

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

[2025] SGHC 227

Magistrate's Appeal No 9195 of 2024/01

Between

Public Prosecutor

*... Appellant*

And

ZH Builders Pte Ltd

*... Respondent*

Magistrate's Appeal No 9198 of 2024/01

Between

Public Prosecutor

*... Appellant*

And

457 Balestier Pte Ltd

*... Respondent*

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**GROUNDS OF DECISION**

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[Criminal Procedure and Sentencing — Sentencing — Appeals

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**Public Prosecutor**  
**v**  
**ZH Builders Pte Ltd and another appeal**

**[2025] SGHC 227**

General Division of the High Court — Magistrate's Appeals Nos 9195 of 2024/01 and 9198 of 2024/01  
Sundaresh Menon CJ, Tay Yong Kwang JCA, Vincent Hoong J  
20 August 2025

17 November 2025

**Tay Yong Kwang JCA (delivering the grounds of decision of the court):**

**Introduction**

1 These were two appeals brought by the Prosecution against the sentences imposed by a Magistrate's Court, presided over by a District Judge (the "DJ"). The respondents in HC/MA 9195/2024/01 ("MA 9195") and HC/MA 9198/2024/01 ("MA 9198") are two companies ("ZH Builders" and "457 Balestier" respectively). They were charged with offences under the Building Control Act (Cap 29, 1999 Rev Ed) ("Act") pertaining to building works in a project (the "Project") involving an existing shophouse at Balestier Road.

2 ZH Builders pleaded guilty to the following two charges:

**Charge 1**

You,

ZH BUILDERS PTE. LTD.

UEN NO. 201634644G

OF 16 SHAW ROAD #03-10 KIN BUILDING,

SINGAPORE 367954

are charged that you, between 1 April 2021 and 26 April 2021, did carry out building works, *to wit*, the casting of 12 pad footings, namely, P4, P5, P6, P8, P11, P12, P18, P20, P23, P24, P27, and P51, for the Project Ref. No. A1753-00376-2019, in respect of an existing two-storey building located at 453, 455, 457, 459, 461 and 461A Balestier Road, Singapore (“**the Project**”), the plans of which have not been approved by the Commissioner of Building Control under section 5 or 5A of the Building Control Act (Cap 29, 1999 Rev Ed), (“**the Act**”), and you have thereby committed an offence under section 20(1)(a) and punishable under section 20(1)(i) of the Act.

**Charge 2**

You,

ZH BUILDERS PTE. LTD.

UEN NO. 201634644G

OF 16 SHAW ROAD #03-10 KIN BUILDING,

SINGAPORE 367954

are charged that you, between 28 April 2021 and 4 May 2021, as the builder of the building works for Project Ref. No. A1753-00376-2019, in respect of an existing two-storey building located at 453, 455, 457, 459, 461 and 461A Balestier Road, Singapore (“**the Project**”), did fail to ensure that the building works for the Project are carried out in accordance with the relevant plans approved by the Commissioner of Building Control and supplied to you by the qualified person under section 9(1)(c) of Building Control Act (Cap 29, 1999 Rev Ed) (“**the Act**”), *to wit*:

(a) by casting pad footing P16 with the dimensions of 1600mm x 1600mm x 350mm, instead of the

dimensions of 1100mm x 2700mm x 450mm stated in the approved structural plans, A1753-00376-2019-ST05 (“**the approved plans**”);

- (b) by casting pad footing P16 with the rebar specifications of H16-100-B (B/W) and H13-150-T (B/W) instead of the rebar specifications of H-13-150-B, H20-100-BB and H13-150-T&TT stated in the approved plans;
- (c) by casting pad footing P52 with the dimensions of 1900mm x 1900mm x 400mm, instead of the dimensions of 1500mm x 1500mm x 350mm stated in the approved plans;
- (d) by casting pad footing P52 with the rebar specifications of H16-100-B (B/W) and H13-150-T (B/W) instead of the rebar specifications of H-13-125-B (B/W) and H13-150-T (B/W) stated in the approved plans; and
- (e) by casting pad footings P9, P16, P50 and P52, using concrete grade C35/45 instead of concrete grade C45/55 stated in the approved plans,

and you have thereby contravened section 11(1)(a)(iii) of the Act, which is an offence punishable under section 11(6) of the Act.

