indicated that for both the Neodymium and Peak Investments "closure [was] confirmed" and that it would be in March 2014.[66] On 12 March 2014, Pradeepto gave a clear signal that redemption was eminent: "trade finance one [*ie*, Peak Investment] and deal two [*ie*, Neodymium Investment] will reach us on Monday with onward closure thereafter in that week".[67] In presenting contrary facts to the Mukherjees, Pradeepto acted in breach of his duty of honesty and good faith. He was not fair and transparent with his principals, the Mukherjees, in respect of the Neodymium and Peak Investments.

228 In relation to the Peak Investment, Pradeepto's position is that the Mukherjees are at liberty to approach Peak directly for redemption. As I have alluded to above, this position is disingenuous. First, the Mukherjees' claims

---

65 Transcript Day 16, p 68.

66 PCB 3, p 1365.

67 PCB 3, p 1491.

against the Peak for their investment stands independent of Pradeepto's duties to the Mukherjees. Secondly, Pradeepto represents the Mukherjees means of access to the Peak Investment in that the Mukherjees depended and relied upon him to contract with the counterparty. This was the basis of the parties' relationship. On the flipside, Pradeepto shares a close relationship with Mr Sen; having dealt with Mr Sen for a long time and over various transactions. Pradeepto ought to be apprised of the circumstances surrounding the Mukherjees' investment. If there were serious issues with redemption, Pradeepto should not have conveyed to the Mukherjees that redemption was forthcoming. In providing false assurances to the Mukherjees, Pradeepto breached the duty of honesty.

*Conclusion on breach of fiduciary duty in relation to the Neodymium and Peak Investments*

229 In relation to the Neodymium Investment, the Mukherjees are claiming for the principal sum of US$250,000 and reasonable returns. In relation to the Peak Investment, the Mukherjees are claiming for the principal sum of US$500,000 and reasonable returns. In summary, I am satisfied that Pradeepto had acted in breach of his fiduciary duty in respect of the Post-Decision Activities. As a result, the Mukherjees were deprived of their principal sums in relation to the two investments.

230 I grant judgment in favour of the Mukherjees the principal sum of US$250,000 for the Neodymium Investment. I also grant judgment in favour of the Mukherjees the principal sum of US$500,000 for the Peak Investment. I will deal with the question of interest under s 12 of the CLA later in this judgment. As explained at [52] above, the claims for reasonable returns based on alternative investments fail.

***Pacatolous Investment***

231 Pacatolus Growth Fund Class 6 ("Pacatolus SPV6") is a special purpose vehicle set up by Pacatolus Growth Fund, a Mauritian private equity fund, that invested in Trilogy Holdings Limited ("Trilogy"). According to the Mukherjees, in or around May 2013, Pradeepto orally advised them over the phone to invest in Pacatolus SPV 6 and informed them that it was one of the many investments that he would usually pick. It is said that Pradeepto orally represented that the investment in Pacatolus SPV 6 came with a guaranteed return of 14% per annum (which carried with it the implicit representation that the principal was secured) and was a recommended investment of Barclays Bank. The decision to invest was made on or about 21 May 2013 when the Mukherjees instructed Barclays Bank to transfer a sum of US$2.25m to Pacatolus SPV 6. There is no dispute that the money was withdrawn from the Mukherjees' account. Barclays Bank notified the Mukherjees of the withdrawal by way of its invoice dated 22 May 2013.

*Pacatolus SPV 6 and Trilogy*

232 How Trilogy, through Pacatolus SPV 6, became an underlying investment of the Pacatolus Investment was indirect, by way of a debenture. What transpired is as follows. The monies (*ie* US$2.25m) remitted by Gouri on or about 21 May 2013 effectively put Pacatolus SPV 6 in funds to provide a debenture dated 29 May 2013, made between Pacatolus SPV 6 and Trilogy ("the Debenture"). Notably, the interest rate on the Debenture is 15% on the principal sum loaned (contrast this to the 14% rate of return on the Pacatolus Investment as stated at [231]). Pursuant to the Debenture, Pacatolus SPV 6 transferred approximately S$2.5m to Trilogy on 31 May 2013.

233 At the material time, Pradeepto was involved in the fund raising activities of Trilogy. The Debenture for a sum of approximately S$2.5m was intended to be used as a personal guarantee by Mr Suredj Sudeshkumar Autar ("Mr Autar"), and another to secure the release of S$691,500 to Trilogy from an escrow account established pursuant to a loan agreement concerning the acquisition of City Golf Holdings Pte Ltd and SynergyInTheSky Pte Ltd. At the trial, Pradeepto acknowledged that Suredj Sudeshkumar Autar ("Mr Autar"), a principal of Trilogy, was the promoter of Trilogy's intended acquisitions.

234 Pradeepto introduced Pacatolus SPV 6 to the Mukherjees who ended up putting up funds for a debenture that was unlike the usual trade finance or project finance the Mukherjees had invested in. It turned out that Trilogy could not honour its obligations to repay the Debenture. As a result, issues relating to the redemption of Pacatolus Investment arose.

*Circumstances surrounding the redemption of the Pacatolus Investment*

235 It is the Mukherjees' case that Pradeepto hindered the redemption of the Pacatolus Investment. Pradeepto, on the other hand, sought to demonstrate that the Mukherjees were the authors of their own woes. The Pacatolus Investment required a structured exit as the underlying investment (*ie*, Trilogy) was facing financial difficulties. However, the Mukherjees refused to adopt his suggested exit plan and were adamant in lodging a redemption request through Citco Global Securities Ltd (the fund custodian of the Pacatolus SPV 6) ("Citco"). This led to the fund manager suspending the Mukherjees' redemption request. As a result of the Mukherjees' refusal to participate in the structured exit, the Mukherjees made a loss upon the liquidation of Trilogy.

236 For the reasons set out below, I accept the Mukherjees' position that Pradeepto had hindered the redemption of the Pacatolus Investment. The evidence will show that the structured exit was simply an excuse to have the Mukherjees withdraw their redemption request. The evidence points to a situation where Pradeepto sought to stall the redemption to buy time to source for funds to repay the Mukherjees.

