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

[2026] SGHC 123

Originating Application No 349 of 2026 (Summons No 1439 of 2026)

Between

(1) Anurag Avula
(2) Lim Yen Ti

… *Claimants*

And

MatchMove Pay Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders — Sealing and redaction orders — Redaction of commercially sensitive information]

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v
MatchMove Pay Pte Ltd

[2026] SGHC 123

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2 June 2026

10 June 2026

Low Siew Ling JC:

Introduction

1 This was the Defendant's application to seal the entire case file in HC/OA 349/2026 ("OA 349") on the grounds that the Claimants' first supporting affidavit filed in OA 349 dated 30 March 2026 (the "Affidavit") contained confidential and commercially sensitive information.

2 After hearing parties, I dismissed the Defendant's application for the case file to be sealed but ordered that the Claimants' Affidavit in OA 349 be sealed and that the Claimants file a redacted copy of the Affidavit which would be available for public inspection. As the Defendant appeared to be labouring under the misimpression that a private obligation of confidentiality *alone* would be a sufficient basis for a sealing order to be made, I set out my detailed reasons for dismissing its application.

Facts

Background to the dispute

3 The Claimants, Mr Anurag Avula ("Mr Avula") and Ms Lim Yen Ti ("Ms Lim"), are the founders and former shareholders of Shopmatic Holdings Pte Ltd ("SHPL"), an e-commerce specialist.[1] The Defendant, MatchMove Pay Pte Ltd, is a company that develops and provides Banking-as-a-Service wallet solutions supported by application programming interfaces. The Defendant is a Major Payment Institution ("MPI") regulated by the Monetary Authority of Singapore ("MAS").[2]

4 Sometime in late 2021, the Claimants and the Defendant began to discuss the potential acquisition of SHPL by the Defendant.[3] On 17 May 2022, the Defendant finalised a share purchase agreement ("SPA") to acquire SHPL in a share-swap transaction.[4] Pursuant to the SPA, the Defendant agreed to purchase all the shares in SHPL in exchange for new shares in the Defendant to be issued to all SHPL shareholders, including the Claimants.[5]

5 In anticipation of the proposed acquisition, the Defendant had earlier entered into a non-binding Supplementary Term Sheet with the Claimants on 16 November 2021 whereby the Claimants agreed to enter into the Defendant's employment upon completion of the Defendant's acquisition of SHPL, and the Defendant agreed to purchase a fixed number of each of the Claimants' shares in the Defendant within 10 business days from completion of the SHPL

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1 Affidavit of Shailesh Naik filed in OA 349 dated 4 May 2026 ("SN1") at para 15.

2 SN1 at paras 8–9.

3 SN1 at para 17.

4 SN1 at Tab 10, p 154.

5 SN1 at Tab 10, pp 169–171.

acquisition. The consideration for the proposed share buy-back for each of the Claimants was US$2 million.[6]

6 The Defendant's acquisition of SHPL was completed on 29 July 2022.[7] However, the Defendant did not complete the share buy-back as promised. Instead, parties continued to discuss the finalisation of a draft share buy-back agreement to implement the terms of the Supplementary Term Sheet from March 2022 to January 2023. Although the Claimants signed the draft share buy-back agreement prepared by the Defendant's Chief Financial/Investment Officer, Mr Daniel Stuart-Smith ("Mr Stuart-Smith"), on 19 March 2022 (with certain details to be filled in by the Defendant),[8] the Defendant only circulated the completed, signed and dated Share Buy-Back Agreement (the "Share Buy-Back Agreement") to the Claimants on 11 January 2023 after repeated chasers.[9]

7 Pursuant to the terms of the Share Buy-Back Agreement, the Defendant agreed to purchase 387,713 of the Defendant's shares from each of the Claimants for US$2 million each, with payment to be made in various tranches as set out in Clause 3.2 of the Share Buy-Back Agreement. Other notable terms of the Share Buy-Back Agreement included the following:

(a) Clause 2.1 stated that the Defendant's obligations under the Share Buy-Back Agreement were conditional and subject to, among others, the parties having obtained all necessary approvals and consents (including from all relevant governmental, regulatory authorities and

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6 Affidavit at paras 6–7, and Tab B at pp 24–34.