3 As the developer of the Project, 457 Balestier pleaded guilty to the following charge:

You,

457 BALESTIER PTE. LTD.

UEN NO. 201839668E

OF 75 BEACH ROAD #04-01, 75BR

SINGAPORE 189689

are charged that you, on or about 25 March 2021, as the developer of the building works for Project Ref. No. A1753-00376-2019, in respect of an existing two-storey building located at 453, 455, 457, 459, 461 and 461A Balestier Road, Singapore (“**the Project**”), did authorise the carrying out of building works, *to wit*, the casting of 12 pad footings for the Project, namely, P4, P5, P6, P8, P11, P12, P18, P20, P23, P24, P27 and P51, the plans of which have not been approved by the Commissioner of Building Control under section 5 or 5A of the

Building Control Act (Cap 29, 1999 Rev Ed) (“**the Act**”), and you have thereby committed an offence under section 20(1)(a) and punishable under section 20(1)(i) of the Act.

4 The DJ imposed fines of \$38,000 for Charge 1 and \$28,000 for Charge 2 in respect of ZH Builders. In respect of 457 Balestier, the DJ imposed a fine of \$38,000. The Prosecution appealed against these sentences on the ground that they were manifestly inadequate because both companies’ culpability was high.

5 A Young Independent Counsel (“YIC”), Mr V Santhosh, was appointed for the purposes of discussing the appropriate sentencing framework for such offences. After hearing the parties and the YIC, we allowed the Prosecution’s appeals.

6 We enhanced the sentences and imposed a fine of \$70,000 for each of the two charges for ZH Builders and a fine of \$90,000 for 457 Balestier. The respondents had paid the fines imposed earlier by the DJ. They applied to pay the balance of the enhanced fines by instalments. We granted the application and ordered that the balance be paid in four equal monthly instalments, with the first instalment to be paid on or before 26 August 2025.

### **The facts**

7 The full facts for both cases are set out in their respective Statement of Facts. We provide a summary of the salient points.

8 ZH Builders was the builder for the Project while 457 Balestier was the developer of the Project. The Project involved, among other things, the construction of an additional floor to the existing two-storey structure (the “Front Building”) as well as a rear extension comprising six storeys of

residential units. The existing columns of the Front Building were required by the Urban Redevelopment Authority to be conserved. After the completion of the building works, the area of the Front Building would be approximately 200m<sup>2</sup>. It was meant to be used for retail shops and restaurants which would be open to the public.

9 On 25 May 2021, the Commissioner of Building Control (“Commissioner”) received feedback that the Project involved building works that contravened the Act. These violations concerned the construction of pad footings at the Front Building. The pad footings were the foundations of new columns that were to be erected at the Front Building which would support the Front Building. They were key structural elements as defined under s 2(1) of the Act.

10 Subsequent investigations revealed the following facts. On 9 March 2021, structural plans for the pad footings were submitted to the Commissioner. These were disapproved on 8 April 2021 because the proposed situation of the pad footings might be unsafe to the Front Building. On 10 April 2021, revised structural plans were submitted. These were approved on 27 April 2021.

11 Between 1 April 2021 and 26 April 2021, prior to the approval of the revised structural plans, ZH Builders carried out the casting of 12 pad footings for new columns at the Front Building. These were the unauthorised pad footings referred to in ZH Builders’s Charge 1. ZH Builders was aware that the revised structural plans had not been approved yet but carried out the casting of the pad footings based on the disapproved structural plans, as it had been instructed on or about 25 March 2021 by 457 Balestier to do so. Thereafter, 457 Balestier continued to chase and check in on ZH Builders to expedite and complete the casting of the unauthorised pad footings.

12 After casting the unauthorised pad footings, ZH Builders attempted to conceal them by bending the column rebars backwards and covering the rebars with soil and soil bags. 457 Balestier instructed the site supervisor to inspect the 12 unauthorised pad footings based on the disapproved structural plans and to post-date his inspection forms to a date after the revised structural plans were approved. The failure of any of the unauthorised pad footings could result in structural damage to the beams and columns of the Front Building.

13 In respect of ZH Builders's Charge 2, between 28 April 2021 and 4 May 2021, ZH Builders failed to ensure that the building works in respect of the pad footings were carried out in accordance with the approved structural plans. It cast 4 other pad footings in contravention of the approved structural plans, knowing that the deviations were material changes from the approved structural plans. All 4 pad footings also used a weaker grade of concrete than that specified in the approved structural plans. That could affect adversely the load-carrying capacity of the 4 pad footings.

14 As stated in the DJ's grounds of decision ("GD") in *Public Prosecutor v ZH Builders Pte Ltd and another* [2024] SGMC 79 at [48], a stop work order was issued on 16 June 2021. The stop work order was lifted on 5 July 2021.