237 Pradeepto was aware of Trilogy's poor financial health during the life of the Pacatolus Investment. As early as November 2013, he had doubts over the prospects of Trilogy's redemption of the Debenture. Pradeepto had in fact expressed deep concerns over Trilogy's liabilities in several emails to Mr Autar in November 2013. In one of these emails, Pradeepto even asked Mr Autar to provide him with a list of all the debts Trilogy faced. Pradeepto's concern over Trilogy's liabilities is unsurprising as IOEL was itself a creditor of Trilogy, having provided a substantial loan of US$1m. This culminated in an email exchange where Mr Mehra and Pradeepto discussed the redemption of the Debenture. From the email exchanges that followed, both Mr Mehra and Pradeepto raised concerns regarding Trilogy cooperation over the redemption of the Debenture and made an attempt to recover whatever sums they could as soon as possible. On 7 January 2014, Mr Mehra emailed Pradeepto stating the following:[68]

> Pradeepto
>
> On 31 May 2013, Pacatolus … transferred S$2,541,500 to Trilogy Holdings Pte Ltd.
>
> Interest for 227 days @ 15% since 31st May, 13 to 10th Jan, 14 will be S$237,090.6.
>
> Kindly arrange for Trilogy to give a 4 days Redemption Notice and redeem principal with accumulated interest so far.

[68] AB 11, p 5748.

238 By June 2014, Trilogy was facing winding up proceedings. Pradeepto himself affirmed an affidavit on behalf of IOEL supporting the winding up of Trilogy. In the affidavit, he stated that IOEL had issued a letter of statutory demand against Trilogy for a sum of US$1m on 24 February 2014.

239 As stated, Pradeepto was aware of the poor financial health of Trilogy since November 2013 and had emailed Mr Mehra to arrange for the redemption of the debenture in December 2013. Yet, in an email dated 26 November 2013, Pradeepto told the Mukherjees that would receive "14% Due in May 2014" for the Pacatolus Investment. Again, on 18 January 2014, in response to Gouri's request for an update on the Pacatolus Investment, Pradeepto informed her that: "I am expecting the premium in on Monday … Pactaclous [*sic*] premium is a debenture so at end of tenure we get it".[69] Pradeepto did not inform the Mukherjees of the Trilogy's poor financial health. Thereafter, Gouri instructed Pradeepto to unwind the Pacatolus Investment on 23 January 2014 via an email where Pradeepto was asked to "return all … funds that [he was] managing within seven days". Redemption was, however, not forthcoming.

240 In May and June 2014 respectively, Gouri requested Pradeepto to prepare the redemption instructions to be sent to Barclays Bank. On 9 June 2014, the Mukherjees instructed Barclays Bank to redeem the Pacatolus Investment by way of an email. In a reply email, Barclays Bank acknowledged the instruction, and informed the Mukherjees that the Pacatolus Investment was not part of Barclays Bank's recommendation list and that Barclays Bank had no influence over the redemption value (NAV) of the Pacatolus Investment. Barclays Bank, through Citco, then communicated the redemption request to a fund accountant from Apex Fund Services (Mauritius) Ltd (the fund

69 PCB 2, p 925.

administrator of the Pacatolus SPV 6) ("Apex"). It is apparent from the email exchanges between Citco and Apex that Pradeepto, through Pacatolus, was seeking to stall the redemption request.

241 On 13 June 2014, Apex submitted the redemption request which it had received from Citco to Mr Mehra. On 17 June 2014, Apex sent a follow up email to Mr Mehra regarding the redemption request. Mr Mehra in turn contacted Pradeepto stating that: "[t]his needs to be recalled from the client's end, extremely urgent".[70] Mr Mehra further queried if Pradeepto had spoken to the Mukherjees about the redemption. Pradeepto replied stating that he had already written to the Mukherjees to withdraw the redemption and told Mr Mehra that he made mention of the need for a structured exit. Pradeepto was referring to an email he sent on 18 June 2014 to the Mukherjees where he stated the following:[71]

> Growth fund: This is a [private equity] fund investment and the allocation is still live. This needs a structured exit as one of the underlying investments is stuck. I had a meeting with the fund manager earlier this month and they are taking steps to that effect. … Have you sent a redemption request in between? If yes then please have the redemption request withdrawn as it is not ready for redemption.

242 On 20 June 2014, Apex acknowledged Citco's request to redeem the Pacatolus Investment. In a series of emails spanning 20 June 2014 to 16 July 2014, Citco sent several follow ups on the redemption but each follow up was met with Apex explaining that it was still liaising with the fund manager over the redemption. There was also conflicting information as to whether the Mukherjees were proceeding with their redemption request during the entire exchange between Apex and Citco – Apex would indicate that the Mukherjees

---

70 PCB 4, p 1878.

71 PCB 4, p 1871.

had withdrawn their redemption request whereas Citco maintained that the redemption request remained on foot. This arose because Pradeepto appears to have mentioned to Mr Mehra that the Mukherjees were going to withdraw their redemption request even before he had a clear indication from them that they were going to do so. At trial, Pradeepto attempted to suggest otherwise. He gave evasive responses to Mr Ng's questions and the objective evidence is that Pradeepto had informed Mr Mehra of the withdrawal when there was no commitment from the Mukherjees to withdraw the redemption request.

243 On 18 July 2014, Apex then informed Citco that it would not proceed with the redemption request as the fund manager had already contacted the Mukherjees of the matter and sought a withdrawal of the redemption request. Citco responded by seeking the name of the fund manager. Thereafter, Citco informed Apex that its client had not cancelled the redemption. The exchanges continued with Apex providing various excuses for not proceeding with the redemption. Separately, at a meeting with the Mukherjees in July 2014, Pradeepto emphasised to the Mukherjees that the Pacatolus Investment required a structured exit. He informed the Mukherjees that they had to move the Pacatolus Investment to the Bank of Singapore where he could coordinate the redemption.