7 SN1 at para 63.

8 Affidavit at para 10, and Tab C at p 49.

9 Affidavit at para 18, and Tab E at p 89.

other parties) and the Defendant having passed the necessary directors' and/or shareholders' resolutions to approve the transactions;

(b) Clause 3.4 provided that notwithstanding any other provision, the parties agreed that the consideration payments would be deferred to a later date if payment on the dates specified in Clause 3.2 would prejudice the Defendant's ability to operate in the ordinary course of business; and

(c) Clause 3.3 stated that the Defendant's payment of the final US$1 million tranche to the Claimants was conditional on both the Claimants not being classified as "Bad Leavers" at the time they left the Defendant's employment.

8 As the Defendant failed to complete the share buy-back in accordance with the terms of the Share Buy-Back Agreement, the Claimants filed OA 349 to seek damages of US$4 million in total, plus interest.

9 The Defendant denied that the Share Buy-Back Agreement was binding and enforceable as claimed for the following reasons: (a) the Share Buy-Back Agreement was voidable due to certain misrepresentations made by the Claimants, including their professed commitment to remain in the Defendant's employment;[10] (b) no notice proposing a members' resolution was circulated and no special resolution of at least 75% of the Defendant's shareholders was passed so the condition precedent in Clause 2.1 was not satisfied;[11] (c) completion of the Share Buy-Back Agreement on schedule would prejudice the Defendant's ability to operate in the ordinary course of business so payment

10 SN1 at Tab 23, pp 594–596.

11 SN1 at Tab 23, pp 593–594.

should be deferred pursuant to Clause 3.4;[12] and (d) the Claimants had deceived the Defendant into characterising them as "Good Leavers" at the time of their respective resignations in January and February 2023 by falsely or materially overstating their personal circumstances, thereby engaging Clause 3.3.[13]

The Claimants' supporting affidavit in OA 349

10 In their Affidavit filed in support of OA 349, the Claimants exhibited numerous documents including the parties' correspondence relating to the Share Buy-Back Agreement, the Defendant's financial statements and various shareholder updates which were circulated to them in their capacity as shareholders of the Defendant.

11 The Defendant objected to the inclusion of some of these documents as it claimed that, amongst other grounds, they were subject to the confidentiality obligation in Clause 16.1 of the Amended and Restated Shareholders' Agreement dated 29 July 2022 ("SHA") which binds all shareholders of the Defendant, including the Claimants:[14]

> **All communications between the Company and the Shareholders or any of them and all information and other material supplied to or received by any of them from any one or more of the others which is either marked "confidential" or is by its nature intended to be exclusively for the knowledge of the recipient alone, or to be used by the recipient only for the benefit of the Company, any information concerning the business transactions or financial arrangements of the Company or the Shareholders or any of them**, or of any person with whom any of them is in a confidential relationship with regard to the matter in question coming to the knowledge of the recipient **shall be kept**

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12 SN1 at Tab 23, p 594.

13 SN1 at Tab 23, p 596.

14 Affidavit of Shailesh Naik filed in HC/SUM 1439/2026 dated 11 May 2026 ("SN2") at paras 23, 32–42.

> **confidential by the recipient and shall be used by the recipient solely and exclusively for the benefit of the Company** unless:
>
> (a) disclosure is required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
>
> …
>
> (c) any party can reasonably demonstrate that such confidential information is or part of it is in the public domain through no act or default on the part of the recipient, its servants and/or agents, whereupon to the extent that it is public, this obligation shall cease.
>
> [emphasis added in bold]

12 The Defendant took issue with the Claimants' inclusion of the following documents, which I categorised below for ease of reference (the "Disputed Documents"):

(a) Category 1: Email correspondence between the Claimants and the Defendant's Mr Stuart-Smith in March 2022 regarding the execution of the draft Share Buy-Back Agreement;[15]

(b) Category 2: Email correspondence between the Claimants, Mr Stuart-Smith and/or the Defendant's Chief Executive Officer and Director, Mr Shailesh Naik ("Mr Naik"), from 19 July 2022 to 9 January 2023 regarding when the Defendant would be completing the share buy-back, and a separate discussion from 3 to 15 May 2022 on increasing the Claimants' "sell limit" for the Defendant's shares;[16]

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15 Affidavit at Tab C, pp 38–48 and 49–69.