### **The DJ's decision**

15 The DJ agreed with the view taken in *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [47] that the sentencing framework for offences under the Act could be developed with reference to the sentencing framework for offences under the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("WSHA"). At the same time, the DJ was mindful to make the necessary modifications to factor in the entire sentencing range of the prescribed punishments for corporate offenders (GD at [91]–[92]).

16 The DJ proposed the following sentencing matrix, based on the two principal factors of harm and culpability, to be applied to both offences (GD at [100]):

		<u>Culpability</u>		
		Low	Medium	High
<u>Harm</u>	<b>Low</b>	Fine of up to \$30,000	\$30,000 to \$60,000	\$60,000 to \$90,000
	<b>Medium</b>	\$30,000 to \$60,000	\$60,000 to \$90,000	\$90,000 to \$120,000
	<b>High</b>	\$60,000 to \$90,000	\$90,000 to \$120,000	\$120,000 to \$200,000

17 The DJ then applied this sentencing matrix to the facts:

- (a) The parties agreed that the level of harm caused by the offences both on the part of ZH Builders and 457 Balestier was low and the DJ agreed (GD at [104], [105] and [112]).
- (b) The DJ assessed the culpability of ZH Builders to be medium, with the indicative starting sentence being \$50,000 for Charge 1 and \$40,000 for Charge 2 (GD at [123], [131], [140] and [147]–[148]).
- (c) The DJ assessed the culpability of 457 Balestier to be medium, with an indicative starting sentence of \$50,000 (GD at [139]–[140]).

(d) There were no aggravating factors raised against either ZH Builders or 457 Balestier. A downward calibration was warranted because both companies pleaded guilty at the earliest available opportunity, cooperated fully with the authorities, took remedial steps to rectify the breaches and were untraced for antecedents (GD at [149]–[151]).

18 Following from the above, the DJ imposed fines of \$38,000 and \$28,000 respectively on ZH Builders and a fine of \$38,000 on 457 Balestier. Dissatisfied with the DJ’s decision on sentence, the Prosecution appealed.

### **The parties’ cases on appeal**

19 The Prosecution argued that in applying the relevant framework, the DJ erred in assessing the culpability of ZH Builders and 457 Balestier as being medium when it should have been high. The Prosecution’s arguments were two-pronged. First, the DJ failed to appreciate that the breaches were deliberate, driven by financial motivations and contained an element of concealment. Second, for the offender-specific aggravating and mitigating factors, a higher sentence was warranted for 457 Balestier as compared to ZH Builders because the developer had distinct duties under the Act and was also the directing mind of the unauthorised works and attempted concealment. In the circumstances, the appropriate sentence for ZH Builders was a fine of between \$50,000 to \$60,000 for each charge and that for 457 Balestier was a fine of between \$60,000 to \$70,000.

20 ZH Builders argued that the DJ did not err in the sentences imposed. First, the DJ assessed the culpability of ZH Builders to be medium. Mere knowledge that its actions were contrary to law or mere attempts at concealment could not in themselves equate to high culpability. There was also no evidence

that ZH Builders was driven by financial motivation to commit the offences. Second, the DJ gave appropriate weight to the duration of the offences, ZH Builders' cooperation with the authorities, the subsequent rectification of the breaches and the guilty plea.

21 457 Balestier likewise argued that the DJ did not err in the sentences imposed. First, 457 Balestier did not exercise its authority or influence over ZH Builders improperly. Second, 457 Balestier was not driven by financial motivation to commit the offence. Third, the DJ gave appropriate weight to 457 Balestier's full and immediate cooperation with the investigating authorities.

22 The YIC was tasked with considering the following question: What was an appropriate sentencing framework for offences under s 11(1)(a) and punishable under s 11(6) of the Act (the “s 11(1)(a) Offence”); and (b) s 20(1)(a) and punishable under s 20(1)(i) of the Act (the “s 20(1)(a) Offence” and collectively, the “Relevant Offences”) committed by a corporate offender? Without limiting the generality of the question, the YIC was asked to consider:

- (a) whether the sentencing framework for the Relevant Offences could be developed with reference to the sentencing frameworks developed for offences under the WSHA in cases such as *Mao Xuezhong v Public Prosecutor and another appeal* [2020] SGHC 99 (“*Mao Xuezhong*”) and *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2023] 3 SLR 327 (“*Manta Equipment*”);
- (b) the sentencing framework in *Leong Sow Hon* and whether it should be adapted where the Relevant Offences are committed by corporate offenders;

- (c) the factors the Court should consider in assessing the degree of harm and the offender's culpability for the Relevant Offences and how these factors might differ from those that apply in assessing the degree of harm and the offender's culpability for offences under the WSHA; and
- (d) whether the same sentencing framework could apply to both Relevant Offences.

