IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 115

Originating Summons No 27 of 2021

Between

Wei Fengpin

… *Applicant*

And

(1) Raymond Low Tuck Loong
(2) Sim Eng Chuan
(3) Lateral Solutions Pte Ltd

… *Respondents*

GROUNDS OF DECISION

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Introduction

1 Less than a year has passed since the introduction of new provisions to the Rules of Court (2014 Rev Ed) ("ROC") and the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") to operationalise the Appellate Division of the High Court (the "AD"). It is therefore inevitable that litigants may not be entirely sure how the new provisions are intended to work.

2 The new provisions cater for several ways in which a transfer from the AD to the Court of Appeal can be effected. Some of these provisions overlap and could possibly contribute to the uncertainty surrounding their scope and application. This may lead litigants to err on the side of caution and to adopt a route which may not be correct with the benefit of hindsight once the provisions

are properly analysed and understood. Here, there are indeed overlapping provisions which are applicable.

3 The transfer application before me concerned a rather unique situation. At the commencement of the suit, the claim was an oppression action. An appeal against a decision from such an action would be expected to be made to the AD since an appeal in relation to an oppression action would typically fall outside the Sixth Schedule to the SCJA. However, prior to the start of the trial, the company was wound up and at the trial, various issues relating to the insolvency of the company took centre stage. Under these circumstances, would an appeal against such a decision be considered an appeal which "arises from a case relating to the insolvency … of a corporation" and hence to be made to the Court of Appeal? It was in the context of these unusual circumstances that I directed an oral hearing to determine the transfer application before me.

4 I heard the parties on 12 November 2021 and ordered the transfer of the appeal from the AD to the Court of Appeal with brief oral reasons. These are my detailed grounds.

5 It is hoped that this decision and the recent Court of Appeal decision in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 ("*Noor Azlin*") will provide much needed guidance to assist litigants to properly navigate the new appellate regime.

Procedural history

6 The applicant ("Wei") and the first and second respondents ("Low" and "Sim" respectively) are equal shareholders of the third respondent (the "Company"). On 15 March 2017, Wei commenced HC/S 238/2017 ("Suit 238") against Low and Sim under s 216 of the Companies Act (Cap 50, 2006 Rev Ed)

("Companies Act"), claiming that they had acted in a manner that was unfair, oppressive or prejudicial to him. The Company was a nominal defendant in Suit 238. The primary remedy sought by Wei in Suit 238 was for Low and Sim to buy out his shares in the Company.

7 Suit 238 was scheduled for trial in September 2020. A few months before that, on 5 May 2020, Low and Sim applied to wind up the Company on the basis that the Company was insolvent and unable to pay its debts. Wei did not object to the application and on 12 June 2020, a winding up order was granted in HC/CWU 130/2020. Thereafter, the trial of Suit 238 took place.

8 Following the trial, a written decision was issued by the General Division of the High Court ("High Court") on 15 April 2021: see *Wei Fengpin v Low Tuck Loong Raymond and others* [2021] SGHC 90 (the "HC Judgment"). The material findings of the HC Judgment are as follows:

(a) First, Low and Sim had conducted the affairs of the Company in a manner that was oppressive to Wei, and the acts which they had caused the Company to take also unfairly discriminated against or were prejudicial to Wei (see the HC Judgment at [137]).

(b) Second, the fact that a company is already wound up at the time of the trial of an action under s 216 of the Companies Act is no bar to the action continuing or to the court granting reliefs under s 216(2) of the Companies Act where appropriate (see the HC Judgment at [151]).

(c) Third, although oppression was made out, the court did not order Low and Sim to buy out Wei's shares in the Company. The Company was insolvent, and its accounts had not been audited since financial year 2015 and was unlikely to be audited given that the Company has been

wound up. Hence, there might be difficulties in the proper determination of the fair value of the shares at the date of the decision or as of April 2016 (as Wei had sought). Any attempt at such determination would likely be time-consuming and expensive. In any event, the liquidators could carry out investigations and take appropriate steps to redress any wrongs to the Company committed by its directors (see the HC Judgment at [153]).