244 In August 2014, Apex explained to Citco that "there cannot be any redemption in [*sic*] this investment since [the] underlying investment is a private equity investment with [a] long term holding, these kind of investments have 5-7 years investment horizon with no liquidity in [the] intermediate term".[72] Citco responded by stating that there is no clause in the investment documents indicating that the investment would be locked in for 5 to 7 years. On the

[72] PCB 4, p 2076.

contrary, the documents state that a redemption may be sought with a notice period of 90 days prior to the applicable "Dealing Day". On 5 August 2014, Apex escalated the matter to Mr Mehra who then forwarded the entire exchange between Apex and Citco to Pradeepto stating that: "[w]e need to speak to them now … it is becoming unmanageable".[73] Mr Mehra further indicated to Pradeepto that he had to attend to the redemption request and that it was "top priority".[74] Citco eventually directly contacted Mr Mehra on 12 August 2014. Mr Mehra then sent an email to Pradeepto stating that: "[t]his is blowing up full throttle now … Please manage client till we have a firm agreement".[75] It is unclear what "firm agreement" Mr Mehra was referring to but it was likely to concern an agreement between Trilogy and Pacatolus SPV 6 in relation to Trilogy's debts. Eventually, it was communicated to the Mukherjees that the fund manager had suspended the redemption request.

245 The email thread involving Apex, Mr Mehra and Pradeepto in September 2014 clearly shows the true state of affairs behind the redemption process. Apex sent a follow up email on 2 September 2014 to Mr Mehra seeking an update on the status of the redemption. Mr Mehra then sent two emails to Pradeepto. In the first email dated 4 September 2014, Mr Mehra writes:

> Boss
>
> What is the update on this?
>
> *This has gone out of my hands now and cannot get apex to help any more.*
>
> [emphasis added]

---

73 PCB 4, p 2075.

74 PCB 4, p 2068.

75 PCB 4, p 2093

Having not received a reply from Pradeepto, Mr Mehra sent another email on 9 September 2014 as a chaser. The statement from Mr Mehra that he could no longer enlist the help of Apex is most telling of what had truly transpired in the drawn out email exchanges between Citco and Apex in the past few months from the time the Mukherjees confirmed their redemption request with Barclays Bank. Apex had simply been cooperating with Pacatolous to stall the redemption.

246 At trial, Pradeepto took the position that he lacked the standing to communicate with the fund manager as the investment was held by Barclays Bank and he was by then under the employment of Deer Creek. It was necessary for the Mukherjees to move the holding of the Pacatolus Investment to the Bank of Singapore to give him the requisite standing to act for the Mukherjees as Deer Creek had a relationship with the Bank of Singapore. Pradeepto further explained that he could not properly communicate with Barclays Bank as he left the bank on a sour note. As the move to Bank of Singapore never occurred, he could not effect the structured exit. Pradeepto's position is untenable. The evidence above shows that Pradeepto had a relationship with Mr Mehra and could influence the redemption of the Pacatolus Investment.

247 From the sequence of events above, it is eminent that Pradeepto and Mr Mehra were aware of the difficulties in recovering monies from Trilogy to return the Mukherjees their investment and thus attempted to stall the redemption. The Mukherjees were not informed of the poor financial health of Trilogy during the entire episode. Instead, Pradeepto was not fair and transparent and consistently gave them the misimpression that the principal sum and returns on the investment could still be recovered. While Pradeepto attempted to suggest that the structured exit had to do with the liquidation of

Trilogy during cross-examination, he was unable to provide details as to how the exit was to be executed. Pradeepto came up with the structured exit as an excuse to stall the redemption in the hope of buying time to find alternative funds to for the eventual return of US$2.25m to the Mukherjees.

*Other investors*

248 From the documents produced in court, Pradeepto's relationship with other investors who were introduced to transactions or investments involving Mr Autar, the principal of Trilogy, also turned sour around the time the Mukherjees sought their redemption. I need only refer to a letter dated 6 January 2014 written by Pradeepto to Mr Kanade where the former apologised for the delay in the return of the latter's principal sum:[76]

> Re: As discussed on 06/01/2014
>
> Dear Vaibahv,
>
> Foremost i wish to UNCONDITIONALLY APOLOGISE for the mess that I have created / has happened.
>
> I am thankful to have someone like you and Abhjit who have brought order to the problem and resolving the same.
>
> I will be forever indebted in gratitude for this and apologise once again as I have been put into a maze, which has completely eroded my credibility, trust and faith and kept dragging me deeper and deeper. I am thankful to you and Abhijit for getting the light at the end of the tunnel, which only true friends do.
>
> I have put together various sources, which will infuse in USD 1M into my accounts during this week (07/01, 08/01, 09/01, 10/01) and i will close the USD 1M with Banker's drafts while i will hopefully recover the blocked funds of USD 2M with [Mr Autar].
>
> …
>
> I am sorry for not being honest about the problems and tried to handle it at my end when i should have been open and

[76] PBD 1, p 489.

> transparent so it could have been addressed correctly. I am very sorry as i have never experienced something like this in my whole life and i just fell from one mess to another, as i believed in what was being confirmed. I will never want to trust anyone like the way i did [Mr Autar]. In the process i have lost my trust imposed by you and others including my family, disgraced myself and i am truly sorry and repentant and grateful for being this chance to amend.
>
> I am sorry that my intention of helping everyone has created such a mess and i am ashamed of myself that i got cheated and jeopardised everything for everyone.
>
> …

At the trial, Pradeepto explained that he experienced a great deal of trouble from his dealings with Mr Autar; calling himself a victim of Mr Autar's fraud. As a result of him introducing Mr Autar or investments linked to Mr Autar to his network of contacts, Pradeepto had to mend relationships to fix the "mess" Mr Autar created when he did not honour his financial commitments.