23 Responding to the questions posed, the YIC made the following four arguments in his written submissions. First, the sentencing frameworks for the Relevant Offences could be developed with reference to the sentencing frameworks developed for offences under the WSHA. Second, in devising an appropriate framework for corporate offenders who have committed the Relevant Offences, the sentencing framework in *Leong Sow Hon* could largely be adapted with suitable modifications. Nevertheless, the YIC proposed slight upwards adjustments to the amounts in the indicative sentencing ranges adopted by the DJ. Third, the factors to be considered when assessing the level of harm and the accused person's culpability for the Relevant Offences were similar to those that applied in the context of offences under the WSHA. Finally, the same sentencing framework could apply to corporate offenders who were guilty of either a s 11(1)(a) Offence or a s 20(1)(a) Offence.

24 At the hearing before us, the YIC revised his position slightly. Having considered the parties' written submissions, he agreed that the matrix set out by the DJ (and reproduced at [16] above) was appropriate and that there was no need for recalibration of the figures in that matrix.

## Issues to be determined

25 The following issues arose for our determination in these appeals:

- (a) What is the sentencing framework for corporate offenders convicted of the s 11(1)(a) Offence or s 20(1)(a) Offence?
- (b) Did the DJ err in the assessment of the sentences that were imposed on ZH Builders and 457 Balestier?

## Our decision

26 In our judgment, the fines imposed were manifestly inadequate. We considered the culpability for each of the offences was high, with the culpability of 457 Balestier being higher than that of ZH Builders. The parties were wrong to have pegged the harm as “low” although there was no actual harm caused. We considered the harm to be at least at the medium level.

## *Sections 11 and 20 of the Act*

27 The charges brought against ZH Builders and 457 Balestier in respect of the 12 unauthorised pad footings were under s 20(1)(a) of the Act. Section 20(1) provides:

### **Building offences**

**20.—(1)** Any person who commences or carries out, or permits or authorises the commencement or carrying out of —

- (a) any building works (including geotechnical building works) the plans of which have not been approved by the Commissioner of Building Control under section 5 or 5A; or
- (b) any building works (including geotechnical building works) for which there is no permit under section 6 in force,

shall be guilty of an offence and shall be liable on conviction —

- (i) to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 2 years or to both; and
- (ii) in respect of a continuing contravention, to an additional fine not exceeding \$1,000 for each day or part thereof the contravention continues,

and if the contravention continues after the conviction, the person shall be guilty of a further offence and shall be liable on conviction of this further offence to a further fine not exceeding \$2,000 for every day or part thereof during which the contravention continues after conviction.

...

28 The next relevant provisions are s 11(1)(a)(iii) and s 11(6) of the Act, which are the subject of ZH Builders's Charge 2. They state as follows:

**Duties of builders**

**11.—(1)** A builder undertaking any building works shall

—

- (a) ensure that the building works are carried out in accordance with —
  - (i) the provisions of this Act;
  - (ii) subject to section 6A, the building regulations;
  - (iii) the relevant plans approved by the Commissioner of Building Control and supplied to him by a qualified person under section 9(1)(c); and
  - (iv) any terms and conditions imposed by the Commissioner of Building Control in accordance with the provisions of this Act and, subject to section 6A, the building regulations;

...

(6) Any builder or specialist builder who contravenes subsection (1)(a), (2)(a) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 2 years or to both.

...

29 As mentioned at the start, these cases were dealt with in a Magistrate's Court which was presided over by a District Judge. For the offences in issue, a Magistrate has the power to impose the maximum penalties provided for these offences (see s 46 of the Act).

*The DJ's proposed sentencing framework could apply to the s 11(1)(a) Offence and s 20(1)(a) Offence*

30 We agree that there is no need for separate sentencing frameworks for the s 11(1)(a) Offence and the s 20(1)(a) Offence. Both offences have the same maximum fine of \$200,000 for corporate offenders. They also provide for the same maximum imprisonment term of two years for non-corporate offenders (see ss 11(6) and 20(1)(i) of the Act). The mischief targeted by both offences is also similar. Section 11(1)(a) of the Act concerns decisions by a builder to carry out building works that are not approved, contrary to law or in violation of certain terms and conditions imposed by the Commissioner. Section 20(1)(a) of the Act criminalises the decision of a person to carry out building works that have not been approved by the Commissioner. Both offences share a common core: they target decisions to carry out building works that have not been approved by the Commissioner. It was therefore sensible to employ the same sentencing framework for the offences in issue.