(d) Fourth, Wei also contributed to the Company's insolvency as he had diverted business away from the Company. It would not be fair to give Wei a windfall by ordering Low and Sim to buy out his shares that may now be worth little when Wei had contributed in part to the devaluation of these shares (see the HC Judgment at [153]).

The issues arising from the Appeal

9 On 15 May 2021, Wei filed an appeal against the HC Judgment to the AD (the "Appeal"). His main contention on appeal was that the High Court should not have refused a buyout for the reasons above. The Appeal therefore centred on the appropriate relief to be granted to Wei, following the High Court's finding that Low and Sim had behaved in an oppressive manner.

10 The key issues arising from the Appeal can be summarised as follows (the "Key Issues"):

(a) whether difficulty in auditing the accounts of a wound-up company precludes a buyout order;

(b) whether the fact that liquidators will redress wrongs done to a wound-up company precludes a buyout order;

(c) whether a buyout order should be refused for a shareholder that contributed to the insolvency of a company; and

(d) whether and how a shareholder's contribution to a company's insolvency may affect the terms of the buyout, and/or may otherwise be accounted for through parameters imposed on the valuation exercise and/or an adjustment of the critical dates for the valuation of the company's shares.

The application

11 Under s 29C(2) of the SCJA, an appeal against a decision of the High Court is to be made to the Court of Appeal if the Sixth Schedule to the SCJA or any other written law so provides. Otherwise, the appeal is to be made to the AD under s 29C(1) of the SCJA. When the Appeal was filed, Wei initially took the position that the Sixth Schedule to the SCJA did not apply. Consequently, the Appeal was made to the AD.

12 However, in the Appeals Information Sheet filed on 8 September 2021, Wei adopted a different position. Wei indicated that it would be more appropriate for the Court of Appeal to hear the Appeal *and* that para 1(*d*) of the Sixth Schedule to the SCJA applied. He also indicated that he intended to apply for a transfer of the Appeal from the AD to the Court of Appeal.

13 Two possible pathways for a transfer from the AD to the Court of Appeal were open to Wei. First, under s 29D(2)(*c*)(i) of the SCJA, Wei could apply for a transfer on the ground that the appeal was not made to the AD in accordance with s 29C of the SCJA. This would govern a situation when the appeal was erroneously made to the AD when it ought to have been made to the Court of Appeal. Second, under s 29D(2)(*c*)(ii) of the SCJA, Wei could apply for a

transfer on grounds prescribed by the ROC (specifically, on the grounds set out in O 56A r 12(3)).

14 However, O 56A r 12(4) of the ROC provides that an application under s 29D(2)(*c*)(i) of the SCJA must be filed and served within 14 days after the date of the service of the notice of appeal on the respondents. As the notice of appeal was served on 15 May 2021, Wei was out of time to pursue this route. He was, however, not out of time for an application under s 29D(2)(*c*)(ii) of the SCJA *ie*, "on grounds prescribed by the [ROC]", since under O 56A r 12(5) of the ROC, the application need only be filed and served within 14 days after the date of service of the Respondent's Case. At the relevant time, the Respondent's Case had not been served and was eventually only served on 21 October 2021.

15 A case management conference was convened on 13 October 2021, and the assistant registrar directed Wei to confirm by 15 October 2021 whether he would be applying for a transfer of the Appeal from the AD to the Court of Appeal, and if so, on what grounds. Wei later confirmed that he would only rely on s 29D(2)(*c*)(ii) of the SCJA for a transfer from the AD to the Court of Appeal *ie*, on grounds prescribed by the ROC, and not under s 29D(2)(*c*)(i) of the SCJA.

16 Thereafter, on 19 October 2021, Wei filed the present application by way of originating summons in CA/OS 27/2021 (the "Application") for a transfer of the Appeal from the AD to the Court of Appeal. The Application was made under ss 29D(1)(*a*) and 29D(2)(*c*)(ii) of the SCJA, read with O 56A r 12(1) of the ROC, on the basis that it would be more appropriate for the Court of Appeal to hear the Appeal, notwithstanding that it had been made to the AD.