16 Affidavit at Tab D pp 71–87, and Tab K pp 220–221.

(c) Category 3: The email from Mr Stuart-Smith to the Claimants enclosing the completed and signed Share Buy-Back Agreement on 11 January 2023;[17]

(d) Category 4: An email from Mr Stuart-Smith to the Defendant's shareholders on 6 July 2024 and a set of slides titled "Shareholder Update 1H 2023";[18] and

(e) Category 5: Email correspondence between Mr Naik and the second Claimant, Ms Lim, in January 2023 regarding her resignation from the Defendant due to her health condition and her offer to work as an independent contractor.[19]

13 The Defendant applied for the entire case file in OA 349 to be sealed as it claimed that the Disputed Documents were confidential pursuant to Clause 16.1 of the SHA.[20] In addition, the Defendant claimed that the Category 4 documents were commercially sensitive as they included information relating to the Defendant's valuation methodologies, commercial, legal and compliance strategies, financial position and growth plans.[21]

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17 Affidavit at Tab E, pp 89–100.

18 Affidavit at Tab H pp 114–117, and Tab J pp 192–218.

19 Affidavit at Tab L, p 234.

20 Defendant's Written Submissions filed on 26 May 2026 ("DWS") at [10]–[12] and [18]–[21].

21 DWS at [26]–[28]; Notes of Evidence for 2 June 2026, at p 4 line 19 to p 6 line 20.

Issue to be determined

14 The sole issue to be determined in this application was whether the court should order that the case file in OA 349 be sealed so that it would not be available for public inspection.

Sealing order

Applicable law

15 The starting point is that open justice is a hallowed principle that is fundamental to the integrity of the justice system: *Re Tay Quan Li Leon* [2022] 5 SLR 896 at [17] ("*Leon Tay*"). Chief Justice Sundaresh Menon explained in *Chua Yi Jin Colin v Public Prosecutor* [2022] 4 SLR 1133 at [34] that the principle of open justice is of fundamental importance as it rests on important considerations of public policy that justice must not only be done but must also be seen to be done. Open court proceedings and open court files protect public confidence in the judicial system and guard against judicial arbitrariness by allowing the public to engage meaningfully and critically with the judicial process.

16 A court dealing with an application for a sealing order must recognise that such orders should not be lightly made as they represent a departure from the principle of open justice. Such orders should therefore be the exception and not the norm. Any derogation from this principle must either "be grounded in statute or in the court's inherent powers to do what is *necessary* in order to serve the ends of justice" [emphasis in original]: *Leon Tay* at [19]. Apart from specific statutory exceptions such as those involving family matters or commercial arbitration, s 8(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") confers on the court the broad power to hear cases in private where it

is "expedient in the interests of justice, public safety, public security or propriety, the national interest or national security of Singapore, or for other sufficient reason". The same considerations would necessarily inform the court's approach to applications for sealing orders as well, which are granted pursuant to the inherent powers of the court: *BBW v BBX* [2016] 5 SLR 755 at [25].

17 In cases where considerations of national or public interest are not directly engaged and the court is solely concerned with whether the principle of open justice should make way for what the "interests of justice" require in a particular case, the court engages in a balancing exercise where the scales are weighted heavily in favour of open justice. It will accordingly require sufficiently compelling countervailing reasons to outweigh the court's strong desire to conduct its proceedings openly and transparently, with the full benefit of public scrutiny.

Analysis and decision

18 With the above principles in mind, it was clear that there were no grounds to make an order for the entire case file in OA 349 to be sealed. Such an order was entirely disproportionate when the Defendant was objecting only to the inclusion of the Disputed Documents in the Claimants' Affidavit.

19 The Defendant argued that such a wide-ranging order was necessary because the Disputed Documents comprised an extensive portion of the Claimants' exhibits in their Affidavit, the text of the Affidavit contained substantive descriptions of and references to the Disputed Documents, and a partial sealing of the Affidavit itself would not remove the risk of indirect disclosure as third parties would still be able to access other documents in the

case file that were "likely to contain references to the confidential material", such as written submissions and transcripts of hearings.[22]

20 In making this submission, the Defendant appeared to have turned the principle of open justice on its head. It bears repeating that open justice is the norm, not the exception. Even if a case presents sufficiently strong countervailing circumstances that may justify a sealing or redaction order, such orders must still be narrowly scoped to ensure that they do not have the effect of undermining public confidence in the administration of justice.