*Did Pradeepto act in breach of fiduciary duty*

249 The Mukherjees submit that Pradeepto breached his fiduciary duty as he: (a) failed to explain the Pacatolus Investment to them; (b) failed to execute the subscription agreement necessary for the Pacatolus Investment (no documents setting out the Mukherjees' title to the investment); (c) failed to disclose his connections and interests in Pacatolus; (d) hindered the redemption of the Pacatolus Investment; (e) lied about a structured exit being available; (f) introduced to them an investment that was not authentic.

250 All these points speak to the same concern – Pradeepto's substantial influence over the Pacatolus Investment. I shall therefore consider the Mukherjees' position holistically.

251 Like the other investments, Pradeepto voluntarily undertook the Post-Decision Activities. Gouri testified that following payment of the principal sum, Pradeepto did not provide the Mukherjees with documents setting out or evidencing their interest in the Pacatolous Investment.[77] I accept that like the other investments, there were no documentary evidence from the fund manager of Pacatolus Growth Fund or its agent that recognised the Mukherjees' investment at the point of investing. The only document that is shown in court is a confirmation of the share value of Pacatolus Growth Fund Class 6 as at 28 March 2014. This written confirmation dated 6 June 2014 was from the fund administrator, Apex, and addressed to Citco who was referred to as "the investor". The Mukherjees' closing submissions stated Barclay Bank was the custodian bank of the Mukherjees' investment.[78]

252 The dissatisfaction with the Pacatolus Investment surfaced following the Mukherjees' decision to redeem all their investments with Pradeepto and that was in January 2014. By that time, the Mukherjees had experienced delays in the redemption of other investments made in 2013 and were having serious misgivings about Pradeepto. As stated earlier, Pradeepto did not assist in the redemption and had in fact tried to stall the same. In that regard, Pradeepto had not been loyal, fair and transparent in his role as a fiduciary who had voluntarily undertaken the obligation to redeem the Pacatolus Investments as part of his Post-Decision Activities. It is not surprising that after several unsuccessful attempts to get Pradeepto to redeem the Pacatolus Investment, Gouri sought the assistance of Barclays Bank sometime in June 2014. She explained that she learnt of the Pacatolus Investment not being a Barclays Bank authorised investment when she sought the assistance of the bank to redeem the Pacatolus

77 PCS, para 286.

78 PCS, para 265.

Investment (see [267] below). Throughout the time Barclays Bank was assisting the Mukherjees, Pradeepto was working behind the scenes to stall the redemption. In carrying out his Post-Decision Activities, and in particular hindering the redemption of the Pacatolus Investment and concealing the true state of affairs behind the investment, Pradeepto had breached his fiduciary duty.

*Conclusion on breach of fiduciary duty in relation to the Pacatolus Investment*

253 In summary, Pradeepto had acted in breach of his fiduciary duty in respect of his Post-Decision Activities. As a result, the Mukherjees were deprived of their principal sum of US$2.25m. Accordingly, I grant judgment in favour of the Mukherjees for the sum of US$2.25m. I will deal with the question of interest under s 12 of the CLA later in this judgment. As explained at [52] above, the claim for reasonable returns based on alternative investments fail.

**Issue 2: Cause of action based on the tort of deceit**

254 The Mukherjees advance an alternative cause of action in the tort of deceit. To this end, they have identified five investments: the Swajas, Neodymium, Peak, Pacatolus; and SEW Investments. I make a few observations about this second cause of action.

255 First, having concluded that the Mukherjees succeed on their first cause of action (breach of fiduciary duty) in respect of six investments, save for Swajas, it is strictly speaking, not necessary to formally discuss the claims based on the tort of deceit since it is advanced as an alternative cause of action. Notably, claims in relation to the Swajas Investment failed on the first cause of action. I have foreshadowed the evidential difficulties and arguments on a claim

based on the alleged representations earlier in this judgment and have noted that for the same reasons, claims based on the tort of deceit in relation to the Swajas Investment would also fail (see [92] above).

256 Secondly, where the pleaded representations were oral representations, they would run into similar reliability and accuracy issues that I have outlined at [11] above. To succeed, the false representation would have to be made before the investment decision was made and the evidence on this matter is unclear. The impression gathered from Gouri's testimony is that she had assumed that the investment in question was an investment authorised by the bank. All this adds to the difficulties in the case.

257 Thirdly, the Mukherjees say that having been defrauded to invest, they are entitled to recover the principal sums together with reasonable returns; being damages for their loss that flowed directly from reliance on the fraudulent misrepresentation. The claim for reasonable returns are made for all five investments. The Mukherjees rely on *East and another v Maurer and another* [1991] 1 WLR 461 ("*East*") to support their claim for reasonable returns on investments. It is not necessary to go into the facts of *East.* In *East*, the loss of opportunity was to compensate for the profits a claimant would have received if he had bought another business at the time of the acquisition of the bad business that was induced by false representations (at 466–468). Unlike the facts in *East*, there is no evidence of any alternative investment before this court. The evidential gap cannot be supplanted by Mr Iyer's testimony that customer of a good private bank would have earned between 5% and 10% per annum on the assumption that there is no black swan event. The concession Pradeepto is alleged to have made – investors of moderate risk profile could target a return of between 8% to 10% – is also not helpful without there being evidence of the

semblance of an alternative investment in the first place. In short, even if fraudulent misrepresentation is made out, the Mukherjees would not be able to recover the returns on investments based on 7.5 % per annum.

258 The elements of the tort of deceit is clear and it is not necessary to state the law. However, it is worth noting that because the Mukherjees rely on implicit representations, an issue that arises is whether the circumstances could reasonably give rise to false assumptions which a representee would reasonably assume to be true (see *Clerk & Lindsell on Torts* (Michael Jones gen ed) (Sweet & Maxwell, 22nd Ed, 2018) at paras 18-07; see also *Chitty on Contracts* (Hugh Beale gen ed) (Sweet & Maxwell, 32nd Ed, 2017) at para 7-016).