The parties' respective arguments

17 Wei submitted that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD under O 56A r 12(1) of the ROC, the Court of Appeal may have regard to one or more of the following matters in O 56A r 12(3) of the ROC:

> …
>
> (*a*) whether the proceedings relate to a matter of national or public importance;
>
> (*b*) whether the appeal will raise a point of law of public importance;
>
> (*c*) the complexity and novelty of the issues in the appeal;
>
> (*d*) whether there is a decision of the Court of Appeal in relation to a point of law raised in the appeal which may be material to the outcome of the appeal;
>
> (*e*) whether there are conflicting judicial decisions;
>
> (*f*) the significance of the results of the proceedings;
>
> (*g*) any other relevant matter.

18 Wei relied on O 56A r 12(3)(*a*), (*b*), (*c*), (*f*) and (*g*) of the ROC to justify a transfer from the AD to the Court of Appeal. In response, Low and Sim argued that none of the grounds prescribed under O 56A r 12(3) of the ROC are satisfied. The Company did not take any position in this Application. For the reasons as explained below at [39]–[41], the grounds prescribed under O 56A r 12(3) of the ROC are not relevant on the facts of this Application.

The Court's decision

The statutory scheme for the transfer of appeals between the Court of Appeal and the AD

19 Before dealing with the merits of the Application, it is important to first understand the statutory scheme for the transfer of appeals between the Court of Appeal and the AD.

20 The AD serves the purpose of alleviating the caseload of the Court of Appeal by having certain specific categories of civil appeals allocated to the AD by default. As explained in *Noor Azlin* (at [22]), the default allocation of appeals and the subsequent opportunity to transfer the already-allocated appeals between the AD and the Court of Appeal provide flexibility while maintaining efficiency.

21 The first step under the current statutory scheme governing the allocation of appeals between the Court of Appeal and the AD is to ascertain the applicable version of the SCJA and the ROC (*ie*, the temporal dimension): see *Noor Azlin* at [37(*a*)]. The new provisions in the SCJA and the ROC only came into force on 2 January 2021.

22 If the new provisions in the SCJA and ROC apply to the case, the second step is to ascertain if the case falls within any of the prescribed grounds in the Sixth Schedule or if any other written law provides that the appeal is to be heard by the Court of Appeal pursuant to s 29C(2) of the SCJA (*ie*, the subject matter dimension): see *Noor Azlin* at [37(*b*)]. If the case does fall within any of the prescribed grounds, the appeal and other related applications are to be made to the Court of Appeal. Otherwise, the appeal and other related applications are to be made to the AD.

23 Despite the default allocation pursuant to the two steps above, a transfer of the appeal may be effected pursuant to s 29D (for a transfer from the AD to the Court of Appeal) and s 29E (for a transfer from the Court of Appeal to the AD) of the SCJA: see *Noor Azlin* at [37(*c*)].

24 In particular, the Court of Appeal may transfer an appeal from the AD to the Court of Appeal *on its own motion* under s 29D(2)(*a*) of the SCJA. Section 29D of the SCJA reads:

> **Power to transfer appeal to Court of Appeal**
>
> **29D.**—(1) The Court of Appeal may transfer the following appeals to itself:
>
> (*a*) any appeal against any decision of the General Division that has been made to the Appellate Division;
>
> (*b*) where an order under section 39A of the Land Acquisition Act (Cap. 152) is in force, any appeal made to the Appellate Division under section 29(2) or 38(2) of the Land Acquisition Act.
>
> (2) The power in subsection (1) may be exercised by the Court of Appeal —
>
> (*a*) on its own motion;
>
> (*b*) on a reference by the Appellate Division; or
>
> (*c*) on an application to the Court of Appeal by any party to the appeal, but such an application may only be made —
>
> (i) on the ground that the appeal was not made to the Appellate Division in accordance with section 29C; or
>
> (ii) on grounds prescribed by the Rules of Court.
>
> (3) In deciding whether to exercise the power in subsection (1), the Court of Appeal is to have regard to matters prescribed by the Rules of Court.
>
> (4) To avoid doubt, Rules of Court made for the purpose of subsection (3) may prescribe different matters for the different circumstances mentioned in subsection (2)(*a*), (*b*) and (*c*).

> (5) To avoid doubt, an appeal may be transferred under subsection (1) even if it was made to the Appellate Division in accordance with section 29C(1).