31 The YIC submitted that the key difference between s 11(1)(a) and s 20(1)(a) was that the former targets building works which do not comply with approved plans and regulations while the latter targets the absence of approval. However, these appear to be essentially two sides of the same coin. The key distinction between s 11(1)(a) and s 20(1)(a) is that s 20(1)(a) targets "any person" who carries out building works that have not been approved by the Commissioner while s 11(1)(a) targets "builders" specifically who carry out building works that are not in compliance with the law or with the approved

plans. Nonetheless, there is no distinction of significance that would militate against having the same sentencing framework for the s 11(1)(a) Offence and s 20(1)(a) Offence.

*The sentencing framework for the Relevant Offences here could be adapted from the sentencing framework developed for offences under the WSHA*

32 We agree with the DJ and the YIC that the sentencing framework for the offences here could be adapted from the sentencing framework developed for offences under the WSHA. We come to this conclusion for two reasons.

33 First, Parliament intended expressly to align the penalties for offences under the Act with the penalties for offences under the WSHA. During the Second Reading for the Building Control (Amendment) Bill (“Amendment Bill”), then Minister of State for National Development Ms Grace Fu explained that the Amendment Bill would align the penalties for offences under the Act with those for offences of similar severity under the WSHA (see Singapore Parl Debates, Vol 83, Sitting No 13; Cols 2059 and 2080; [20 September 2007] (Grace Fu, Minister of State for National Development)). The High Court in *Leong Sow Hon* also referred to Ms Grace Fu’s comments and held that the sentencing framework for offences under the Act could, in principle, be developed with reference to that for offences under the WSHA (at [47]).

34 Second, similar sentencing considerations drive the imposition of punishments for offences under the Act and for offences under the WSHA. The WSHA was introduced as a replacement for the Factories Act (Cap 104, 1985 Rev Ed). The WSHA is aimed at enhancing safety in the construction industry and ensuring that appropriate penalties are prescribed to reflect the true economic and social cost of risks and accidents (Singapore Parl Debates; Vol 80; Sitting No 16; Col 2206; [17 January 2006] (Dr Ng Eng Hen, Minister

for Manpower)). The Act is aimed at ensuring the professionalism, standards of safety and quality in the construction industry, with lapses in safety often causing ripple effects in terms of loss of lives and damage to property (Amendment Bill at cols 2053–2054). Both the WSHA and the Act are therefore aimed at ensuring safety in the construction industry. Further, general deterrence is of special significance where the offence in question is one which affects public safety (*Leong Sow Hon* at [41]). Since the sentencing considerations for offences under the WSHA and offences under the Act are essentially the same, it is entirely logical that the sentencing framework for the Relevant Offences be adapted from the sentencing framework for the WSHA.

35 We also agree with the DJ's decision to adopt the sentencing matrix proposed in *Leong Sow Hon* (in the context of an offence under s 18(1) and punishable under s 18(3) of the Act), subject to appropriate modifications. The High Court in *Leong Sow Hon* at [51] proposed the following two-stage sentencing framework adapted from *Mao Xuezhong v Public Prosecutor and another appeal* [2020] 5 SLR 580 (“*Mao Xuezhong*”):

- (a) First, the Court establishes the level of harm (actual and potential) caused by the offence as well as the level of culpability to derive an indicative starting point in the sentencing matrix.
- (b) Second, the Court considers offender-specific aggravating and mitigating factors before deciding on the appropriate sentence to impose.

36 The sentencing matrix adopted by the DJ (GD at [100]) utilised the appropriate indicative starting ranges. The sentencing matrix adopted a generally consistent range of fines (of \$30,000) for each of the harm-culpability permutations. The range for the fine at the high-harm and high-culpability box

was higher (\$120,000 to the maximum of \$200,000) than the ranges for the fine proposed for the other permutations. This was justifiable in the present context as the high-harm and high-culpability category of cases could include death and serious injuries.

37 We agree with *Leong Sow Hon* that the relevant factors in ascertaining harm and culpability for offences under the Act would be broadly similar to those for offences under the WSHA (at [48]–[51]). This is because the offences in both sets of legislation aim to deter non-compliance with statutory duties that could have the potential to cause death, serious injuries and economic loss.