21 In the present case, it would be entirely inappropriate to seal the whole case file simply because of the Defendant's speculative concern that some reference to the Disputed Documents could still find its way into other documents in the case file. If a particular court document has been sealed, the onus must be on the party seeking to maintain the confidentiality of that document to ensure that it seeks the necessary consequential orders from the court for the sealing or redaction of any *other* documents, to the extent that they may contain any stray references to the document in question.

22 Turning to consider the Defendant's arguments on why public inspection of the Disputed Documents should be restricted, counsel expounded at length on how the Documents fell within the scope of Clause 16.1 of the SHA.[23] However, the Claimants only became shareholders of the Defendant and parties to the SHA on 29 July 2022.[24] Thus, many of the documents under Categories 1 and 2 could not fall within Clause 16.1 of the SHA to begin with,

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22 DWS at [80]–[82].

23 DWS at [10]–[24] and [30]–[52].

24 Notes of Evidence for 2 June 2026 at p 3 line 3.

as they entailed correspondence between the parties *before* the Claimants even became shareholders of the Defendant and parties to the SHA.[25] When this was pointed out to counsel for the Defendant at the hearing, he readily accepted that Clause 16.1 of the SHA did not have retrospective effect. Instead, counsel emphasised that the earlier Disputed Documents were still confidential because of the disclaimers found in the email correspondence.[26] For example, the email from Mr Stuart-Smith to the Claimants dated 18 March 2022 contained the following standard term:[27]

> Disclaimer:
>
> **This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail**. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required, please request a hard-copy version
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> [emphasis in original in underline; emphasis added in bold]

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25 SN1 at Tab 12, p 443.

26 Notes of Evidence for 2 June 2026 at p 3 lines 10–16.

27 SN1 at Tab 6, p 106.

23 Similarly, the emails from Mr Avula contained the following standard term:[28]

> Disclaimer: The information contained in this email and its attachments **may be confidential and/or privileged and has been sent for the sole use of the intended recipient(s).** If you received this email by mistake, please reply to the sender immediately, eliminate it from your system and **do not disclose, use, print, retain or disseminate this message, in whole or in part.** …
>
> [emphasis in original omitted; emphasis added in bold]

24 Beyond a contractual duty of confidence such as Clause 16.1 of the SHA, confidentiality can also arise under an equitable duty of confidence. For this to apply, however, the court must consider that the substance of the information has the "necessary quality of confidence", and any express stipulation, contractual or otherwise, is not determinative: *Adinop Co Ltd v Rovithai Ltd* [2019] 2 SLR 808 at [40]–[41]. Thus, the disclaimers themselves were of limited assistance to the Defendant's case, unless the Defendant could also establish that the information contained in the emails had the necessary quality of confidence.

25 The Defendant also argued that the terms of the disclaimers expressly prohibited distribution of the emails to third parties. However, a close reading of the disclaimers made clear that the prohibition against dissemination only applied if the party receiving the email was "not the named addressee" or the "intended recipient(s)". In the present case, there was no question that the parties, including the Claimants, were the intended addressees and recipients of the relevant emails in contention.

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[28] SN1 at Tab 11, pp 425–441.

26 More importantly, even if I assumed that all the Disputed Documents were confidential either pursuant to a contractual or equitable duty of confidence, this would not take the Defendant's case very far because this was insufficient, in and of itself, to justify the grant of a sealing order.

27 A private obligation of confidentiality is generally not sufficient to outweigh the fundamental principle of open justice. The countervailing factor must be "something more, *eg*, a need to protect a trade secret, [or] to protect unpublished price-sensitive information": *TYN Investment Group Pte Ltd v ERC Holdings Pte Ltd* [2020] 5 SLR 894 ("*TYN Investment*") at [133]. I did not consider the Defendant's attempts to distinguish the confidentiality clause in *TYN Investment* from Clause 16.1 of the SHA to be productive,[29] because it was clear that Coomaraswamy J was making a point of general principle in that case. In my view, "something more" is required precisely because of the importance of the open justice principle.

28 This is consistent with the position in Australia as well, where the grounds for making suppression and non-publication orders are set out in s 37AG(1) of the Federal Court of Australia Act 1976 (Cth). The Federal Court of Australia has noted that confidentiality on its own is insufficient to attract a suppression or non-publication order: *Betfair Pty Ltd v Racing New South Wales (No 5)* [2009] FCA 1011 at [9]; *Motorola Solutions, Inc. v Hytera Communications Corporation Ltd (No 2)* [2018] FCA 17 at [9]. There must also be a real risk that disclosure could cause commercial harm: *In-N-Out Burgers, Inc v Hashtag Burgers Pty Ltd* [2020] FCA 193 at [361], appeal on other grounds dismissed in *Hashtag Burgers Pty Ltd v In-N-Out Burgers, Inc* [2020] FCAFC 235.