25 Although the discretion of the Court of Appeal to transfer an appeal on its own motion is a wide one, the exercise of the discretion should be made on principled grounds and the court is specifically required to have regard to matters prescribed by the ROC. This was explained during the Second Reading of the Supreme Court of Judicature (Amendment) Bill (Bill No 32/2019), *Singapore Parliamentary Debates, Official Report* (5 November 2019) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law):

> … As a starting point, the allocation of matters in the two tracks that I mentioned will apply generally, as a starting position. However, it is useful beyond the default allocation to allow the Court of Appeal themselves looking at the specific case and understanding the issues that are raised beyond just the label that is put on it, a discretion to transfer to itself or to the Appellate Division depending on its assessment of complexity, novelty and so on. The basis on which it seeks to do so – novelty, complexity, cases of general public importance and so on – would be amongst the factors that will guide the exercise of discretion in any such transfer exercise.
>
> At the same time, the powers of the Court of Appeal in doing so are not unfettered, and Members will note clauses 29D(3), 29E(3) and 47(3) of the amended SCJA which expressly require that the Court of Appeal have regard to the matters prescribed in the Rues of Court when exercising these powers. As I had mentioned, the relevant matters will be prescribed in the Rules of Court.
>
> …

26 As explained above (at [14]), O 56A r 12(4) and O 56A r 12(5) of the ROC prescribe the timelines for transfer applications. However, it was acknowledged by both parties during the hearing that the above timelines do not apply in the event that the Court of Appeal decides to transfer the appeal from the AD to the Court of Appeal on its own motion.

The proper basis for this Application

27 It bears repeating that the Application was brought under s 29D(2)(*c*)(ii) of the SCJA *ie*, on grounds prescribed by the ROC. In his submissions, the specific ground Wei relied on was O 56A r 12(3) of the ROC (see above at [18]), which contain the matters that the Court of Appeal may have regard to in deciding whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD. In this way, the Application would have been filed within time under s 29D(2)(*c*)(ii) of the SCJA. Understandably, Low and Sim's arguments were therefore made on the same grounds in response to Wei's arguments. However, it bears mention that the grounds prescribed under O 56A r 12(3) are only relevant for the purposes of O 56A r 12(1) and O 56A r 12(2)(*b*), and are not relevant for the purposes of O 56A r 12(2)(*a*) and (*c*). This is an important point of distinction because, as I will explain below, the pertinent provisions for the transfer are O 56A r 12(2)(a) and/or (*c*) *ie*, where "the appeal was not made to the AD in accordance with section 29C of [the SCJA]" and where "one or more of the legal issues in the appeal engage one or more of the matters set out in the Sixth Schedule" respectively.

28 It is of paramount importance to first examine the true nature of the issues arising in the Appeal. The proper characterisation of the issues will in turn determine the applicable provision to govern the transfer application.

29 The Key Issues arising from the Appeal have been articulated at [10] above. The parties do not dispute the finding that oppression was made out against Low and Sim. They also do not dispute the finding that the insolvency of the Company does not preclude the grant of a buyout order. But what they dispute is essentially *whether* and *how* the insolvency of the Company impacts on the propriety of a buyout order.

30 As explained in *Noor Azlin* at [37(*b*)], it is essential to ascertain if the case falls within any of the prescribed grounds in the Sixth Schedule or if any other written law provides that the appeal is to be heard by the Court of Appeal. In this connection, reference was made by Wei to paragraph 1(*d*) of the Sixth Schedule to the SCJA in aid of a different point *ie*, his submission under O 56A r 12(3) of the ROC that "there are other relevant matters which make it more appropriate for the Court of Appeal to hear [the Appeal]".