38 Where harm is concerned, the Court considers both the actual harm caused as well as the potential harm that could have been caused by non-compliance offences under the Act. If death or serious injuries materialised, the harm occasioned would fall near the top end of the top range. As for potential harm, the Court would consider factors such as the seriousness of the harm risked, the likelihood of that harm arising and the number of people likely to be exposed to the risk of that harm. The harm could be considered to be high even if actual harm did not happen (*Mao Xuezhong* at [64(a)(i)]; *Leong Sow Hon* at [49] and [51(a)(i)]).

39 Where culpability is concerned, the Court considers factors such as the nature of the non-compliance, the number and duration of instances of non-compliance, the level of deviation from established procedures and whether the non-compliance was motivated by the offender’s desire to save on costs (*Mao Xuezhong* at [64(a)(ii)]; *Leong Sow Hon* at [49] and [51(a)(ii)]). We also agree with the YIC that it is important to consider whether the offender acted intentionally or negligently in failing to comply with his statutory duties.

Deliberate concealment of non-compliance would increase the offender's culpability.

40 Offender-specific aggravating factors would include previous non-compliance by the offender. This could be shown by earlier warnings having been given by the authorities to the offender and by previous convictions for similar conduct. Offender-specific mitigating factors would include the offender taking active steps to remedy the non-compliance once it was discovered, cooperating with the authorities in any investigations and having a previous consistent good safety record.

41 With the introduction of the Sentencing Advisory Panel's Guidelines on Reduction in Sentences for Guilty Pleas on 1 October 2023, the Court should no longer consider a plea of guilt under the offender-specific mitigating factors. Instead, the Court should decide what the sentence would have been if the case before it had concluded with a conviction after trial, bearing in mind the tiers of punishment in the sentencing framework and all aggravating and mitigating factors other than a plea of guilt. This was made clear by the Court of Appeal's recent decision in *Iskandar bin Jinan v Public Prosecutor* [2024] 2 SLR 673 at [75] and [76]:

75 We were also of the view that the PG Guidelines rightly account for the guilty plea in a separate step of the sentencing framework, as opposed to considering it in conjunction with other offender-specific mitigating factors. "Offender-specific" factors are understood to refer to those aspects which relate to the "*personal circumstances of the offender* – that is to say, matters such as his character, personal attributes, expression of remorse, or any other considerations which are particular to the offender" [emphasis in original] (*Terence Ng* at [62]). While a plea of guilt is the result of the personal choice of the accused person, the utilitarian benefits that the guilty plea brings, such as the savings of time and state resources, are quite objective and independent of the personal circumstances of the accused person. We therefore held that as a matter of principle, it is

correct to account for the guilty plea in a separate step of the sentencing framework.

76 Additionally, given that the mechanism in the PG Guidelines is to provide a percentage reduction, it would be practically unfeasible to apply a percentage discount in conjunction with other offender-specific mitigating factors. At that stage, the sentence against which the percentage reduction should apply would not have been formulated.

*Summary of the applicable framework for the Relevant Offences*

42 We set out here a summary of the sentencing framework for the Relevant Offences under the Act in respect of a corporate offender:

(a) The Court first assesses the offender's levels of harm and culpability so as to derive the indicative starting point:

(i) In assessing the level of harm, the Court considers both actual harm and potential harm. The non-exhaustive list of factors to consider includes:

- (A) the seriousness of the actual harm that occurred;
- (B) the seriousness and likelihood of any potential harm; and
- (C) the number of people affected or likely to be affected by the harm.

(ii) In assessing the level of culpability, the Court considers the following non-exhaustive list of factors:

- (A) the nature of the non-compliance;
- (B) the number of and duration of the non-compliance;

- (C) the extent of deviation from approved or established procedures;
- (D) whether the non-compliance was motivated by the offender's desire to save on costs; and
- (E) whether the non-compliance was deliberate or negligent.

Once the Court has assessed the level of harm and culpability, the indicative starting point is determined according to the following sentencing matrix, with the starting points reflecting first-time offenders who have claimed trial:

		<u>Culpability</u>		
		Low	Medium	High
<u>Harm</u>	<b>Low</b>	Fine of up to \$30,000	\$30,000 to \$60,000	\$60,000 to \$90,000
	<b>Medium</b>	\$30,000 to \$60,000	\$60,000 to \$90,000	\$90,000 to \$120,000
	<b>High</b>	\$60,000 to \$90,000	\$90,000 to \$120,000	\$120,000 to \$200,000

- (b) The Court next adjusts the starting point, having regard to offender-specific aggravating and mitigating factors:

(i) The offender-specific aggravating factors to consider include:

- (A) the non-compliance being a significant cause of the harm;
- (B) any obstruction of justice;
- (C) the falsification of documentation; and
- (D) the offender being a repeat offender.