259 I will now touch briefly on the five investments.

***Swajas Investment***

260 As regards the Swajas Investment, the complaints based on the tort of deceit are not made out for the reasons explained in [87]–[99]. The email of 5 January 2011 did not contain Pradeepto's representation that the IPO would take place in the "next two months". There is no evidence that Pradeepto harboured a dishonest or reckless intention when he sent the email. Furthermore, the findings are that the Mukherjees knew and accepted that Rising Ventures would be used to facilitate the purchase of pre-IPO shares. The Mukherjees have not made out a case that they were induced by the false representation that Dr Mukherjee would hold the share in his own name to enter the investment.

***SEW Investment***

261 The Mukherjees submit that Pradeepto had deceived them into making the SEW Investment for three reasons. First, that Pradeepto had no basis for

recommending the SEW Investment as a very good investment. Secondly, that the SEW Investment could not generate returns at a rate of 1.5% flat. Thirdly, the SEW Investment was not an authentic investment. The Mukherjees' closing submissions, however, differed slightly from their pleadings; where only the second reason is the same as the pleadings on the representations that were made. The representations relied upon in the pleaded case were from an email dated 4 October 2013 and a WhatsApp message of 26 November 2013, which modified the holding period stated in the email. The thrust of the Mukherjees' contention, as pleaded, is that Pradeepto had represented the investment to have a holding period of one week at a rate of 1.5% flat. As these representations are borne out in the email and text message, and as the parties proceeded on these representations, I am satisfied that the representations were made. It goes without saying that the representations turned out to be false. I am also satisfied that the Mukherjees would have been induced to enter into the SEW Investment on the aforementioned representations as Gouri was only keen on short term investments at the material time. In the text messages surrounding the representations, Gouri made known to Pradeepto that she needed liquidity for her business. It follows that a short term investment with a holding period of one week would be particularly attractive to her. The real issue relates to whether Pradeepto had dishonestly made those representations (*ie*, the one week holding period and 1.5% rate of returns) knowing that they were false given the true nature of the SEW Trident Investment.

262 The same findings of fact under the cause of action for breach of fiduciary duty are relevant and they apply equally to this cause of action in deceit. Pradeepto knew of the Mukherjees' investment requirements, and it would be incumbent on Pradeepto not to make any misstatements, or to recommend a highly risky investment without pointing out that it was such.

These matters are directed at the appropriateness of the SEW Investment introduced to the Mukherjees. I accept that there is no evidence to support the representation that the SEW Investment could generate returns at the rate of 1.5% flat on an investment of US$500,000 for one week. Having reaching the conclusion that the true purpose behind the SEW Investment was to put SEW Trident in funds to provide a loan to IOEL for Pradeepto to pay off his dues, it follows that Pradeepto harboured a dishonest intention in introducing the SEW Investment. He deliberately concealed the true nature of the investment from the Mukherjees. Pradeepto is therefore liable to make good the loss arising out of his deceit. The Mukherjees are entitled to recovery of the principal of US$250,000 under this cause of action in the tort of deceit as an alternative to the first cause of action for breach of fiduciary duty. There can be no claim for returns on investment for the reasons stated in [257] above.

***Neodymium and Peak Investments***

263 The representations in question were orally made. The pleaded representation is that the investments were great structures which would earn a premium of between 14% and 18% per annum and that it was implicit in the aforesaid representation that the investments were genuine investments. Further, there was an implicit representation that the investments were Barclays Bank authorised investments as Pradeepto had acted as though the investments were to be executed through Barclays Bank. The pleadings go on to aver that the Mukherjees were induced by the representations and entered into the investments. On this cause of action in deceit, the burden of proof is on the Mukherjees in respect of the alleged representations, and they have to show that the representations were made recklessly to induce them into entering the two investments. There is no evidence to substantiate the oral representation that the

investments were "great structures" and what was meant by that expression. Regardless of Pradeepto's concession as to the potential premiums, the fact of the matter is whether the pleaded representations were actually made orally at the outset before the Mukherjees entered into the investment must be established. As I have foreshadowed above, oral representations do present evidential difficulties for the Mukherjees. There is no evidence to substantiate the oral representation that the investments were "great structures" and what is meant by that expression. Turning to the argument that Pradeepto had concealed from the Mukherjees the fact that the investments were not authorised investments of Barclays Bank, there are difficulties. An assumption made by one can hardly have the attributes of a concealment by the other. For an implied representation to have arisen, the circumstances must be such that the assumptions held are reasonable (see [258] above). There was no cogent evidence in this regard. Accordingly, for the reasons stated, the cause of action in deceit is not made out.

***Pacatolus Investment***

264 The pleaded representations made orally are: (a) a guaranteed return of 14% per annum (which itself carried an implicit representation that the principal was secured); and (c) an implicit representation that the investment was a recommended investment of Barclays Bank as Pradeepto was their relationship manager at Barclays Bank at the material time. On the basis of these representations, the Mukherjees claim that they were induced to enter into the Pacatolus Investment. The Mukherjees submit that Pradeepto had fraudulently deceived them into making the Pacatolus Investment and that the Pacatolus Investment was a sham.

265 As regards the representation that the Pacatolus Investment came with returns of 14% per annum and the inherent representation that the principal sum would be secured, I accept the Mukherjees contention. Pradeepto conceded during cross-examination that he represented that the Pacatolus Investment would yield a return of 14% per annum. The 14% per annum return is also consistent with the 15% interest rate charged by Pacatolus to Trilogy in the Debenture. Whether or not the returns were guaranteed is beside the point. The promise of returns would be sufficient to induce the Mukherjees to enter into the investment in the circumstances. At the trial, Pradeepto accepted that the Mukherjees would generally request for investments that carry a 14% rate of returns.

266 Turning to the implicit representation that the investment was secured (*ie*, capital protected), I am satisfied that this implicit representation was made. The Mukherjees had communicated their investment requirement of capital protection to Pradeepto and, as I have stated above, the parties operated under the expectation that Pradeepto would introduce investments that adhered to the Mukherjees' investment requirements. I refer to Mr Ng's cross-examination of Pradeepto on whether he had in mind the Mukherjees' requirement of capital protection when he introduced the Pacatolus Investment:[79]

> Q: Right. One of those assumptions was that this particular investment would be capital protected; yes?
>
> A: The underlying premise of any investment has risk in it. However, the objective of any relationship manager would be to try and see that his clients don't lose their money in the investments that they are locate in.
>
> Q: That is not answering my question, Mr Biswas.
>
> A: That's my understanding of capital protection.