31 Paragraph 1(*d*) of the Sixth Schedule to the SCJA provides as follows:

> 1. For the purposes of section 29C(2), an appeal against a decision of the General Division in the exercise of its original or appellate civil jurisdiction is to be made to the Court of Appeal in the following cases:
>
> …
>
> > (*d*) the appeal arises from a case relating to the insolvency, restructuring or dissolution of a corporation, limited liability partnership or sub-fund of a variable capital company (even if the appeal does not raise any issue relating to the law concerning the insolvency, restructuring or dissolution of a corporation, limited liability partnership or sub-fund of a variable capital company);
>
> …

32 As is apparent from the above extract, paragraph 1(*d*) of the Sixth Schedule to the SCJA draws a distinction between a "case" and an "issue". An appeal can fall within para 1(*d*) of the Sixth Schedule to the SCJA where the appeal arises from a *case* relating to insolvency, even if the *appeal* does not raise any *issue* relating to the law of insolvency. In order to properly understand the distinction between "case" and "issue", it is useful to note that the same distinction is repeated in paras 1(*a*) to (*e*) of the Sixth Schedule to the SCJA. The intention is to carve out specific *categories or types* of proceedings identified in paras 1(*a*) to (*e*) to be heard by the Court of Appeal. In the case of

para 1(*d*), it covers, *inter alia*, any appeal "relating to the insolvency, restructuring or dissolution of a corporation … (even if the appeal does not raise any issue relating to the law concerning the insolvency, restructuring or dissolution ...)". In my view, it is deliberately worded in this manner to ensure that any *case* relating to insolvency should by default be made to the Court of Appeal. Thus, in a situation where the appeal concerns an *issue* as to whether a winding up order (which by default falls within para 1 (*d*)) should be set aside on account of grounds such as abuse of process or non-disclosure of material facts, which are strictly *not* issues relating to insolvency, such an appeal would nonetheless fall within para 1(*d*) of the Sixth Schedule to the SCJA because it is an appeal which arises from a *case* relating to the insolvency of the company.

33 The Application before me concerned a unique situation. The case started as a typical oppression action. But, by the time of the trial, the Company had been wound up. This in turn raised an interesting question. When is the proper time to characterise the nature of the case before the High Court? Is it at the time when the action was commenced and/or at the time when the trial was heard? In my view, the characterisation of any case should not be limited to the time when the action was commenced as that approach would fail to have regard to material subsequent developments which may change the complexion of the case from when it first started. This is amply borne out here. Due to the supervening insolvency of the Company, the parties knew that they had to address various factual and legal questions arising from the insolvency. At the trial, the parties specifically addressed the High Court on the effects of the insolvency of the Company as regards the appropriate remedy to be granted. This is clear from the parties' opening statements, the identification of the issues and their closing submissions. In short, the case before the High Court was not a typical oppression action. Instead, the parties had to argue and lead evidence

as to what led to the insolvency of the Company and how the insolvency would affect the remedy sought.

34 Under these circumstances, the Appeal against the decision of the High Court would constitute an appeal which arises from a *case* relating to the *insolvency* of the Company and would thus fall *within* para 1(*d*) of the Sixth Schedule to the SCJA.

35 There is an additional ground for the transfer which is relevant to this Application. The Key Issues on appeal (see above at [10]) do not merely relate to oppression *per se*, but are *issues* uniquely arising from the insolvency of the Company. The Appeal does not merely concern the appropriate remedy to be granted for a successful action for oppression, but it directly engages the critical issue as to whether and how the insolvency of the Company may affect the appropriate remedy to be granted. In other words, the issue of the appropriate remedy to be granted would have to be decided with reference to the law of insolvency. This much is clear following the High Court's determination that oppression was made out:

> (a) While oppression was the key issue in the court below, that is no longer a live issue in the Appeal since there is no cross-appeal by Low and Sim against the finding of oppression.
>
> (b) A buyout order is a typical order to be made following a finding of oppression. The reason is that a buyout order helps the oppressed shareholder realise his investment in the company at a fair value and to exit the company: see *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 at [275]–[277].

(c) Based on the HC Judgment (see above at [8]), it appears that the insolvency of the Company was the principal reason why a buyout order was not made notwithstanding the finding of oppression: see [8(c)] and [8(d)] above.

(d) The reasons relied on by the Judge in deciding against the buy-out order principally relate to the insolvency of the Company.

(e) That being the case, the issues on appeal undoubtedly "engage one or more of the matters set out in the Sixth Schedule to the SCJA, in particular the insolvency of the Company, and thus came within O 56A r 12(2)(*c*).