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[29] DWS at [68]–[69].

29 I had earlier noted that the court's approach to applications for sealing orders without a specific statutory basis should draw inspiration from s 8(2) of the SCJA, which provides that exceptions to the open justice principle may be justified "in the interests of justice, public safety, public security or propriety, the national interest or national security of Singapore, or for other sufficient reason". While the "interests of justice" is a broad and flexible concept, the overriding consideration must be to demonstrate that a sealing order is "*necessary* in order to serve the ends of justice" [emphasis in original]: *Leon Tay* at [19]. Menon CJ's use of the word "necessary" sets a high threshold precisely because of the importance of the principle of open justice. To my mind, this cannot be made out by recourse to a private obligation of confidentiality alone. An applicant who wishes to demonstrate that a sealing order is *necessary* to serve the ends of justice must be able to show not only that the information is confidential but also that there is a real risk that disclosure of the information in an open case file would either cause him or some other party to suffer personal or commercial harm, or otherwise prejudice the proper administration of justice.

30 This is consistent with the state of the authorities in Singapore. The examples cited by Coomaraswamy J in *TYN Investment* involving trade secrets or unpublished price-sensitive information were all instances in which disclosure created a real risk of commercial harm. In the exceptional cases where sealing orders have been made (outside of the arbitration or arbitration-adjacent context), the court was also satisfied not only that the information was confidential but also that there was a real risk of commercial harm by its disclosure in an open case file.

31 Thus, in *Hi-P International Ltd v Tan Chai Hau* [2020] SGHC 128 ("*Hi-P International*"), Choo Han Teck J granted an order to seal the annex to

an affidavit listing the plaintiff's customers, agents and suppliers that the third defendant should be prohibited from soliciting. Choo J made the order not simply because the list contained confidential information but because he found that its disclosure could cause "substantial damage to the plaintiff (*ie*, by resulting in a breach of its confidentiality obligations owed to the persons listed, or by allowing its customers and suppliers to bypass it resulting in a loss of business)": *Hi-P International* at [23]. Similarly, in *Re Zipmex Co Ltd* [2023] 4 SLR 1100, Aidan Xu @ Aedit Abdullah J granted an order to seal an affidavit that disclosed some commercially sensitive matters relating to a share subscription agreement involving an investor because such confidentiality was required to move the companies' restructuring forward (at [10]). In other words, rejecting the sealing application would have created a real risk of commercial harm as it could derail the companies' ongoing restructuring exercise.

32 Applying the principles to the present case, the Defendant had to satisfy me not only that the Disputed Documents were confidential, but also that there was a real risk of commercial harm arising from their disclosure that outweighed the interests of open justice. This could be made out if, for example, the Defendant was able to show that the Disputed Documents contained commercially sensitive information. Commercial sensitivity provides a sound basis for the making of a sealing order as there would be a real risk of commercial harm arising from the disclosure of such information. Further, it is not in the interests of the administration of justice that litigation becomes "a vehicle for advantaging or prejudicing trade rivals": *Australian Competition and Consumer Commission v Cement Australia Pty Ltd (No. 2)* [2010] FCA 1082 at [23], *per* Greenwood J.

33 Unfortunately, the Defendant was content to rest its case largely on the basis of confidentiality alone. In his affidavit filed in support of this application,

Mr Naik's primary contention was that the Disputed Documents were confidential pursuant to Clause 16.1 of the SHA. He did not go on to contend that their disclosure may pose a risk of harm to the Defendant or any other party, save in respect of Category 4 of the Disputed Documents which he stated also contained commercially sensitive information.

34 Counsel for the Defendant argued at the hearing that Mr Naik, as a layperson, did not address the point on commercial sensitivity for the other categories of the Disputed Documents in his affidavit as he had left it to his counsel for submissions.[30] However, the commercial sensitivity of the information and the potential risk of harm to the Defendant as a result of its disclosure were self-evidently factual assertions that ought to have been made and particularised on affidavit, to enable the court to assess whether there were sufficiently compelling countervailing considerations to outweigh the principle of open justice. As the Defendant's case for restricting public inspection of Categories 1, 2, 3 and 5 of Disputed Documents was based solely on its claim that the documents were confidential, and I had already found that a private obligation of confidentiality alone was insufficient to outweigh the fundamental principle of open justice, it followed that the Defendant's case for a sealing order premised on these categories of the Disputed Documents was unsustainable.