[79] Transcript Day 12, pp 153–154.

> Q: One of the assumptions that you had of the requirements of the plaintiffs is that it would be capital protected; "yes" or "no"?
>
> A: The plaintiffs, or for that matter any other investor, would have a similar requirement.
>
> Q: A similar requirement of capital protected?
>
> A: Nobody wishes to lose capital when they invest, but every investment has an element of risk.
>
> Q: This is a requirement that the plaintiffs had made known to you; correct?
>
> A: I think this is very clear that we've had more than 700-plus transactions where this is demonstrated.

In the circumstances, it would be reasonable for the Mukherjees to operate under the assumption that Pradeepto was representing the Pacatolus Investment to be capital protected when he introduced the investment to them.

267 As regards the representation that the Pacatolus Investment was a Barclays Bank recommended investment, I also accept the contention that it was reasonable for the Mukherjees to have understood Pradeepto to have made this implicit representation. It is clear from the tape-recorded conversation on 4 July 2014 that Pradeepto insisted that the Pacatolus Investment was a Barclays Bank approved product despite Barclays Bank having told Gouri that the investment was not:[80]

> [Gouri]: – you know, I have a – I have something to say here. This two point two five, you had advised me – you advised me that, "Aunty, we are doing this here et cetera." I didn't even know that it is not a Barclays product! –
>
> [Pradeepto]: No, it is a Barclays product –
>
> [Gouri]: When I'm asking Nilesh –
>
> [Pradeepto]: It is a regular fund –

---

80 PCB 4, p 1933.

> [Gouri]: Nilesh says that, "No, no, no, we don't know anything about it! This is not a bank one" –"
>
> …
>
> [Gouri]: – and they quickly shrug off any responsibility!
>
> [Pradeepto]: "– All the products that we have, most of the products – None of the banks today has any product, which is the bank's product.
>
> [Gouri]: Bank approved product.
>
> [Pradeepto]: This is also a bank approved product!
>
> [Gouri]: No! Nilesh says that it is not–
>
> …
>
> [Pradeepto]: No, no, no, no, no. Bank holds full responsibility for the product. You can't – They just can't come and say that the bank holds no responsibility for the product –
>
> …
>
> [Pradeepto]: – These are, these are all bank led products. That he says this, he will not put that in writing, that it is not a bank approved product, right?

As the recorded conversation shows, Gouri was surprised that the Pacatolus Investment was not a bank product and in response Pradeepto made attempts to correct that surprise.

268 In introducing the Pacatolus Investment to Gouri, there was an element of dishonesty. As stated, the Pacatolus Investment was intended to put Pacatolus SPV 6 in funds to provide the Debenture. Pradeepto, however, did not reveal to the Mukherjees the true state of affairs at the material time. He did not inform them of how their monies would be used. While this may not rise to the level of dishonesty in the usual course of things, it must be remembered that the parties shared a unique relationship. The parties had operated under the expectation that the investments introduced would be appropriate for the Mukherjees. Furthermore, as a fiduciary in respect of the Mukherjees' Post-Decision

Activities, he wield significant control over the Mukherjees' monies in executing the investment. Under these circumstances, the failure to bring to the Mukherjees' attention how the monies would be used would amount to concealment.

269 In his affidavit of evidence-in-chief, Pradeepto emphasised that the Pacatolus Investment was not a bank recommended investment and that the Mukherjees ought to have known this from the investment documents. Pradeepto's affidavit evidence, however, flies in the face of what he said on 4 July 2014. At trial, Pradeepto meandered in his position. He appeared at points to suggest that the Pacatolus Investment had undergone a due diligence process by Barclays Bank but did not know if the investment was recommended by Barclays Bank. In the light of Pradeepto's inconsistent positions, I preferred Gouri's evidence.

270 In the closing submissions, Pradeepto's counsel, Mr Liew, attempted to salvage the case by referring to the certain Pacatolus-related documents, the Barclays Bank transfer form and the Mukherjees bank statements. Mr Liew's point is that the clauses and statements in these documents would have made it clear that the Pacatolus Investment could not have been capital protected and was not a Barclays Bank recommended investment. These arguments are disingenuous. Having made oral representations without believing in their truth to induce the Mukherjees to enter into the Pacatolus Investment for the purposes of facilitating a transaction that he was assisting in, Pradeepto cannot now claim that the Mukherjees are not entitled to relief on the basis that they failed to verify the truth. In any event, these clauses merely disclaim liability between the Mukherjees and the relevant counterparty.

271 On a related note, Pradeepto submits that the tort can only be established *vis-à-vis* Gouri as Dr Mukherjee gave no evidence on whether he was induced to enter into the Pacatolus Investment. In my view, it is clear that the parties understood Gouri to be representing Dr Mukherjee for all intents and purposes. Pradeepto would act on Gouri's instructions without having to check with Dr Mukherjee separately. In any event, Gouri was the decision maker when it came to the investments. Indeed, Pradeepto dealt almost exclusively with Gouri. Hence, even if the tort of deceit were only established in respect of Gouri, there would be no difficulty in terms of the damages to be awarded. Again, the recovery under the second cause of action (pleaded in the alternative) would be limited to the principal sum and not the claim for returns on investment for the reasons stated in [257] above.

**Conclusion on Suit 1270/2014**

272 As stated, two causes of action in relation to each investment were pleaded as alternatives. The Mukherjees need succeed on only one cause of action. Even if they succeed on both causes of action, they are only entitled to one set of compensation. Based on the findings above, Pradeepto is liable as follows:

(a) Swajas Investment – the Mukherjee have not made out their claim for reasonable returns.