36 Counsel for Low and Sim, Mr Loo Choon Chiaw, argued at the hearing that the above issues do not relate to the insolvency of the Company, ostensibly because the Company was wound up after Suit 238 was commenced and the winding up was not opposed by Wei. However, this argument does not address the crucial question of whether the issues on appeal relate to the insolvency of the Company. Even though the Company was only wound up after Suit 238 was commenced, for the reasons explained above, the insolvency of the Company became the principal reason why a buyout order was not granted.

37 On this note, I turn my attention to examine the scope of O 56A r 12 of the ROC, which is the enabling provision under which the Court of Appeal may transfer an appeal that has been made to the Appellate Division on its own motion under section 29D(1)(*a*) of the SCJA.

The ambit of O 56A r 12 of the ROC

38 Order 56A r 12 of the ROC reads:

Transfer of appeal under section 29D(1)(*a*) of Supreme Court of Judicature Act (O. 56A, r. 12)

12.—(1) For the purposes of section 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act, the Court of Appeal may exercise its power under section 29D(1)(*a*) of that Act, on an application to the Court of Appeal to transfer an appeal that has been made to the Appellate Division, on the ground that it is more appropriate for the Court of Appeal to hear the appeal.

(2) For the purposes of section 29D(3) of the Supreme Court of Judicature Act, the Court of Appeal may, on its own motion or on a reference by the Appellate Division, exercise its power under section 29D(1)(*a*) of that Act only where —

(*a*) the appeal was not made to the Appellate Division in accordance with section 29C of that Act;

(*b*) it is more appropriate for the Court of Appeal to hear the appeal; or

(*c*) one or more of the legal issues raised in the appeal engage one or more of the matters set out in the Sixth Schedule to that Act.

(3) For the purposes of paragraphs (1) and (2)(*b*), when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the Appellate Division, the Court of Appeal may have regard to one or more of the following matters:

(*a*) whether the proceedings relate to a matter of national or public importance;

(*b*) whether the appeal will raise a point of law of public importance;

(*c*) the complexity and novelty of the issues in the appeal;

(*d*) whether there is a decision of the Court of Appeal in relation to a point of law raised in the appeal which may be material to the outcome of the appeal;

(*e*) whether there are conflicting judicial decisions;

(*f*) the significance of the results of the proceedings;

(*g*) any other relevant matter.

(4) An application under section 29D(2)(*c*)(i) of the Supreme Court of Judicature Act must be made in accordance with Order 57, Rule 16, and must be filed and served within 14 days after

> the date of service of the notice of appeal on the respondents in the appeal.
>
> (5) An application under section 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act must be made in accordance with Order 57, Rule 16, and must be filed and served no later than 14 days after the date of service of the Respondent's Case.

39 In my view, the relevant provisions which govern this Application are s 29D(1)(*a*) of the SCJA, read with O 56A r 12(2)(*a*) and (*c*) of the ROC and not ss 29D(1)(*a*) and 29D(2)(*c*)(ii) of the SCJA read with O 56A r 12(3) of the ROC as relied on by Wei.

40 Given my finding that the appeal does arise from a *case* relating to the insolvency of the Company, O 56A r 12(2)(*a*) of the ROC is applicable because the Appeal was not made to the AD in accordance with s 29C of the SCJA. In addition, as the issues relate to the insolvency of the Company, O 56A r 12(2)(*c*) of the ROC also applies since the legal issues raised in the Appeal "engage one or more of the matters set out in the Sixth Schedule to [the SCJA]".

41 Under O 56A r 12(3) of the ROC, which was addressed by both parties, the applicant will need to satisfy the court that the requirements for transfer under O 56A r 12(3) of the ROC are satisfied. There is however no necessity to engage the requirements under O 56A r 12(3) of the ROC if the transfer is made under O 56A r 12(2)(*a*) or (*c*). This is so because O 56A r 12(3) *expressly* applies for the purposes of transfers contemplated under O 56A r 12(1) and (2)(*b*) and not under O 56A r 12(2)(*a*) or (*c*), the reason being that the Sixth Schedule was formulated with the *presumption* that the grounds under O 56A r 12(3) of the ROC are deemed to be satisfied when a case falls within or engages one or more of the matters set out in the Sixth Schedule to the SCJA. It was observed in *Noor Azlin* (at [45]) that "the grounds contained within O 56A r 12(3) of the ROC

bear marked similarities to the elucidated considerations governing the selection of categories prescribed under the [Sixth] Schedule".