(ii) The offender-specific mitigating factors to consider include:

- (A) the offender voluntarily taking steps to remedy the non-compliance;
- (B) the offender's cooperation with the authorities in the investigations;
- (C) self-reporting and acceptance of responsibility;
- (D) a good safety record; and
- (E) the offender having effective safety procedures in place.

(iii) Finally, in a case involving a plea of guilt, the Court factors in the appropriate discount in sentence using the PG Guidelines.

***The sentences imposed on ZH Builders and 457 Balestier did not reflect their culpability and the harm correctly***

43 The culpability of ZH Builders and 457 Balestier in respect of the 12 unauthorised pad footings was high. ZH Builders was aware that the revised plans were not yet approved but carried out the casting of the 12 unauthorised

pad footings based on the rejected plans as it was instructed to do so by 457 Balestier. It was obvious therefore that ZH Builders had acted deliberately in its non-compliance. Further, there were attempts made to conceal the non-compliance (see Statement of Facts for ZH Builders at para 5(e)). This meant that its culpability was high. Accordingly, we disagree with the DJ that ZH Builders's culpability was medium (GD at [123]).

44 The above reasoning applied to 457 Balestier with even greater force. Its representative instructed ZH Builders to proceed with the casting of the 12 unauthorised pad footings in accordance with the rejected plans. This was done despite its awareness that the revised plans had not yet been approved. Further, the representative "continued to chase and check in on ZH Builders to expedite and complete the casting of the [u]nauthorised [f]ootings" (see Statement of Facts for 457 Balestier at para 5(d)). In these circumstances, there can be no question that its culpability was even higher than that of ZH Builders. We therefore disagree with the DJ's assessment that 457 Balestier's culpability was the same as that of ZH Builders at medium (GD at [139]).

45 Further, 457 Balestier's representative also instructed the site supervisor appointed by it to inspect the 12 unauthorised pad footings between 1 and 26 April 2021 based on the rejected plans and to post-date the inspection forms to a date after the approval of the revised plans. This was done as a cover up for the unauthorised works. Being in a position of authority over ZH Builders and the site supervisor, the culpability of 457 Balestier was accordingly higher.

46 The fact that the culpability of both ZH Builders and 457 Balestier was high was buttressed by the irresistible inference that both companies had carried out the casting of the 12 unauthorised pad footings in order to save on costs. In its mitigation before the DJ, ZH Builders claimed that it had acted out of

compassion for the workers hired since they had to continue to earn a living on a piece-work basis. 457 Balestier likewise claimed in its mitigation before the DJ that it had acted out of compassion for the workers hired by ZH Builders. We reject these assertions.

47 For each day that ZH Builders and 457 Balestier had to wait for approval of the revised plans, additional costs would have been incurred to maintain the construction site and the construction workers. The Prosecution pointed out that both ZH Builders and 457 Balestier had admitted in their mitigation pleas that the workers engaged for the Project were idle and that the COVID-19 pandemic had delayed the progress of the Project severely. It was therefore clear that the unlawful actions of ZH Builders and 457 Balestier were motivated by their financial considerations.

48 We appreciate that most people had a difficult time during the early years of the COVID-19 pandemic because of the health situation, the disruptions to normal life and the uncertainty of how long the pandemic might last. However, this could not justify proceeding with building works that had been disapproved by the Commissioner, especially when we consider subsequently the potential harm that could result from such actions.

49 In respect of the factor of harm, the parties before the DJ were not in dispute that the level of potential harm occasioned by all the offences was low and that there was no actual harm caused by the breaches. The DJ agreed with the parties (GD at [104], [105] and [112]). The DJ considered the fact that the Front Building was a low three-storey building with a relatively small area of 200m<sup>2</sup>. Consequently, even though the structural failure of the existing columns in the Front Building could cause injury to persons in the vicinity of the columns in issue, the seriousness of the harm risked was reduced. The likelihood of harm

arising from structural damage would, in the DJ's view, be likely to be localised and confined (GD at [106]–[107]).

50 We do not agree that the level of potential harm occasioned by the 12 unauthorised pad footings was low. As set out in the respective Statement of Facts, these items are the “foundations of new columns to be erected at the Front Building which will support the Front Building and are key structural elements” (Statements of Facts for ZH Builders and 457 Balestier at para 4). The columns and beams of the Front Building form the skeletal framework for the building. The Front Building was meant to be open to the public and would house retail shops and restaurants. If the structural columns failed, the Front Building could collapse and there would likely be serious injuries and even death. There would also be financial repercussions for the shops and restaurants should the building be found to be unsafe. There would also be alarm caused to the public to learn that buildings constructed in the present age with all the regulatory safeguards could still be unsafe. No actual harm was caused only because the non-compliance was discovered early through a whistle-blower. In the circumstances, we hold the view that the level of potential harm occasioned by the 12 unauthorised pad footings was at least medium in the sentencing framework.