(b) SEW Investment – Pradeepto is liable for US$250,000.

(c) Trade Sea Investment – Pradeepto is liable for US$200,000.

(d) Farmlands of Africa Investment – the Mukherjees are not entitled to the reasonable returns sought for want of proof of loss.

(e) Neodymium Investment – Pradeepto is liable for US$250,000.

(f) Peak Investment – Pradeepto is liable for US$500,000.

(g) Pacatolus Investment – Pradeepto is liable for US$2.25m.

273 The total sum (excluding interest) for investments (b), (c), (e), and (f) above amounts to US$3.45m. By 23 January 2014, the Mukherjees had instructed Pradeepto to redeem all investments (both the principal sums and returns on investments), and having regard to all the circumstances of this case, in exercise of this court's discretion under s 12 of the CLA, I award interest on the judgment sum of US$3.45m at the rate of 5.33% per annum from 23 January 2014 to the date of judgment. I also order Pradeepto to pay the costs of the action. Costs to be taxed if not agreed.

**Suit 417/2017**

274 In Suit 417/2017, the plaintiff, IOGPL, is suing Gouri as defendant to recover a loan made in 2012. Gouri has viewed this action as frivolous and dismisses it as nothing more than a retaliatory move to get back at the Mukherjees for suing Pradeepto in Suit 1270/2014.

275 The entity that advanced the alleged loan was IOEL, a company incorporated in the British Virgin Islands on 14 September 2011. Ms Kundra was then the sole director and shareholder of IOEL.

276 IOGPL (originally known as Indian Ocean Properties Pte Ltd prior to 15 May 2013) was incorporated on 10 December 2010 in Singapore. IOGPL is involved in the business of consulting and private equity including capital

introduction, raise capital, trade and project finance. On 18 December 2013, IOGPL took over the single share in IOEL from Ms Kundra.

277 IOGPL relies on two remittances made by IOEL to Gouri in support of its claim for recovery of the loaned sum. On 10 July 2012, a sum of approximately US$1.4m was remitted from IOEL to the Mukherjees' UOB account. Separately, on 19 July 2012, a second transfer of approximately US$200,000 was made to the Mukherjees' UOB account. According to IOGPL, these transfers were made at Gouri's request as she needed the funds for her business.

278 Both parties provided slightly different figures for the two tranches of transfers, however, the difference is immaterial. In this judgment, purely for convenience, it is sufficient to refer to the approximate figures. The total amount received by Gouri is rounded up to US$1.6m.

279 Gouri's case is that she had never asked IOEL for a loan. The contemporaneous correspondences on the fund transfers do not refer to the transfer as a loan. The funds that were transferred were the Mukherjees' own funds and the transfers were made pursuant to Gouri's instructions. I will elaborate on her case later. I propose to first deal with her threshold objection to IOGPL's title to sue.

***IOGPL's title to sue***

280 A preliminary challenge raised by Mr Ng is that IOGPL is not the proper party to commence this action to recover the alleged loan.

281 It is not disputed that funds totalling US$1.6 m were transferred by IOEL and not IOGPL. In dealing with the threshold question, the discussions here proceed on IOGPL's claim that funds transferred was a loan to Gouri. The alleged loan is assumed for now without deciding on the specific nature of the transfers.

282 According to Pradeepto, on behalf of IOGPL, the latter came to hold IOEL's claim against Gouri for the loan of US$1.6m as a result of the following:

(a) IOEL provided monies totalling US$1.6m to Gouri in 2012.

(b) On 18 December 2013, Ms Kundra transferred a single share in IOEL to IOGPL. This transfer was done so as to provide "better bandwidth to raise capital and build on the stronger balance sheet of [IOGPL]".[81]

(c) Subsequently, on 17 July 2014, IOGPL sold its single share in IOEL to one Vijay Sethu ("Mr Sethu"), a creditor of Trilogy. IOEL had a debt due from Trilogy at the material time and Mr Sethu, who had a priority claim against Trilogy, intended to purchase IOEL as part of his plans to obtain recovery in the liquidation of Trilogy. During this sale, Mr Sethu transferred IOEL's loan debt to IOGPL. According to Pradeepto, Mr Sethu was not interested in taking over IOEL's claim against Gouri for US$1.6m and the same was transferred to IOGPL.

283 In my judgment, IOGPL did not receive the loan debt from IOEL at any point in time during the entire chain of events:

---

[81] Pradeepto's AEIC for Suit 417, para 34.

(a) IOGPL at no point derived any right to IOEL's loan debt. Upon Ms Kundra's transfer of the single share in IOEL to IOGPL, no loan debt was passed as a matter of law. Legally, a transfer of shares merely passes on ownership of a company and not the underlying assets of the company (see *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, 3rd Rev Ed, 2009) at para 2.39).

(b) Neither did IOGPL receive IOEL's loan debt during the sale of IOEL's share to Mr Sethu. There was no evidence of Mr Sethu having transferred the loan debt of IOEL to IOGPL during the sale. Pradeepto was unable to point to any clause in the share purchase agreement between Mr Sethu and IOGPL (an unsigned copy was produced in court) or any side correspondence stating that Mr Sethu transferred the alleged debt owed by Gouri to IOGPL. There is also no evidence of any assignment of the loan debt from IOEL to IOGPL (equitable or otherwise).

284 There is no proper basis for IOGPL to be taking over the loan debt of IOEL. There are no details or documents to show how IOEL's right to the loan debt was taken over by IOGP, either by way of novation, assignment or otherwise. As regards Pradeepto's claim that the debt owed by Gouri to IOEL was transferred by way of equitable assignment, there is nothing in evidence to substantiate this contention.