35 Nevertheless, for completeness, I also considered the Defendant's arguments on the commercial sensitivity of Categories 1, 2 and 3 of the Disputed Documents which were raised at the hearing itself. The Defendant did not contend that Category 5 of the Disputed Documents was commercially sensitive. In relation to Categories 1, 2 and 3, which concerned the parties' discussions regarding the Share Buy-Back Agreement, counsel for the

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[30] Notes of Evidence for 2 June 2026 at p 2 lines 27–28.

Defendant argued that the information on the share buy-back was commercially sensitive as it was known only to the Defendant and the Claimants, and disclosure of the correspondence to the public at large would be "prejudicial" to the Defendant by revealing the share buy-back price, the Defendant's valuation of its own shares and its limits in the negotiations.[31] Counsel stressed that the proposed share buy-back was not a routine matter as it would affect the control and ownership of the Defendant, which would in turn have ramifications on the relationships between the Defendant's shareholders *inter se* and with the Defendant.[32] There was also a suggestion that disclosure of the negotiations in an open case file may give rise to the wrong impression that there was a binding transaction between the parties, when the Defendant's case was that the Share Buy-Back Agreement was inoperable.[33]

36 In my view, the latter suggestion that disclosure may lead to a misunderstanding of the Defendant's position on the Share Buy-Back Agreement was purely speculative and rested on the tenuous presumption that the hypothetical reader would only consider the Disputed Documents, and no other document in the case file. The former point on prejudice also goes nowhere near the requisite threshold necessary to justify deviating from the principle of open justice. The fact that a share buy-back is not a routine matter and requires special approval from the shareholders is, by itself, neither here nor there. I did not see how disclosure of this information could pose any risk of commercial harm to the Defendant. I would further note that, first, any unhappiness of the Defendant's shareholders may not necessarily lead to *the Defendant* suffering any harm or damage, and second, that this situation was the

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31 Notes of Evidence for 2 June 2026 at p 3 lines 14–30.

32 Notes of Evidence for 2 June 2026 at p 3 line 27 to p 4 line 3.

33 Notes of Evidence for 2 June 2026 at p 4 lines 5–7.

result of the manner in which the Defendant had conducted its affairs. It could not expect to keep the other shareholders in the dark when the Share Buy-Back Agreement itself did not provide for confidentiality and in fact required the shareholders to approve the transaction.[34]

37 Turning to Category 4 of the Disputed Documents, this was the only category which Mr Naik asserted on affidavit contained commercially sensitive information.[35]

38 Category 4 of the Disputed Documents comprised the following:

(a) An email update from Mr Stuart-Smith to the Defendant's shareholders on 6 July 2024 titled "KFC Forfeiture – information for shareholders", which included an attachment "Cap Table Summary (pre- & post-KFC Forfeiture)"; and

(b) the Defendant's "Shareholder Update 1H 2023".

39 Mr Stuart-Smith's email update pertained to the Defendant's forfeiture of the shares held by one of the Defendant's shareholders, KFC Ventures Pte Ltd ("KFC Ventures"), after KFC Ventures failed to follow through on its agreed investment in the Defendant. The attached capitalisation tables showed the effects of the forfeiture on the Defendant's shareholding percentages.[36]

40 I did not find anything in the contents of the email that constituted commercially sensitive information that may pose a real risk of commercial

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34 SN1 at Tab 15, pp 560–570.

35 SN2 at paras 44–49.

36 Affidavit at Tab H, pp 116–117.

harm to the Defendant, for the simple reason that the forfeiture of KFC Ventures' shares was already in the public domain. Mr Stuart-Smith himself expressly stated in the same email that "ACRA filing of the forfeiture and transfer was completed on 9th May 2024."[37] Much of the other information contained in the email update was either disclosed in the Defendant's audited financial statements for Financial Year 2022,[38] or ought to have been disclosed in the Defendant's financial statements.