51 Having regard to the sentencing matrix set out earlier, the appropriate starting sentence to be imposed on ZH Builders should be a fine of \$100,000. As for 457 Balestier, given that its culpability was higher than that for ZH Builders, the appropriate starting sentence should be \$120,000.

52 In respect of the offender-specific aggravating factors, there did not appear to be any that applied here. As for the offender-specific mitigating factors, it was contended that ZH Builders and 457 Balestier had mitigated their

wrongdoing by rectifying the 12 unauthorised pad footings. We did not accept this contention. Both offenders had no choice but to rectify the defective works because they had deliberately used rejected structural plans. If they did not rectify the unauthorised building works, they could be liable to an additional fine not exceeding \$1,000 for each day or part of a day on which the contravention continued (see s 20(1)(ii) of the Act). A stop work order would also most likely be in place to prevent further building works. In any event, if the non-compliance was not rectified, the Project would most likely not have been given a temporary occupation permit.

53 Much of what we have set out above applies to ZH Builders's Charge 2. In deviating from the approved building plans by making unauthorised material changes, ZH Builders's culpability was high. The DJ stated (GD at [143]) that there was "clearly a lack of effort, care or diligence on the part of ZH Builders to ensure the compliance" with the approved plans. If this suggested that ZH Builders' non-compliance was not deliberate, it would contradict the Statement of Facts for ZH Builders at para 5(h), which stated that ZH Builders "knowingly carried out the Deviations, despite being aware that the Deviations were material changes" from the approved plans.

54 The DJ also stated (GD at [144]) that there was no evidence that the deviations were done "with the desire to save on costs or time". It must be commonsensical that ZH Builders used a lower grade of concrete because it was cheaper. If ZH Builders truly believed that the use of the lower grade of concrete was appropriate and safe, it would have approached the Commissioner to obtain approval for the use of the lower grade. It did not do so. Further, if the lower grade of concrete was in truth more expensive than the approved grade, surely ZH Builders would have highlighted this to the Court. The irresistible inference

was that ZH Builders was motivated to save on costs. For Charge 2, the culpability of ZH Builders was therefore high.

55 As in the case of Charge 1, the potential harm that could result from the non-compliance in Charge 2 was at least medium. As the Statement of Facts for ZH Builders stated at para 5(i), the weaker grade of concrete used “could adversely affect the load-carrying capacity of the 4 pad footings”. This could have compromised the structural integrity of the Front Building.

56 Having regard to the sentencing matrix set out earlier and considering that the culpability of ZH Builders and 457 Balestier was high (with 457 Balestier’s culpability being higher than ZH Builders’) and the potential harm was medium, we were of the view that the appropriate starting sentence for ZH Builders was a fine of \$100,000 for each charge and that for 457 Balestier was \$120,000. As both companies pleaded guilty at the earliest opportunity, they were given a discount in sentence ranging from 25% to 30%. This resulted in a fine of \$70,000 each for ZH Builders’s Charge 1 and Charge 2 and a fine of \$90,000 for 457 Balestier’s sole charge.

### **Conclusion**

57 For the above reasons, we allowed the Prosecution’s appeals and set aside the sentences imposed by the DJ. We imposed a fine of \$70,000 on ZH Builders for each of its two charges and a fine of \$90,000 on 457 Balestier.

58 Prior to the hearing of the appeal, ZH Builders paid the total of \$66,000 in respect of the fines imposed by the DJ while 457 Balestier paid its fine of \$38,000. At the conclusion of the appeal, ZH Builders and 457 Balestier asked to pay the balance of the fines imposed on appeal (\$74,000 for ZH Builders and \$52,000 for 457 Balestier) by way of instalments. We allowed their applications

and ordered that payment of the remaining fines be made by way of four equal monthly instalments, with the first instalment to be paid on or before 26 August 2025.

59 We record our appreciation for the submissions made by the YIC which assisted us in our deliberations.

Sundaresh Menon  
Chief Justice

Tay Yong Kwang  
Justice of the Court of Appeal

Vincent Hoong  
Judge of the High Court

Kong Kuek Foo and Ruth Teng (Attorney-General's Chambers) for  
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Lim Bee Li and Kurzbock Tsang Yu Han Kenn (Chevalier Law  
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