285 Accordingly, I accept Mr Ng's contention that IOGPL has not shown that it has *locus standi* to sue for the loan allegedly owed to IOEL. I should also point out that from the outset, the evidence before this court is consistent with Mr Ng's assertion that IOGPL did not have title to sue. Pre-litigation matters

were clearly contrary to IOGPL's claim to being the proper party to sue. Niru & Co LLC's warrant to act in Suit 417/2017 was given by IOEL and *not* IOGPL. Moreover, the pre-writ letter of demand was issued on behalf of IOEL instead of IOGPL. The inference to be drawn from these two pieces of evidence is that the party with the claim was IOEL. For the reasons stated, I find that IOGPL has no *locus standi* to sue Gouri, and the action fails and is dismissed.

***Was there a loan***

286 For completeness, I make the following observations on the question of whether Gouri borrowed the sum of US$1.6m from IOEL and that the loan is outstanding at the time the action was commenced.

287 Having considered the evidence, this court finds that there was no loan for US$1.6m from IOEL to Gouri. The funds belonged to the Mukherjees. The transfers from IOEL were made pursuant to Gouri's instructions to Pradeepto to move her own funds from one account to another. This conclusion is reached based on the contemporaneous evidence and the coherence of the parties' position on the facts.

288 The chronology of events supports Gouri's account of the facts. From a series of emails between Pradeepto and Gouri, it is evident that Pradeepto had been assisting Gouri to make withdrawals from her USD Barclays account around the time the purported loan was given by IOEL. The starting point is Pradeepto's email update to Gouri regarding the amounts under his "management". On 19 March 2012, Pradeepto informed her that he was managing US$6.72m from her USD Barclays account. Having been informed of the amounts under management, Gouri sought to make a series of transfers to her UOB account. I need not set out the details of these transfers. It suffices

to note Gouri's instructions to withdraw the balance in her Barclays account and returns on investments in an email dated 27 June 2012:

> As already discussed I wish to withdraw as follows:
>
> Original deposit amount as of May 31 2012, US$6.0 ML minus withdrawal of US$450k & 150k on June 13 & 21 respectively = US$5.4 ml.
>
> Premium on above April 1 – June 30, 2012 (not yet known)

289 On 2 July 2012, Gouri instructed Pradeepto to withdraw US$2m from her investment returns and faxed him a set of instructions for the withdrawal. According to Gouri, Pradeepto then informed her that only part of the US$2m could be withdrawn at the material time. Subsequently on 10 July 2012, merely 8 days after the instruction to transfer the US$2m was given, the transfer of US$1.4m (which was the first tranche of monies given for the purported loan) took place. Gouri wrote to Pradeepto on 16 July 2012 acknowledging receipt of the US$1.4m and stated that she would be "expecting [to see] the balance … on Tuesday July 17th 2012".[82] Shortly after, on 19 July 2012, a further transfer of US$200,000 took place; this being the second tranche of monies given for the purported loan.

290 Far from acknowledging that the first tranche of funds she received was a loan, Gouri related the sum to her earlier withdrawal instructions. It is also crucial to note that the second tranche of funds was sent shortly after Gouri told Pradeepto that she was expecting to see the balance of the sum she wished to transfer. This strongly suggests that the two tranches of monies received from IOEL by Gouri were part of the series of transfers Gouri was making from her Barclays account in 2012. Mr Liew, at trial, sought to point out that there remains a further US$400,000 that has been unaccounted for. This is because

[82] PCB 1, p 397.

Gouri's instructions was to withdraw US$2m whereas she only received US$1.6m. Mr Liew makes the point that Gouri would have at least raised concerns over this unaccounted sum. As she did not do so, the instruction to withdraw US$2m is unrelated to the US$1.6m received by her. In my view, the US$400,000 was not unaccounted for. Pradeepto stated that he would only transfer part of the US$2m. Further, Gouri did offer an explanation. She stated that the US$400,000 was eventually received in later dealings with Pradeepto.

291 IOGPL sought to point out an apparent factual inconsistency between the figures stated in Gouri's affidavit of evidence-in-chief regarding the balance in the Barclays account and the bank statements. The point being that there would be insufficient funds to support Gouri's recount of the series of transfer which led to IOEL's transfer of the US$1.6m. This is immaterial. Gouri's instructions to transfer were all made pursuant to updates that Pradeepto would give her on the balance in the account and pending returns. There is evidence to suggest that Gouri was labouring under a misimpression of the balance in the account.

292 IOGPL submits that the transfers could not have been part of Gouri's instructions to transfer funds from one account of hers to another as there has been no evidence of monies moving from Gouri's account to IOEL's account. Instead, the credit advices clearly show that IOEL made the transfer to Gouri. This is unpersuasive. It is Pradeepto' own position that IOEL was frequently used to facilitate investments on behalf of his clients. If anything, this lends further support to Gouri's evidence that Pradeepto had explained to her that the purpose of having IOEL transfer the US$1.6m was for faster processing.

293 Finally, Pradeepto's account of the facts is incredulous. He said that the monies advanced by IOEL came from funds placed by investors with IOEL for Sri Lankan hospitality projects. As the funds were only required at a later date, IOEL could provide Gouri with the loan in the interim. In my view, it would be highly unusual for the investors of the Sri Lanka projects to agree to allow their funds to be used by IOEL for the purposes of providing a substantial loan to Gouri without any documents setting out the terms of the loan. Most crucially, there has been no evidence to show that a demand was made on Gouri to repay the loan. Pradeepto's own evidence is that the Sri Lanka projects were due for execution sometime in 2013. One would expect him to be seeking for repayment prior to the execution of the project.

294 On the balance of probabilities, the loan claimed by IOGPL is not made out.

**Conclusion on Suit 417/2017**

295 For the reasons stated above the action is dismissed with costs to be taxed if not agreed.

Belinda Ang Saw Ean
Judge

Ng Ka Luon Eddee, Muk Chen Yeen Jonathan, Chan Yi Zhang, Sherlene Goh Shi Li and Jeremy Toh (Tan Kok Quan Partnership) for the plaintiffs in Suit No 1270 of 2017 and the defendant in Suit No 417 of 2017;

Liew Teck Huat, Christopher Yee and Kenneth Yap (Niru & Co LLC) for the defendant in Suit No 1270 of 2017 and the plaintiff in Suit No 417 of 2017.

---