41 The Defendant also suggested that leaving the email and attachment open in the case file would prejudice KFC Ventures, which was a third party that was not involved in the present dispute.

42 There is some authority to suggest that where the documents in question are subject to confidentiality interests belonging to non-parties to the litigation, the court may be more prepared to make a sealing order because the non-party has been forced to give up its confidential information through no fault or dispute of its own: *Himel v. Greenber*g (2010) ONSC 2325 at [58]. It has also been held, in the separate context of discovery orders made against documents owned by non-parties to the litigation, that the court must carefully consider and ensure that any invasion of the non-party's confidentiality and privacy is counterbalanced by the interests of justice in the individual case: *The Lao People's Democratic Republic v Sanum Investments Ltd* [2013] 4 SLR 947 at [22], citing Paul Matthews & Hodge M Malek, *Disclosure* (Sweet & Maxwell, 3rd Ed, 2007) at para 10.15.

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37 Affidavit at Tab H, p 114.

38 Affidavit at Tab I, pp 140–190.

43 Nevertheless, I did not find that these authorities assisted the Defendant's case because once the forfeiture of KFC Ventures' shares became public, there was no longer any confidentiality interest belonging to KFC Ventures which required the court's protection. The Defendant also did not point to any specific basis on which KFC Ventures would be entitled to confidentiality, beyond stating that it "has a legitimate interest in maintaining the confidentiality of the information" in Mr Stuart-Smith's email.[39] Even if it is assumed that Mr Stuart-Smith's email was indeed confidential, I had already held that a bare assertion of confidentiality was insufficient.

44 To the extent that the Defendant suggested that there was a residual interest worthy of protection as Mr Stuart-Smith's email also contained information about the commercial terms upon which KFC Ventures had invested in the Defendant (*eg*, the consideration KFC Ventures paid for its shares in the Defendant), it was difficult to discern how or why the terms of a failed investment should be commercially sensitive. The Defendant provided no particulars or evidence to explain why information about the terms of KFC Ventures' aborted investment in the Defendant was commercially sensitive, in the sense that its disclosure could pose a real risk of commercial harm to either the Defendant or KFC Ventures. In the absence of such evidence, there were simply no grounds for me to order that the information be sealed.

45 Turning to the Defendant's Shareholder Update 1H 2023, this was a 27-slide update to the Defendant's shareholders which contained information on the Defendant's clients, breakdowns of the Defendant's revenue streams by client profile and business segment, the Defendant's expected cash flows, management accounts and funding updates, and its plans for growth for the

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[39] DWS at [21].

second half of 2023.[40] Mr Naik asserted that this information was commercially sensitive as open access would allow third parties (including competitors, counterparties and potential transaction partners) to obtain insight into the Defendant's commercial strategy, pricing dynamics, internal assessments and forward-looking commercial position, which could be used to the Defendant's detriment in negotiations and competitive positioning.[41]

46 What Mr Naik did not explain fully in his affidavit was how historical information relating to the Defendant's affairs in the first half of 2023 could still be relevant and potentially used to the Defendant's detriment in 2026. As the Claimants rightly pointed out, the Defendant's revenue forecast would have been superseded by the Defendant's actual financial performance for 2023, which would have been statutorily disclosed in the Defendant's audited statements.[42] Many of the issues discussed in the Shareholder Update 1H 2023, such as the Defendant's planned funding sources for 2023 and 2024, would also presumably have been overtaken by events. Finally, some of the information in the Shareholder Update 1H 2023 was in the public domain, such as the Defendant's list of clients and new partners and the Defendant's acquisition of an MPI licence from MAS.

47 However, I was also cognisant that confidentiality, once breached, is lost forever: *ANB v ANC* [2015] 5 SLR 522 at [25], citing *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 at [18]. Once documents containing commercially sensitive information have been seen, they cannot be unseen: *H8 Holdings Pte Ltd v RIC Dormitory (SG) Pte Ltd* [2025] 3 SLR 762 at [55]–[56], citing *Mobil*

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40 Affidavit at Tab J, pp 192–218.