42 As the Appeal arises from a case relating to the insolvency of the Company *and/or* the legal issues raised in the Appeal engage the law of insolvency *ie*, one of the matters set out in the Sixth Schedule to the SCJA, the Court of Appeal may on its own motion transfer the Appeal from the AD to the Court of Appeal under s 29D(1)(*a*) of the SCJA read with O 56A r 12(2)(*a*) and/or (*c*) of the ROC.

43 The remaining question is whether there is any reason why this court should *not* exercise its power to transfer the Appeal from the AD on its own motion under s 29D(1)(*a*) of the SCJA read with O 56A r 12(2)(*a*) or (*c*) of the ROC. In this regard, it is material to note that even in respect of appeals against decisions of the High Court where the Sixth Schedule or any other written law so provides, the Court of Appeal retains the discretion to transfer an appeal before it to the AD under O 57 r 10A(1)(*c*) of the ROC in a situation where "all of the legal issues raised on appeal in relation to the Sixth Schedule to [the SCJA] relate to issues of settled law". Applying this approach in the converse for the purpose of deciding whether the transfer should be ordered on this court's own motion where the Appeal arises from a case relating to insolvency and/or where the issues engage one or more of the matters set out in the Sixth Schedule, the transfer should generally be ordered so long as the legal issues raised on appeal do *not* relate to issues of settled law.

44 Counsel for Wei, Mr Kevin Lee, submitted that there are at least three issues concerning the law of insolvency that are not settled:

(a) Whether and in what circumstances a Singapore court will consider it appropriate for a buyout order to be ordered in respect of a company put into liquidation by its controlling shareholders after the commencement of a minority oppression suit.

(b) Whether and in what circumstances the mere existence of fault or inequity on the part of a minority shareholder, who took action in response to the majority shareholders' oppressive conduct, may preclude a buyout.

(c) Whether and how such fault or inequity may affect the terms of the buyout, and/or may otherwise be accounted for through parameters imposed on the valuation exercise and/or an adjustment of the critical dates for the valuation of the company's shares.

45 I agreed with Mr Kevin Lee that the above issues did not relate to questions of settled law. Although the granting of remedies for oppression is not novel, different considerations are engaged when a company is insolvent, as was evidently the case when the High Court refused to grant the buy-out order.

46 As Wei submitted, although other jurisdictions have considered the above issues, the HC Judgment appears to mark the first time the Singapore courts have been asked to consider the same. On appeal, various foreign authorities governing these issues, including those cited by Wei in his submissions (*eg*, *In re London School of Electronics Ltd* [1986] Ch 211, *Grace v Biagioli and others* [2005] EWCA Civ 1222, and *Re Via Servis Ltd Skala v Via Sevis Ltd and another* [2014] EWHC 3069 (Ch)) would have to be considered. Accordingly, the Court of Appeal would by no means be dealing with questions of settled law.

47 Since O 56A r 12(2)(*a*) and (*c*) apply (see above at [39]), there is a principled basis for this court to order the transfer of the Appeal from the AD to the Court of Appeal on its own motion.

Conclusion

48 For the reasons above, I ordered the transfer of the Appeal from the AD to the Court of Appeal and ordered the hearing fixed before the AD to be vacated. I also ordered the security provided by Wei for this Application to be discharged.

49 Given the circumstances for the transfer, the appropriate costs order is for each party to bear their own costs.

Steven Chong
Justice of the Court of Appeal

Jimmy Yim Wing Kuen *SC*, Lee Soong Yan Kevin, Eunice Lau Guan Ting and Lim Joe Jee (Drew & Napier LLC) for the applicant;
Loo Choon Chiaw, Chia Foon Yeow, Tan Jinwen Mark and Lim Jun Wei (Loo & Partners LLP) for the first and second respondents;
Ng Yeow Khoon and Ho Wei Liang Sherman (Shook Lin & Bok LLP) for the third respondent.