41 SN2 at paras 44–45.

42 Claimants' Written Submissions dated 26 May 2026 at [48]–[49].

Oil Australia Ltd v Guina Developments Pty Ltd (1995) 33 IPR 82 at 87–89. While the information in the Shareholder Update 1H 2023 was somewhat dated, I accepted the Defendant's contention that there could still be some residual commercial value in this data as third parties such as the Defendant's competitors could potentially use it to obtain more granular insights into the Defendant's past financial performance and commercial strategies which may still be relevant today. In particular, the Defendant's analysis of its revenue streams by client profile and business segment, its reliance upon certain client and market intelligence,[43] and its forecasts on its future performance and its cash runway,[44] may still be valuable to its competitors. I also saw some force in the Defendant's argument that although its actual financial performance was publicly known through its audited financial statements, the Defendant's competitors may still obtain undue insight into the Defendant's management and business strategy and where it had been able to "make good on its commercial strategies", by comparing its detailed internal forecasts against its actual performance.[45] Taking the Shareholder Update 1H 2023 as a whole, I was satisfied that it contained commercially sensitive information that posed a real risk of commercial harm to the Defendant if disclosed, as this information could be used to gain a competitive edge over the Defendant in negotiations or overall market performance.

48 I was mindful that this information should not be entirely redacted from the case file as it was potentially relevant to the resolution of OA 349, particularly in relation to the merits of the Defendant's claim that completion of

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43 Affidavit at Tab J, pp 203–208.

44 Affidavit at Tab J, pp 212–214.

45 Notes of Evidence for 2 June 2026 at p 9 lines 9–15.

the Share Buy-Back Agreement as scheduled would prejudice its ability to operate in the ordinary course of business.

49 I therefore ordered that the Claimants' Affidavit be sealed, and that the Claimants file another version of the same affidavit with the contents of the Shareholder Update 1H 2023 redacted within a week of the hearing. The latter affidavit should be available for public inspection. In making this order, I considered that even if there are sufficiently compelling grounds to justify a sealing order, the order must still be precise and narrow in scope, so as not to unduly encroach upon the interests of open justice. In my assessment, allowing public inspection of a redacted version of the Affidavit would preserve the principle of open justice whilst still protecting the Defendant's interests in maintaining the confidentiality of its commercially sensitive information.

50 For completeness, the Defendant also emphasised that this was a private commercial dispute that did not engage issues of public interest.[46] It followed from the Defendant's argument that the present dispute was unlike cases such as *Leon Tay* and *Iskandar bin Rahmat v Law Society of Singapore* [2020] SGHC 40, which concerned important issues impacting the legal profession – namely, the character required of a candidate seeking admission to the Bar and matters relating to the discipline of lawyers. The implicit suggestion was that sealing orders should be more readily granted in cases involving private commercial disputes.

51 The actual position is a more nuanced one. The principle of open justice would evidently apply with greater force in cases which directly engage matters of public interest, such as proceedings concerning the legal profession (given

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[46] DWS at [53]–[56].

the role of the legal profession in upholding the justice system): *Leon Tay* at [17]. This simply means that the countervailing factors justifying a sealing order must be *even more compelling* in such cases. However, it does not follow that the principle of open justice is somehow diluted of its normative force where a dispute only engages the private interests of the parties to the litigation. Such an approach fails to give due weight to the important principles that underpin the policy of open justice itself, which exists to protect public confidence in the administration of justice. Justice must not only be done but "should manifestly and undoubtedly be seen to be done": *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 at 259, *per* Lord Hewart CJ. This adage holds true for *all* cases before the courts, whether they are private commercial disputes or cases involving broader issues of public interest.

Conclusion

52 For the reasons above, I dismissed HC/SUM 1439 of 2026. I ordered that the Claimants' Affidavit filed in OA 349 be sealed, and that a version of the same affidavit be re-filed within a week with the contents of the Shareholder Update 1H 2023 (together with the references to its contents at paragraphs 35 and 36 of the Affidavit) redacted. This redacted affidavit shall be open for public inspection.

53 As the Claimants succeeded in resisting the Defendant's application for the entire case file to be sealed, I awarded costs of $4,500 (all-in) to the Claimants. In fixing the quantum of costs, I took into account the fact that the Defendant failed in almost all of its arguments and only succeeded in establishing that a very small subset of the Disputed Documents should be protected from public inspection.

Low Siew Ling
Judicial Commissioner

Nicholas Jeyaraj s/o Narayanan (Nicholas & Tan Partnership LLP) for the claimants and respondents in HC/SUM 1439/2026; Pardeep Singh Khosa and Sivanathan Jheevanesh (Withers KhattarWong LLP) for the defendant and applicant in HC/SUM 1439/2026.